

## **Report of the Strategic Director, Corporate Resources to the meeting of the Regulatory and Appeals Committee to be held on 20 May 2019.**

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**Subject:**

**The Norman Rae Northcliffe Park Trust**

**Northcliffe Allotments, Shipley, Bradford BD18 3DE**

**Summary statement:**

**The Norman Rae Northcliffe Park including Northcliffe Allotments, Shipley, Bradford BD18 3DE is held in Trust by the Council.**

**The Trustees' decision is sought in relation to the self-management of the Northcliffe Allotments by the Northcliffe Allotment Society.**

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## **1. SUMMARY**

- 1.1 This report seeks the Trustees' decision in relation to the proposed self-management of Northcliffe Allotments, Shipley, Bradford BD13 3DE (the Site) by the Northcliffe Allotment Society (the Allotment Society).
- 1.2 The report outlines four options for the Trustees to consider as to which will best support the aims, objectives and responsibilities of the Charitable Trust outlined in section 6.1 (Legal Appraisal).

## **2. BACKGROUND**

### **Trust property**

2.1 The Site, which is shown edged red on the attached plan (Appendix 2), is part of a larger area owned by the Council in Trust for charity number 515034 Norman Rae (or Northcliffe) Playing Fields (Appendix 3).

2.2 The Allotment Society occupies only part of the overall site held in Trust, i.e. plots 1-71, 78-93 and 101-125, the rest of the allotment land (plots 76-77 and 94-100) is held by NEET – Northcliffe Environmental Enterprises Team, which is not included in this report.

2.3 The Regulatory and Appeals Committee sitting as Trustees (the Trustees) has authority to act on behalf of the Council as Trustee, which adheres with Charity Commission guidance to provide a separation between the Council's statutory functions and its role as Trustee.

### **Northcliffe Allotment Society**

2.4 The Allotment Society is in the process of becoming a Charitable Incorporated Organisation.

2.5 The objective of the Allotment Society, which is set out in their constitution (attached in Appendix 4) is "To further or benefit the residents of Shipley (West Yorkshire) and the surrounding area without distinction of age, gender, sexual orientation, race or political, religious or other opinions by providing allotment facilities in the interests of social welfare for recreational leisure time occupation with the objective of improving life for the residents".

### **History of the application for a Community Asset Transfer**

2.6 The Allotment Society first contacted Bradford Council Strategic Asset Management (SAM) Team in October 2017 with a request to consider a Community Asset Transfer (CAT) of the Site.

2.7 A Service Level Agreement transferring some responsibilities to the Allotment Society was signed in April 2018 as an interim solution while a CAT was being considered.

2.8 The SAM Team became aware of the charitable status of the land, of which the Site is part, and began discussions with colleagues from the relevant services (Legal, Parks and Green Spaces), which have resulted in submitting this report to the Trustees.

## **Community Asset Transfer (CAT)**

2.9 A CAT is typically undertaken by way of a long lease, which would provide the Allotment Society with the autonomy to manage the Site for the benefit of the local community and would improve their ability to attract external funds.

2.10 A long lease has been considered but was deemed inappropriate at this time as the possibility of transferring a trust property is still being investigated following the Trustees' recommendation for a similar application (Chapel Lane Allotments, Allerton) considered by the Committee on 7 March 2019.

## **Benefits to the Trust**

2.11 The Allotment Society has, ever since it was set up in 1990s, demonstrated commitment, dedication and enterprising skills even in the partial self-management of the Site and bringing it to a high standard exceeding the Council's minimum site maintenance capacity including regular site clean-ups, providing direct services such as insurance, bulk buys and tools to borrow, offering regular advice and guidance to new plot holders, organising social events, practical classes and speakers, working alongside Friends of Northcliffe on conservation events as well as linking with other partners, developing a wildlife area to improve biodiversity, increasing the sense of community – these are just a few examples of their capability and achievements.

