



CHARITY COMMISSION
FOR ENGLAND AND WALES

Sent by email to:

David.Sellars@sheffield.gov.uk

Charity Commission
PO Box 211
Bootle
L20 7YX

Our ref: LAW/C-036009/RC

Date: 24 November 2023

Dear Mr Sellars

Graves Park - 510841

Thank you for your email of 24 August 2023. We apologise for the delay in providing you with this response.

We note the Charity contacted the Commission 19 September 2023 regarding Bolehill Farm, which will be dealt with separately by our Authority Casework Team. I address below the information provided in your email of 24 August 2023.

Rose Garden Café

In the Action Plan issued to the Trustee dated 4 May 2023, we asked the Trustee to confirm by 4 August 2023 their decision for the future of the Rose Garden Café and details of the actions taken. Having read your email, I note the Trustee has not yet come to this decision. I do however note that the Trustee is trying to maintain a dialogue with the Friends of Graves Park and others regarding what options are reasonable in the circumstances.

I note your comment regarding a capital scheme, in managing any challenges, including financial, the Trustee should consider obtaining appropriate professional advice when making its [decision](#) for the future of the Rose Garden Cafe.

The Council as trustee should also take into account its duty to manage the charity's resources responsibility which includes ensuring that any property it owns is properly maintained and being used correctly. (Section 7.6 of CC3: The Essential Trustee)

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We also note from an update in August on the [website](#) of the Friends of Graves Park, they advise they have over £8000 in their campaign fund for the Rose Garden Café and another £20,000 has been pledged in Council Community Infrastructure Levy Funding. Hopefully, this financial support from the Friends will assist the Trustee when making its decision for the future of the Rose Garden Café.

Friends of Graves Park

I am not aware of correspondence between the Trustee and the Commission being shared with the Friends of Graves Park and any requests for copies of correspondence would have been considered in accordance with the Freedom of Information Act. We did however; share with them; as we did the Trustee; our analysis of the disposal of Bolehill farm. When providing our analysis to the Friends of Graves Park, in accordance with data protection principles, we removed personal details of the current tenant.

Council Governance

To provide some clarity on our reference to the appointment of independent Trustees; when a Charity with a sole Trustee appoints independent Trustees; the sole Trustee would sit on a Board of Trustees with those appointed independently from the sole Trustee and together they would make decisions collectively as a Board of Trustees. The advantage of having independent trustees is that it would make it easier to manage the conflict of interest that arises when managing the Park. Ultimately this is a decision for the Trustee, and we note that the Trustee has considered this and feels it would be impractical.

Action Plan Issued Under section 15(2) of the Charities Act 2011

The Commission's power to issue formal guidance under s.15(2) of the Charities Act does not rely on us making a finding of wrongdoing. We often exercise this power where we consider that the trustee(s) would benefit from the advice and we frame it as an action plan where we consider that the Trustee needs to take steps to ensure compliance with their legal duties and responsibilities as Trustee.

We acknowledge the steps taken by the Trustee to review the governance of the trusteeship of the charitable assets and this is under consideration with details being provided to the Commission in due course. We also note that the Trustee will commence a dialogue with the appropriate parties regarding how their views can be incorporated into any decision-making process in the future and that the Trustee has recognised a need to ensure that new members of the committee are aware of their duties and the governance committee has agreed to look at the governance of its Charities.

Norton Nurseries

The Commission notes your reference made to clause 4 (1) of the 2009 Scheme. However, whilst we appreciate the use of the Norton Nurseries site to provide a depot for the maintenance of Graves Park may be considered as being in furtherance of the objects; it is not clear whether the Norton Nurseries site is used solely as a depot for Graves Park; or if it is also used as a depot for areas within the City of Sheffield.

I assume your reference to dialog with the Commission specifically on the question of how to regularise the situation of a maintenance depot is a reference to correspondence between the Commission and the legal advisor to the Trustee in 2016.

I note from our records, the Trustees' then legal advisor discussed with the Commission the use of the Norton Nurseries site; advising the site was divided into 4 parts; one of which being used by the parks service by the maintenance teams servicing Graves Park and work on maintaining other parks in the City of Sheffield. They further advised, there was no formal written agreement in place, but the Council paid a grant of £200,000 per year to the Charity to cover any annual shortfall in the Charity meeting the costs associated with maintaining the park.

