



## SHEFFIELD CITY COUNCIL

### Cabinet Report

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**Report of:** Executive Director of Place

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**Date:** March 18 2015

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**Subject:** The Graves Park Charitable Trust:  
Cobnar Cottage

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**Author of Report:** Paul Billington

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#### Summary:

This report summarises public objections to the proposed sale for residential use of Cobnar Cottage which adjoins the boundary wall of Graves Park. The full text of all the objections received is attached to this report as Appendix B. In July 2013 Cabinet acting as Trustee of the Graves Park Charity approved a recommendation to sell the freehold interest in the cottage on the open market for residential use and acknowledged the charitable obligation to reinvest the proceeds in improving the public facilities in Graves Park. Improvements to the park that could be funded by the proceeds of the sale include the animal farm, play facilities, recreation and sports areas, improved/extended footpaths, planting schemes and visitor facilities.

The charity no longer has any use for the cottage (it has stood vacant for several years) and the cost of renovation to the charity would be in excess of £100,000. Investment in the cottage has been deprioritised over several years in favour of spending on the upkeep of the park. The City Council is the only source of operational funding for Graves Park. Restoring the property to residential use will complement the adjoining park and the surrounding neighbourhood.

The cottage is in a poor state of repair and represents an increasing maintenance and financial liability to the charity. The Charity Commission had been consulted on the sale and had previously indicated that their consent would not be required for the proposed disposal, but, following an approach from someone objecting to the proposed disposal the Commission has changed their initial position and has now indicated that a formal scheme to authorise the disposal will be required, as covered in more detail in the Legal Property and Charity implications section of this report.

If the application for a scheme were to be successful it would enable the property to be sold on the open market for residential purposes and the proceeds of sale

to be invested in the park. Possible areas of improvement to the park that could be funded by the proceeds include the animal farm, play facilities, recreation and sports areas, improved/extended footpaths, planting schemes and visitor facilities.

In October 2013, the trustee decision to sell was considered by Council Scrutiny and it was agreed that dialogue would take place with a local group (Friends of Graves Park) who had expressed concerns about the sale. This resulted in the group being given 12 months to produce an alternative viable plan for the cottage. The group was asked to submit a detailed business case (including costs and funding) to demonstrate that their proposal would be of greater benefit to the charity than the proposed sale.

In November 2014, an outline proposal was submitted by the group (see Appendix A). The group's proposal is to demolish the cottage and create a 'historical/memorial garden' at a cost of £23,400. The group has been unable to indicate either confirmed funding or 'in principle' funding, apart from suggesting an undisclosed contribution of match funding.

In December 2014, the members of Cabinet met to consider the group's proposal and concluded that the interests of the charity would be best served by proceeding with the original decision to dispose of the cottage and there was no need to put a formal report to Cabinet at that time.

In January 2015, in the belief that the Council had the power to dispose of the property following the Charity Commission's advice, a public notice of the decision to sell was issued in accordance with the requirement contained in section 121 of the Charities Act 2011. A number of public objections, plus objections from the 3 ward councillors were received. An online petition objecting to the sale has also been presented (see Appendix C).

The principal objection is that the sale of the cottage would be in breach of the covenants imposed on Graves Park and/or the Council, as trustee, does not have the power to sell the cottage. Whilst there are restrictive covenants affecting the trust property, there aren't any that prevent or restrict the trustees' ability to sell the property. This point is covered in more detail in the Legal Property and Charity implications section of this report.

Objection has also been made on the basis that a disposal of Cobnar Cottage is the "thin end of the wedge" and would lead to other disposals of parts of Graves Park. This is not the case. The disposal of the cottage is a one off proposal that must be considered in isolation on its own merits. It is only fact that the cottage represents a very small proportion of the total area of the park and has not for a significant period (if ever) been used as part of the publically accessible park, which means that the ability of the Council, as trustee, to carry out the objects of the charity is not affected by its sale..

Some of the objections mention the alternative use of the cottage site put forward by the Friends of Graves Park, but this cannot be considered to be in the best interests of the charity for the reasons set out in the Financial, Legal, Property and Charity implications section of this report.

The petition does not mention any specific grounds of objection, so it is not possible to make any specific comment on this other than to note the petition.

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**Reasons for Recommendations:**

The disposal of this surplus property on the open market would convert a current liability into an asset for the benefit of the Charity and therefore park users. It would also start a process that will lead to the cottage being restored to residential use and provide a significant investment fund for the charity to improve the park.

