



Author/Lead Officer of Report: Lisa Firth Head of Parks and Countryside

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Report of: Laraine Manley
Executive Director of Place

Report to: Cabinet acting as Charity Trustee of Graves Park
(Registered Charity Number 510841)

Date of Decision: 18th December 2019

Subject: Lease Renewal – Rose Garden Cafe, Graves Park, Sheffield S8 8LL

Is this a Key Decision? If Yes, reason Key Decision:-	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
- Expenditure and/or savings over £500,000	<input type="checkbox"/>	
- Affects 2 or more Wards	<input type="checkbox"/>	
Which Cabinet Member Portfolio does this relate to? Finance and resources		
Which Scrutiny and Policy Development Committee does this relate to? Economic and Environmental Wellbeing Scrutiny and Policy Development Committee		
Has an Equality Impact Assessment (EIA) been undertaken?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
If YES, what EIA reference number has it been given?		
Does the report contain confidential or exempt information?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
If YES, give details as to whether the exemption applies to the full report / part of the report and/or appendices and complete below:- <i>“Appendix 1 & Appendix 2 to this report are not for publication because they contain exempt information under Paragraph 3 of Schedule 12A of the Local Government Act 1972 (as amended).”</i>		

Purpose of Report:

1. This report seeks the approval of Cabinet acting as Charity Trustee of Graves Park (*Registered Charity Number 510841*) ("the Charity") to grant a lease of the Property to the current tenant for a further period of 2 years to ensure continued provision of a café facility at Graves Park for the benefit of Park users.

Recommendations:

The following decisions are recommended to Cabinet acting as Charity Trustees:

- R1.** Approve the short-term lease of the subject property to the current tenant based on the terms set out in Appendix 1 of this report
- R2.** On consideration of the Commercial Details in Appendix 1 and the Qualified Surveyor's Report in Appendix 2, agree that the Trustees are satisfied that the proposed terms are the best that can be reasonably obtained in the circumstances.
- R3.** Authorise the Chief Property Officer in consultation with the Director of Legal and Governance to negotiate the terms of the lease with the current tenant and the Director of Legal and Governance to prepare and complete all the necessary legal documentation in accordance with the agreed terms.

Background Papers:

Appendix 1: Confidential – Commercial Details

Appendix 2: Confidential - Qualified Surveyor's Report dated 31 Oct 2019

Appendix 3: Graves Park Title Plan

Appendix 4: Plan showing Lease Demise

Lead Officer to complete:-		
1	I have consulted the relevant departments in respect of any relevant implications indicated on the Statutory and Council Policy Checklist, and comments have been incorporated / additional forms completed / EIA completed, where required.	Finance: Paul Schofield
		Legal: David Sellars
	<i>Legal, financial/commercial and equalities implications must be included within the report and the name of the officer consulted must be included above.</i>	
2	EMT member who approved submission:	Laraine Manley
3	Cabinet Member consulted:	Cllr Terry Fox, Cabinet Member for Finance and Resources Cllr Mary Lea, Cabinet Member for Culture, Parks and Leisure
4	I confirm that all necessary approval has been obtained in respect of the implications indicated on the Statutory and Council Policy Checklist and that the report has been approved for submission to the Decision Maker by the EMT member indicated at 2. In addition, any additional forms have been completed and signed off as required at 1.	
	Lead Officer Name: Tammy Whitaker	Head of Regeneration and Property Service
	Date: 12 th November 2019	

1. PROPOSAL

- 1.1 Graves Park is Sheffield's biggest park and is held on charitable trust, (further details of which are set out later in this report) with Cabinet acting as sole corporate Charity Trustee. Located in the South West of the City, the park is home to a range of facilities for people to enjoy including a cafe, children's playgrounds, animal farm, sporting facilities, nature trails, fishing lake, woodland and plenty of open space.
- 1.2 The Rose Garden café is located in Graves Park. The location of the Property is shown edged red on the plan attached at Appendix 3 and forms part of Graves Park shown edged blue on the plan at Appendix 4. The Graves Park café has been let to the current tenant since 2009. The previous lease has now expired and occupation is currently by way of a Tenancy at Will pending the consideration of granting a new lease by the Trustees.
- 1.3 In order to ensure continued provision of a café in the Park, this report requests that Cabinet acting as Trustee grant a short –term lease to the existing tenant based upon the terms set out in Appendix 1 of this report.
- 1.4 The lease is an interim position intended to ensure continuation of a café facility within Graves Park pending a review of café facilities in Graves

Park and other parks across the city as part of the council's Better Parks initiative. As with the previous lease at the end of the 2 years the tenant will have no right to remain.