Further correspondence advised the Council were making good progress with regards to the lease of the Norton Nurseries site within Graves Park but that this may be impacted upon due to possible Charity proceedings against the Council as Trustee of Graves Park, the Trustees' powers of disposal under the Trusts of Land and Appointment of Trustee Act 1996 and the interpretation of the objects of the scheme governing the Charity.

I note after consideration of the above, the Commission's advice was that the Council as Trustee has powers under the Trusts of Land and Appointment of Trustees Act to dispose of an interest in property. However, as the disposal would be to a connected party (ie to the Council as local authority) this would require an order from the Commission.

Whilst I appreciate that certain matters including those referred to in your email and above, may impact on the Council's plans as Trustee to regularise the situation of a maintenance depot, if the Charity's land has since 2016 been used by the Council for the city of Sheffield, as above, this would require an order from the Commission and should have been obtained prior to the land being disposed of to the Council. We would also expect that conflicts of interest would have and continue to be managed when decisions are made for the use of the Norton Nurseries site by the city of Sheffield. It doesn't appear from our records, that the trustee approached us for formal consent.

If the land continues to be used for the city of Sheffield, the Council as Trustee must [request permission from the Commission](#). We cannot, however, provide permission retrospectively.

We assume given the advice previously provided by the Commission, and as you advise the Council will continue to work closely with the Commission regarding the current and future use of the land, that this is something the Council intends on doing.

The Commission requires clarification on this disposal which I will set out further below.

Proposed disposal of tennis courts

The Commission has received further concerns about the Trustees' lease of the tennis courts to a private company, Courtside CIC, for 25 years, which we understand is a move from a shorter lease of 5-10 years.

We note that the open space notice dated 10 August 2023 on the Council's website advises:

The Sheffield City Council acting as Trustee of Graves Park (registered charity number 510841) give notice that the Charity proposes to dispose by way of lease the property known as:

Land at Graves Park, Sheffield

The property to be leased is held on designated charitable trust.

The lease will facilitate the continuation of the Parks Tennis Programme and will contribute to the wellbeing of the local community and Park users.

If a Charity is disposing of designated land and the proportion of the land in question is small; and there will be little or no effect on the Charity's ability to carry out the purposes for which the remainder of the land is held; the Trustees may be able to rely on the statutory power of sale in the Trusts of Land and Appointment of Trustee Act 1996. The trustees must be satisfied that the sale is in the best interests of the Charity and conducive to achievement of its purposes.

The proceeds of sale of the designated land are held on the same trusts as the land. If those trusts are sufficiently wide for the proceeds to be applied to support the use of the remaining land for the purposes of the Charity, they may be so applied. If not, the Trustee would need to apply for a cy pres scheme to provide for the proceeds to be used, for example as investment permanent endowment to provide income to support the land's upkeep.

The trustee(s) would still need to ensure that the disposal complied with the requirements of s.117-123 of the Charities Act 2011 ("the 2011 Act").

For further information please refer to section [disposing of designated land](#) in our guidance.

Next steps

We require the following information from the Trustee:

Norton Nurseries land

1. Confirm if the use of the Norton Nurseries land, particularly as a deport, is solely for the use of the Graves Park Charity? If it is not, provide full details of how the land is used.
2. If the land is used for the City of Sheffield, please confirm how conflicts of interest were managed when decisions were made? Please also provide minutes of meetings when decisions were made regarding the use of the Norton Nurseries land.
3. If the land has been used for the wider purposes of the City of Sheffield please confirm if the Graves Park Charity has received funds for the use of its land and for how long?
4. If the land is currently used by the Council, not in its role as Trustee, advise why the prior written consent of the Commission was not obtained prior to its use?

Disposal of Tennis Courts

5. Please confirm that the income received from the lease of the tennis courts will be held on the same trusts as the land and only be used in furtherance of the objects of the Graves Park Charity.
6. Please also confirm that the trustee has complied with the requirements of the 2011 Act in relation to the disposal.

The Trustee should read and discuss this letter collectively. We look forward to hearing from the Trustee by **5pm on Friday 8 December 2023**. If the Trustee cannot meet this deadline, they should let the Commission know as soon as possible and before the deadline expires.

Yours sincerely

Laura Wainwright
Case Manager – Regulatory Compliance

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