

Executive

25 January 2018

Report of the Corporate Director of Children, Education and Communities

Portfolio of the Executive Member for Culture, Leisure and Tourism and the Executive Leader (incorporating for Finance and Performance)

Future Operation of Rowntree Park Lodge and Park

Summary

1. The report seeks an Executive decision to invest in Rowntree Park Lodge in order to keep this valuable park asset in good condition, used for public benefit and secure a long term income stream for the Park. Rowntree Park is York premier municipal park, first Green Flag recipient and heavily used site. Given the Lodge's very visible position within the Park, its use, in part by York Explore as a Reading Cafe, investment into the property will contribute significantly to maintaining the parks reputation.
2. This report also highlights the challenges faced by the authority in running its parks and open spaces within the legal framework which places both restrictions and obligations on what is possible.

Recommendations

3. The Executive is asked to:
 - a) To recommend to Council the allocation of £150,000 capital budget to facilitate the regeneration of the upper floors of the Lodge. This capital allocation will be funded from the revenue receipts generated from future use.
 - b) To agree that any net revenue generated should be ring fenced for the upkeep of the Park.
 - c) To lease the upper floors of Rowntree Park Lodge as a Holiday Letting subject to obtaining consent of the beneficiary of the covenants imposed

when the ownership of the park (including the site of the Lodge) was transferred to the Council.

Reason: To support Rowntree Park and its stakeholders in developing the facilities on a long term sustainable future.

Background

4. With the retirement of a Pubic Realm employee the upper floors of the Rowntree Park Lodge have become vacant. This created an opportunity to explore new uses for the space which can contribute in a positive way to the future care and appearance of the Park. Leaving the property vacant risks it falling into disrepair and open to vandalism, which in turn has a negative impact on the park's high standards and reputation.
5. Central to the design of Rowntree Park is the Lodge. Situated adjacent to the entrance on Richardson Street, this tall 4 story structure makes best use of the higher ground to provide a focal point for the park. The upper floors consist of two storeys of living accommodation, incorporating a living room; kitchen; dining room; one large double bedroom, one smaller bedroom and recently refurbished bathroom. Additionally there is a large storage area which could be turned into further living accommodation.
6. Use of the Lodge has remained fairly constant for nearly a hundred years consisting of park keeper's accommodation with parking, a cafe and store rooms. See annexes 1 and 2 for a location plan and photographs of the property.
7. Rowntree Park is York's first municipal park. It was laid out between 1919 and 1921 and is the only known public park designed by Frederick Rowntree who was a distinctive architect in the Arts and Crafts Movement tradition. The park was presented to the City of York by Messrs Rowntree & Co. as a memorial to the Cocoa Works staff that fell and suffered during World War I. The Terry Avenue gates were added as a memorial following the Second World War and are Grade II* listed. The park is on the English Heritage Register of Parks and Gardens of Special Historic Interest and was York's first Green Flag park in 2004.
8. The net running cost of the park is between £60,000 to £80,000 per annum. This includes grounds maintenance, arboricultural management, locking and unlocking, utilities, play ground inspection and care, and repair and maintenance. It is this last area of cost which has the greatest effect on annual running costs. For example in 2016 the toilet hand washer / drier units needed replacement due

to 15 years of use and repeated flooding. Expenditure is offset by income from the car park and cafe rental.

9. In addition to the day to day costs there is significant ongoing capital investment in the park, for example £140,000 was spent on renewing the Skatepark in 2017, and £40,000 will be spent on play area improvements in 2018.
10. Supporting such ongoing expenditure in the current climate is challenging and over the last three years expenditure on the care of parks and open space has had to be reduced. The impact of which can be seen in the move to a mobile workforce instead of dedicated park keepers, closure of park toilets, leaving sites open overnight, moving away from seasonal bedding to herbaceous planting and an increasing reliance on volunteers.
11. In response to this situation, in May 2016 the Executive Member for Economic Development & Community Engagement, established a challenge fund, administered via CVS, to develop volunteering in green spaces. This scheme is operating across five sites where community groups are taking care of a defined space. The Friends of Rowntree Park, working with YUMI Intercultural York (York Unifying Multicultural Initiatives), are maintaining and developing the Central Avenue and two of the adjoining side gardens.
12. In parallel with this initiative officers have worked with local parks communities and users to transfer facilities over to direct community management. In Rowntree Park the tennis courts have been transferred to Rowntree Park Tennis Club to administer bookings and maintain the courts. This allowed for the reduction in parks staff. Similar projects have happened and continue to be developed which reduce staff input and/or save on future facility care: These include
 - West Bank Park where the bowling greens have transferred to the users to care for and manage,
 - Hull Road Park where the old Ranger base is now the home to the Men's Shed project, and Flourish, a dementia friendly gardening project, operate out of the main pavilion.
 - Glen Gardens where the bowling greens have transferred to the users to care for and manage, and, the park pavilion is now a community cafe / kiosk managed by the Friends of Glen Gardens
 - Clarence Gardens where the bowling greens have transferred to the users to care for and manage, and, discussions have started about transferring the park pavilion over to community use.