The objections raised to the disposal principally focus on the Council's legal right to sell the cottage, but a successful application for a scheme would deal with this issue, as set out in this report. The only alternative proposal to disposal put forward is demolition and creation of memorial garden put forward by the Friends of Graves Park, but this cannot be considered to be in the best interests of the charity for the reasons outlined in this report.

**Recommendations:**

That Cabinet acting as Charity Trustee:

- a. Note the objections received, but for the reasons set out in this report, authorises the Director of Legal and Governance to make an application to the Charity Commission for a scheme to give the Trustee the power to dispose of the freehold interest in Cobnar Cottage and to invest the capital receipt in improving the facilities in Graves Park, rather than holding it as a permanent endowment and just applying the income to the charitable objects; and
- b. If an appropriate scheme is made by the Charity Commission following the application, confirms its authority to proceed with the disposal in accordance with the recommendations approved following the report to Cabinet on July 17 2013.

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**Background Papers:**

1. Reports to Cabinet (July 17 2013) and Scrutiny (October 4 2013)
2. Proposals from Friends of Graves Park
3. Objection letters and petition

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**Category of Report: Open**

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## Statutory and Council Policy Checklist

<b>Financial Implications</b>
YES: Paul Schofield
<b>Legal Implications</b>
YES: David Blackburn
<b>Equality of Opportunity Implications</b>
NO
<b>Tackling Health Inequalities Implications</b>
NO
<b>Human rights Implications</b>
NO:
<b>Environmental and Sustainability implications</b>
NO
<b>Economic impact</b>
NO
<b>Community safety implications</b>
NO
<b>Human resources implications</b>
NO
<b>Property implications</b>
YES: Dave Wood
<b>Area(s) affected</b>
<b>Relevant Cabinet Portfolio Leader</b>
Clr Isobel Bowler
<b>Relevant Scrutiny Committee if decision called in</b>
Economic and Environmental Wellbeing Scrutiny and Policy Development Committee
<b>Is the item a matter which is reserved for approval by the City Council?</b>
<b>NO (Cabinet acting as Charitable Trustees)</b>
<b>Press release</b>
NO

## The Graves Park Charitable Trust: Cobnar Cottage

### 1.0 SUMMARY

- 1.1 This report summarises public objections to the proposed sale for residential use of Cobnar Cottage which adjoins the boundary wall of Graves Park. The full text of all the objections received is attached to this report as Appendix B. In July 2013 Cabinet acting as Trustee of the Graves Park Charity approved a recommendation to sell the freehold interest in the cottage on the open market for residential use and acknowledged the charitable obligation to reinvest the proceeds in improving the public facilities in Graves Park. The charity no longer has any use for the cottage (it has stood vacant for several years) and the cost of renovation to the charity would be in excess of £100,000. Investment in the cottage has been deprioritised over several years in favour of spending on the upkeep of the park. The City Council is the only source of operational funding for Graves Park. Restoring the property to residential use will complement the adjoining park and the surrounding neighbourhood.
- 1.2

The cottage is in a poor state of repair and represents an increasing maintenance and rates liability to the charity. The Charity Commission had been consulted on the sale and had previously indicated that their consent would not be required for the proposed disposal, but, following an approach from someone objecting to the proposed disposal have changed their position and have now indicated that a formal scheme to authorise the disposal will be required, as covered in more detail in the Legal Property and Charity implications section of this report.

1.3

If the application for a scheme were to be successful it would enable the property to be sold on the open market and the proceeds of sale to be invested in the park. Improvements to the park that could be funded by the proceeds of the sale include the animal farm, play facilities, recreation and sports areas, improved/extended footpaths, planting schemes and visitor facilities.

1.4

In October 2013, the trustee decision to sell was considered by Council Scrutiny and it was agreed that dialogue should take place with a local group (Friends of Graves Park) who had expressed concerns about the sale. This resulted in the group being given 12 months to produce an alternative plan for the cottage. The group was asked to submit a detailed business case (including costs and funding) to demonstrate that their proposal would be of greater benefit to the charity than the proposed sale.

1.5

In November 2014, an outline proposal was submitted by the group. The proposal is to demolish the cottage and create a 'historical/memorial garden' at a cost of £23,400, as estimated by the group. The group was unable to indicate either confirmed funding or in principle funding, apart from suggested, but undisclosed, match funding of its own. A copy of the group's proposal is attached to this report as Appendix A.

1.6

- 1.7 In December 2014, the members of Cabinet met to consider the group's proposal and concluded that the interests of the charity would be best served by proceeding with the original decision to dispose of the cottage and there was no need to put a formal report to Cabinet at that time.