2.12 Creating an opportunity for the Allotment Society to fully self-manage the Site will strengthen the objectives of the Trust outlined in section 6.1 and provide such benefits as:

2.12.1 Improving the long-term viability of the Site by way of the Allotment Society's increased sense of ownership and ability to obtain funding from a wider variety of sources, which, in view of the Council's ever diminishing resources, is one of the few available options to ensure the asset's sustainability.

2.12.2 Personalised management of the Site by local people rather than part of a wider portfolio of centrally managed allotments across the District.

2.12.3 Investment of income directly in the Site rather than a central resource to support all allotments including those that require greater cleansing and the management of anti-social issues.

2.12.4 Ability of the Allotment Society to ensure the best use of the asset based on the need of the local community.

2.12.5 Empowerment of the Allotment Society in continuing to successfully serve the needs of the local community, which includes people of all ages, backgrounds, gender, ethnicity, sexual orientation, ability etc. thus delivering on the district's Equality and Diversity principles.

2.12.6 Improving the health of the local community by way of getting people involved in growing their own produce and exercising through allotment gardening, thus contributing to the district's Healthier Communities priorities.

2.12.7 Continued promotion of sustainable methods of cultivation that ensures improvement of the land and encourages creativity and innovation.

2.12.8 Better communication among the community groups involved in a common project, e.g. schools, elderly residents, people with disability, local businesses etc.

2.12.9 Environmental benefits through maintaining a fully productive allotment site with a wildlife garden, a community orchard and beehives.

### 3. OTHER CONSIDERATIONS

There are four options for the Trustees to consider: these are set out below with a brief summary of the advantages and disadvantages to the Trustees of each.

Number	Option	Advantages	Disadvantages
Option 1	No change to the existing arrangements	<p>Tried and tested approach.</p> <p>Appears to fulfil the aims of the Trust and the Council as Trustees keep control.</p>	<p>Does not give the Allotment Society the autonomy they are seeking to improve the Site.</p> <p>Limited opportunities to attract external funding.</p>
Option 2	Grant a long lease and a Service Level Agreement to manage the Site in accordance with the aims of the Trust	<p>Provides the Allotment Society with the autonomy they are seeking to improve the Site and manage it for the benefit of the local community.</p> <p>Local management of local services allow them to be tailored to suit and the Service Level Agreement should ensure a good fit with the aims and objectives of the charity.</p> <p>Ability to attract funds from outside of the Council.</p>	<p>The Trustees have less direct control of the asset.</p> <p>The Charity Commission will class this as a disposal and may object as may the public following consultation under the Charities Act 2011.</p> <p>Reliant on legal agreements to ensure aims and objectives of the charity are met.</p>
Option 3	The Allotment Society becomes a charitable trust and takes over as the Trustees of allotment area.	<p>Ensures continuation of charitable trust.</p> <p>Ability to attract funds from outside of the Council.</p> <p>Local management of local services allow them to be tailored to suit.</p> <p>The Allotment Society is in the process of obtaining a charity status, which may ease the process of</p>	<p>Council no longer Trustees.</p> <p>Allotment Society may not want the costs and work associated with being Charitable Trustees.</p> <p>The Charity Commission will class this as a disposal and may object as may the public following consultation under the Charities Act 2011.</p>

Number	Option	Advantages	Disadvantages
		becoming a charitable trust.	
Option 4	Grant the Allotment Society a Service Level Agreement to run the allotments in accordance with the aims of the Trust	<p>No legal transfer of the charitable interest and the Council remain Trustees.</p> <p>The Allotment Society retains income from the Site to re-invest and is not subsidising less successful sites.</p> <p>Formally grants the Allotment Society a greater degree of autonomy to improve the Site tailored to local requirements and a limited ability to attract external funding.</p>	Allotment Society less likely to be able to attract external funding as no legal interest in the Allotments, to the possible detriment of the Site.

#### 4. FINANCIAL & RESOURCE APPRAISAL

No unfavourable financial implications to the Trustees have been identified.

#### 5. RISK MANAGEMENT AND GOVERNANCE ISSUES

5.1 The Trustees are requested to identify which of the options considered is in the best interest of the Trust.

5.2 The Charity Commission guidance advises that “Acting in the Charity’s best interests means always doing what the Trustees decide will best enable the Charity to carry out its Purposes, both now and for the future” (please also see Benefits to the Trust section).