13. In summary, like all parks across the country, increased working with local communities and making best use of park assets to assist with their care and development has become the "norm".

Options

14. Given the Lodge's prominent position within the Park, its use, in part by York Explore as a Reading Cafe, and the need to maintain the parks high standards officers have explored options which :

- ensure the building is occupied and maintained to a high standard,
- retains a recreational use, and,
- generates an income stream to supplement core funding.

15. In developing the options to achieve these objectives officers have considered the impact of restrictive covenants, and property and planning law. The options listed below are:

Option 1 – Sell the leasehold on the open market

Option 2 – Lease the property for private residential accommodation

Option 3 – Lease the property for social residential accommodation

Option 4 – Commercial rental use

Option 5 – Expand the Library / Cafe Use

Option 6 – Lease the Property as a Holiday Letting

16. For all options it is assumed that the existing parking area formerly used by the Park Keeper would be retained to support the use of the Lodge.
17. All options have been tested against appropriate Local Government and Open Space legislation. This is explored in more detail in the following sections but does place significant restrictions on what is possible.

Analysis

Option 1 - Sell the leasehold on the open market

18. Whilst The Lodge forms part of a multi occupied property which would make disposing the freehold interest difficult, a long lease (virtual freehold) of The

Lodge could be granted in exchange for an upfront premium payment. Given the unique nature of the property it is difficult to estimate its' market value until it is actually marketed. Permanent use as a home has the potential for tension between the householder and the Council regarding use of the park and the Council would lose considerable control of the asset.

19. By retaining the freehold the Council would remain liable for external/ structural repairs but could potentially recoup proper and reasonable costs through a service charge arrangement.

Option 2 – Lease the property for private residential accommodation.

20. A monthly letting income of £1,000 - £1,100 per month is considered achievable if the property was let in an unfurnished but modernised condition.

Option 3 – Lease the property for social residential accommodation.

21. A monthly letting income of £180 per month is the likely attainable income for such an arrangement. As with option 2 modernisation works will be required. The property would then be subject to the Right to Buy legislation and may in time transfer into private ownership.

Option 4 – Commercial rental use

22. As the space is laid out to residential accommodation, there would be considerable conversion costs in providing a commercial use such as office use and this would also require a planning permission for a change of use.
23. Option 1, 2, 3 and 4 are not recommended as they do not comply with the recreational use requirement contained within the legal implications section.

Option 5 – Expand the Library / Cafe Use.

24. The current cafe is managed by York Explore. The cafe is a popular destination and the accommodation forming The Lodge could be incorporated within an expanded operation.
25. Planning permission for change of use and external alterations would be required, whilst any rental income achievable is likely to be minimal. The small additional revenues from option 5 would enhance the park and public recreation opportunities connected with the library such as literary festivals.

26. Library use to the upper floors would be complex and expensive modification requiring either a lift or extensive remodelling of the exterior to create ramped access. If a lift was provided to address the access issue, this would necessitate a lift shaft being constructed which would take up substantial parts of the floor space area currently used as the cafe and also substantial parts of the basement and upper floors of the Lodge.
27. The cost of installing a lift is estimated to be in the region of £250,000. An estimated further £275,000 would be required to take into account alterations to provide full access to all areas of the upper floors, providing a total cost estimated in the region of £525,000. An alternative would be to install an external ramp to replace the current steep set of steps leading up to the property. However, it is considered that to cover the height required, a ramp would have to be substantial, it would take up land in the park and furthermore it would not enable full public access to the upper floor of the accommodation.
28. Given the high cost of the works required, the relatively small amount of additional space that would be created, that full DDA access cannot be achieved and that there would be insufficient additional income to repay the capital costs this option is not recommended.

Option 6 – Lease the Property as a Holiday Letting.