- 1.8 In January 2015, in the belief that the Council had the power to dispose of the property following the Charity Commission's advice, a public notice of the decision to sell was issued in accordance with the requirement contained in section 121 of the Charities Act 2011. A number of public objections, plus objections from the 3 ward councillors were received. An online petition objecting to the sale has also been presented. Copies are included with the report.

- 1.9 The principal objection is that the sale of the cottage would be in breach of the covenants imposed on Graves Park and/or the Council, as trustee, does not have the power to sell the cottage. Whilst there are restrictive covenants affecting the trust property, there aren't any that prevent or restrict the trustees' ability to sell the property. This point is covered in more detail in the Legal Property and Charity implications section of this report.

- 1.10 Objection has also been made on the basis that a disposal of Cobnar Cottage is the "thin end of the wedge" and would lead to other disposals of parts of Graves Park. This is not the case. The disposal of the cottage is a one off proposal that must be considered in isolation on its own merits. It is only fact that the cottage represents a very small proportion of the total area of the park and has not for a significant period (if ever) been used as part of the publically accessible park, which means that the ability of the Council, as trustee, to carry out the objects of the charity is not affected by its sale.

- 1.11 Some of the objections mention the alternative use of the cottage site put forward by the Friends of Graves Park, but this cannot be considered to be in the best interests of the charity for the reasons set out in the Financial, Legal, Property and Charity implications section of this report.

The petition does not mention any specific grounds of objection, so it is not possible to make any specific comment on this other than to note the petition.

## 2.0 **WHAT DOES THIS MEAN FOR SHEFFIELD PEOPLE**

- 2.1 The proposed sale of the cottage would start a process that should lead to the cottage being restored to a productive residential use which will complement the park and the surrounding neighbourhood. It would result in a capital receipt which would be invested in improving public facilities in the park. The alternative proposed by the Friends Group would preclude this investment and present a potential additional cost to the charity – either in the form of a capital cost and/or an on-going long term maintenance cost – and therefore potentially place further pressure on the

resources available to support the park.

### **3.0 OUTCOME AND SUSTAINABILITY**

3.1 The freehold disposal of the property would start the process required to bring a redundant property, which the charity has no funds to invest in and no productive use for, back into active use and convert what is now an on-going liability for the Charity into an asset. This disposal would generate a capital receipt which would then be reinvested into Graves Park by the Council as Trustee of the Charity, in accordance with the objects of the charity.

3.2

The recommended 'sale and investment' option provides an appropriate and sustainable solution to the disused cottage and also assists with the long term sustainability of the park.

### **4.0 LEGAL, PROPERTY & CHARITY IMPLICATIONS**

4.1 The objections received to the proposed disposal of Cobnar Cottage state that it would amount to a breach of the covenants contained in the Conveyance of Graves Park to the Council made on 2<sup>nd</sup> December 1925. There are restrictive covenants in the Conveyance, but there aren't any that prevent or restrict the Council's ability to sell the property. It should also be noted that, although the purchase was funded by J G Graves, the land was purchased from B A Firth and it was Mr Firth who the Council covenanted with. One of these covenants does, however, create a restriction on use. This states that "... the land hereby conveyed shall at all times hereafter be preserved as an open space wood or park and that no buildings (other than those at present existing) shall at any time be erected thereon except as hereinafter provided..." There is a further covenant that prevents the erection of further buildings without obtaining the consent and approval of the Vendor, which is what the words "...as hereinafter provided..." are referring to.

4.2

A purchaser of the cottage would need to obtain their own advice as to whether this covenant would affect their interest in the cottage, but it does not restrict the Council's ability to sell the cottage.

4.3

There appears to be confusion between the covenants imposed in the Conveyance as a contractual obligation and the Council's duties and responsibilities as trustee of the Graves Park Charity. Graves Park is what is termed "designated land" which is land that is held by a charity for a specified purpose. As there is no express power of disposal in the charity objects, a disposal of this type of land is not normally possible without making a specific application to the Charity Commission, for a scheme to give the trustee such a power.

4.4

Recent guidance issued by the Charity Commission has, however, stated that it may not be necessary to apply for a scheme if the disposal is only a small proportion of the charity's land that will not affect the ability to carry out the purposes of the charity. The sale proceeds should also be used to support the use of the remaining land for the purposes of the charity.

Where this exception applies, the charity trustee is able to rely upon the general powers relating to the disposal of trust property contained in the Trusts of Land and Appointment of Trustees Act 1996.

4.5

The Charity Commission had been contacted in relation to the proposed disposal of Cobnar Cottage and they had advised that this exception applied and there would be no requirement to apply for a scheme to

4.6

authorise the disposal.