5.3 The Council’s Estates and Property Service (of which SAM Team is part) in any event must follow the required statutory procedure under the 2011 Act and seek the necessary legal advice from Legal Services.

#### 6. LEGAL APPRAISAL (THE CITY SOLICITOR ACTING FOR THE COUNCIL AS TRUSTEES)

6.1 The objectives and responsibilities arising under the Charitable Trust are as set out in the Conveyance dated 2 April 1921, which provide that the land **“shall be used at all time hereafter solely and entirely as an open space for the recreation and benefit of the public and for no other purpose whatever and not for the purpose of profit and all income derived from the Estate shall be used for the maintenance development or improvement of the Estate.”**

6.2 The Trustees are requested to note that the proposed Options 2 and 3 are defined as a disposal within the terms of section 6 of the Trustees of Land and Appointment of Trustees Act 1996 (power of trustees to sell or lease etc.), but such power is restricted by

sections 119 and 121 of the Charities Act 2011 (the 2011 Act). A disposal requires either consent from the Charity Commission or, to avoid that requirement, the Council as trustees must give public notice of the proposed disposal inviting written representations, i.e. consult with the public and consider the representations before any disposal proceeds. A written valuation of the allotments by an independent chartered surveyor and advice whether this is the best way forward is also required. The public may object.

6.3 Current Charities Commission (the Commissioners) advice is that trust purposes should at all times be promoted by its trustees in the interests of the beneficiaries of the trust unless the trust is at an end, which this trust clearly is not.

6.4 The Trustees are advised to be cautious regarding Options 2 and 3 as they may consider there is currently insufficient information of how either option will benefit the trust arrangement in addition to those which currently stand.

6.5 As has already been mentioned, the Charities Act 2011 amongst other things requires public consultation in relation to any disposal of trust land where consent of the Charity Commission has not been obtained. It is worthy of note that the provisions of the Open Spaces Act 1906 and the Local Government Act 1972 relate to disposal of public open space land rather than trust land. The allotment land may also be part of an "allotment green belt" and special rules may apply. Further legal advice is required.

6.6 Were the Trustees to resolve to adopt option 4 which is the recommendation of this report then this would not be deemed a disposal of trust land and could proceed without any public consultation.

## **7. OTHER IMPLICATIONS**

### **7.1 EQUALITY & DIVERSITY**

The Site is fully accessible and its current tenants include those with disabilities and of different ages, races and gender.

### **7.2 SUSTAINABILITY IMPLICATIONS**

Allotment gardening is sustainable.

### **7.3 GREENHOUSE GAS EMISSIONS IMPACTS**

Allotment gardening has a positive effect of reducing the District's carbon footprint and emissions from other greenhouse gasses.

### **7.4 COMMUNITY SAFETY IMPLICATIONS**

There are no community safety implications.

### **7.5 HUMAN RIGHTS ACT**

There are no Human Right Act implications.

## **7.6 TRADE UNION**

There are no Trade Union implications.

## **7.7 WARD IMPLICATIONS**

All Ward Councillors are aware of and fully support the Allotment Society self-management and the CAT application.

## **8. NOT FOR PUBLICATION DOCUMENTS**

None

## **9. RECOMMENDATIONS**

Option 4 – That a Service Level Agreement be granted to the Allotment Society whilst the possibility for processing a Community Asset Transfer (CAT) lease be given further consideration and the findings presented to the Trustees at a future meeting.

## **10. APPENDICES**

Appendix 1 – HMLR Title and HMLR Title Plan

Appendix 2 – Site Plan including allotments edged in red (excluding the blue hatched areas)

Appendix 3 – Charity Commission registration details

Appendix 4 – Northcliffe Allotment Society Constitution

Appendix 5 – CAT Stage 2 Application

## **11. BACKGROUND DOCUMENTS**

11.1 Copies of the Conveyance dated 2 April 1921.

11.2 Advice re Ward Hadaway 8 March 2018 re Littlemoor Park