2. HOW DOES THIS DECISION CONTRIBUTE?

- 2.1 The charitable objects of the Charity are *"the provision and maintenance of a park and recreation ground for use by the public with the object of improving their conditions of life"*.
- 2.2 The proposed short term lease contributes to the provision and maintenance of the park as follows:
- (a) it will maintain the provision of the café facility within the park for use by the public.
 - (b) it will continue to remove the liability from the Charity to maintain and insure the property which will reduce the Charity's expenses;
 - (c) it will generate rental income which will be retained by the Charity and used for the purposes of the objects of the Charity, as set out at paragraph 2.1 above;

3. HAS THERE BEEN ANY CONSULTATION?

- 3.1 As there will be no change to the provision of facilities within the park by continuing with the existing operator there is no requirement to consult
- 3.2 The proposed transaction is an interim position in advance of the review of park facilities, including cafes as part of the Better Parks initiative..

4. RISK ANALYSIS AND IMPLICATIONS OF THE DECISION

4.1 Equality of Opportunity Implications

- 4.1.1 The objects of the Charity are to provide the park and its facilities to all members of the public without restriction to or distinction between any person's characteristics including, but not limited to the protected characteristics identified and defined in the Equalities Act 2010 therefore there are no equality implications to be considered in the decision requested by this report on the proposed disposal.

4.2 Financial Implications

- 4.2.1 The proposed lease will, based upon anticipated turnover, generate an increased rental income to the Trust. All rental income generated by the lease of the Property will continue to be retained by the Charity and used

for the purpose of the Charity in accordance with its charitable objects.

4.2.2 The tenant will pay the Charity's costs and expenses of negotiating and completing the lease ensuring there is no cost to the Charity.

4.3 Legal Implications

4.3.1 Graves Park is held on charitable trust by the Charity and administered by the City Council, with Cabinet acting as sole corporate Charity Trustee and management provided by Parks & Countryside Services. The charitable trust is registered with the Charity Commission as Graves Park (Charity Registration Number 510841) and governed by a Charity Commission Scheme dated 12 March 2009 (the Scheme).

4.3.2 The Property forms part of the land comprised in the Scheme and the Council as charity trustee must comply with the restrictions on any disposition contained in the relevant provisions of the Charities Act 2011. These contain a general obligation to achieve the best price that can be reasonably obtained on any disposal but also contains a number of specific obligations as detailed below. The term "disposal" within the Charities Act includes the grant of leases.

4.3.3 Section 120 of the Charities Act 2011 contains an obligation on the trustee to obtain and consider advice from a person having the requisite ability and practical experience to provide them with competent advice on the proposed disposition and who is instructed by the charity trustee and acting exclusively for the Charity. A report compliant with the requirements of section 120 has been obtained and is attached to this report at Appendix 2.

4.3.4 Although the land including the Property is held by the Charity for a specified purpose (known as designated land) and there is no proposal to replace the Property, there is no requirement under section 121 of the Charities Act 2011 to give public notice of the proposed disposal because the term of the proposed lease does not exceed 2 years.

4.3.5 As the Scheme does not contain an express power allowing the charity trustee to dispose of the whole or any part of the land held on trust as with previous disposals of land held on charitable trust by the Council it will rely on the power of sale contained in section 6 of the Trusts of Land and Appointment of Trustees Act 1996 which applies where the extent of the disposal is so small that it will have no impact on the charity's ability to further its objects. The proposed lease is compliant with these provisions and there is no requirement to seek the consent of the Charity Commission.

4.3.6 The lease will be excluded from the provisions of part 2 of the Landlord and Tenant Act 1954. As a result once the lease comes to an end the tenant will have no rights to request a renewal or compensation should they come out of possession.

4.4 Other Implications

- 4.4.1 The grant of the proposed new lease to the current tenant will continue provision of the café facility during the period the council will consider the longer-term future of the property as part of the Better Parks initiative.

5. **ALTERNATIVE OPTIONS CONSIDERED**

- 5.1 The Council may, in due course, offer alternative options for this property but at present it is considered that renewing the café lease is the only realistic short term option available to ensure provision of this facility within the park.
- 5.2 The reason for this is that if the current tenant was required to leave and a new tenant sought by the time a new suitable tenant were found and terms agreed (which could not be guaranteed) the best part of the two year term would have elapsed depriving the park of a valuable facility and the trust of income

6. **REASONS FOR RECOMMENDATIONS**

- 6.1 The proposal to grant a further short-term lease:
- safeguards the café facility at Graves Park for the benefit of park users
 - secures an increased income stream for the Trust which can be reinvested in the Park
 - enables SCC and the Trustees to explore alternatives for this through the Better Parks programme.
 - enhances the attractiveness of the park as a valuable asset for visitors
 - enables the demised property to be occupied for the purposes of the charitable objects of the Charity
 - complies with the provisos contained within the power granted to the Trustee by the Scheme and with the statutory provisions contained within the Act and further with the requirements of the Charity Commission.