Following an approach from someone objecting to the proposed disposal the Charity Commission has changed its position and has now indicated that a formal scheme to authorise the disposal will be required. Such a scheme, if made, would only authorise the disposal of Cobnar Cottage. It would not give any power to dispose of any other part of Graves Park, so there is no question of this setting a precedent for future disposals as has been suggested in some of the objections. These could only be made by applying for a further scheme.

4.7

The Council, as trustee of the charity, is also under a general obligation to act in the best interests of the charity. Following the initial recommendation to dispose of Cobnar Cottage taken by Cabinet on 17<sup>th</sup> July 2013, the Friends of Graves Park were given the opportunity to come up with a viable alternative proposal for the future of Cobnar Cottage. The only suggestion made was to demolish Cobnar Cottage and create a memorial garden. The cost of this, as estimated by the Friends, would be in the region of £23,000. The group has been unable to indicate any confirmed funding or in principle funding, apart from suggested but undisclosed match funding of its own. The creation of a garden would also require on-going and long term commitment of resources for its upkeep. The group has indicated that they would provide maintenance support.

4.8

However, the cost of £23,000 and on-going maintenance – whether funded or not and by whatever means - compares unfavourably with an estimated capital receipt of £80,000 if the property were to be sold. This receipt would normally be held as a permanent endowment with the income being invested in Graves Park in furtherance of the Charity's objects. The income from such a sum would be relatively small and would not have much impact, but there are capital schemes that the receipt could be applied to that would create a significant benefit to the Park and its users, in furtherance of the Charity's objects.

4.9

Cobnar Cottage does not and as far as can be established, have never formed part of the publically accessible part of Graves Park, so the sale of it would not constitute a loss to the park. On that basis and given the benefits that could be achieved in applying the capital receipt, the sale of Cobnar Cottage must be considered to be more beneficial to the interests of the charity than the alternative proposal put forward.

4.10

In the sale of the property, a covenant will be imposed to restrict future use to residential purposes only. This will put the property back into a productive residential use and will prevent a use that will conflict with the interests of the park and the neighbourhood.



## **5.0 FINANCIAL IMPLICATIONS**

5.1 The disposal would attract a significant capital receipt. All money raised from the disposal would be re-invested into Graves Park by the trustees in accordance with the charitable objects. The alternative proposal by the Friends Group would cost an estimated £23,400 for which there is currently no confirmed or in principle funding. This initial cost and subsequent maintenance costs – whether funded or not and by whatever means - compares unfavourably with an estimated capital receipt and investment fund of £80,000 if the property were to be sold.

5.2

The City Council is the sole funder of operating costs in Graves Park. Any on-going costs relating to the cottage will place further pressure on the Council's funding for the park.

## **6.0 ALTERNATIVE OPTIONS CONSIDERED**

6.1 The empty property is now surplus to the Council's and Charity's requirements and is an on-going liability to the Charity. A significant investment of at least £100,000 would be required to bring the property back into a habitable standard. The charity has no funds for this and even if funding were made available it has no productive use for the property. It may be possible to let the property, but the rental income would not be as beneficial to charity as the capital receipt obtained by selling the property. The Friends Group proposal requires a smaller investment of £23,400, but would create an on-going maintenance liability and not generate any possibility of deriving an income. It would also preclude any capital receipt to invest in improving the park.

## **7.0 REASONS FOR RECOMMENDATIONS**

7.1 The disposal of this surplus property on the open market would convert a current liability into an asset for the benefit of the Charity and therefore park users. It would also start a process that will lead to the cottage being restored to residential use and provide a significant investment fund for the charity to improve the park.

7.2 The objections raised to the disposal principally focus on the Council's legal right to sell the cottage, but a successful application for a scheme would deal with this issue, as set out in this report. The only alternative proposal to disposal put forward is demolition and creation of memorial garden put forward by the Friends of Graves Park, but this cannot be considered to be in the best interests of the charity for the reasons outlined in this report.

## **8.0 RECOMMENDATION**

8.1 That Cabinet acting as Charity Trustees:

- a. Note the objections received, but for the reasons set out in this report, authorises the Director of Legal and Governance to make an application to the Charity Commission for a scheme to give the Trustee the power to dispose of the freehold interest in Cobnar Cottage and to invest the capital receipt in improving the facilities in Graves Park, rather than holding it as a permanent endowment and just applying the income to the charitable objects; and
- b. If an appropriate scheme is made by the Charity Commission following the application, confirms its authority to proceed with the disposal in accordance with the recommendations approved following the report to Cabinet on July 17 2013.