29. The Lodge would be an extremely attractive holiday rental property, benefitting from York's position as one of the UK's top city break locations with a unique park location close to the city centre and the river. It currently provides two bedroomed accommodation but could also readily be converted into three bedrooms. The property also has the benefit of a private garden and parking spaces. As with previous options, modernisation works will be required, together with the need to furnish the property. The cost of property improvements, furnishing and fittings is estimated to be £150,000.
30. If the property was refurbished to provide high quality accommodation local letting agencies consider a hire fee of £1,000 to £1,300 per week could be achieved depending on the time of year. Obviously total income would depend on occupancy rates but we are advised that agencies work typically on the basis of 70% occupancy in York which would provide, on that assumption, £36,000pa at the £1,000 a week rate and £47,000pa at the £1,300 per week rate. Running costs would be deducted from the income. Management fees would be between 15-20% with cleaning costs of around £3,000 per annum
31. Option 6 is not without risk of legal challenge, however the use of a building designed as a small domestic dwelling for public recreation is extremely

challenging, and in particular ensuring compliance with statutory disability access requirements.

32. The business case for a holiday let is anticipated to pay back the capital investment and thereafter any profit would be ring fenced to the park. It would achieve an active use of a space that otherwise is likely to remain empty and therefore become an increasing liability and drain on the investment in the park and public recreation
33. Officers have spoken to letting agents and they have confirmed that this property would be attractive to visitors. The figures in the table below suggest that a breakeven position is achieved at approximately 60% occupancy. The most likely outcome will be around 70% occupancy. Income could be higher if a premium is charged at certain times of the year, e.g. race meetings, or by offering mid-week and weekend breaks. Given the unique and desirable location a higher occupancy rate than 70% is considered possible and the sensitivity analysis below provides projections on likely net income with higher occupancy levels.

	Occupancy rates			
	60%	70%	100%	100%
£1,300 pw for 9 months	60%	70%	100%	100%
£1,000 pw for 3 months	60%	70%	70%	100%
	£	£	£	£
Net Rental Income	31,850	37,158	49,833	53,083
Letting Agent	5,733	6,689	8,970	9,555
Running costs	12,420	12,720	13,440	13,620
Prudential borrowing	13,491	13,491	13,491	13,491
	31,644	32,900	35,901	36,666
Net Income	206	4,259	13,932	16,417

- Based on £150k capital expenditure
- Income is subject to VAT

34. A decision to invest now will enable a quick start to be made on tendering the refurbishment work in order to bring the property back into use and reduce the likelihood of any misuse during a void period.

Consultation

35. Future uses of the Lodge have been discussed with the Friends of Rowntree Park in August this year and again at their AGM on the 19th October. The Friends of Rowntree Park have provided this position statement.

“As the flat is now vacant, we understand that the Council needs to decide what should be done with the property. We believe that the Friends’ views on the potential development are relevant, as they are the views of local residents who care about the park.

Future use of the flat should benefit the park in some way, as it was part of the original gift to the people of York. This benefit might be financially, or in-kind.

We understand that the property seems unsuited to community space, such as hireable rooms, but we consider that it might work well as a small business hub, artists’ studios or for holiday letting, as well as ‘normal’ domestic occupation.

The property should not be sold off.

Any occupation would need to be compatible with the nature of the park and the needs of its diverse users, as well as the operation of the café.

If income was generated from the property, we think that the park should directly benefit from it. In particular, the park is beginning to suffer badly from the lack of regular gardening maintenance. The Friends’ and other volunteers cannot fill this gap entirely, but income from the flat could be put towards gardeners to be employed in the park, for example.

Whilst the discussions about development are in progress, we believe that the flat is vulnerable to damage, and that it should be protected by occupation, preferably of a 24 hour (domestic) nature. There are various companies which supply suitably-reviewed, short-term property guardians. This needs to happen immediately. “

36. Discussions have also taken place around Library usage. The Reading Cafe is very popular and celebrates the joy of reading in new and exciting ways. It is a response to the changing ways that people want to access books and information. Explore, who currently operate York’s library service are developing plans to improve the existing space and looking at how they can deliver events and activities that support our objectives across the wider park, working with the Council and the Friends of Rowntree Park.

37. Explore have said they support the Holiday Let for the Lodge, recognising that the flat does not meet the current standards for access for a library and the room sizes are quite modest. It would be prohibitively expensive to make the space fully accessible. Micklegate Ward members have been consulted. They have been reassured that the Friends views on the future use of the building have been considered and have been informed that it is proposed that the net revenue should be ring fenced to the upkeep of the Park. Councillor Hayes would prefer to see the Lodge used for rental accommodation or an expansion of the Explore Reading Cafe but understands why these are not possible. Councillor Crawshaw is on balance happy to accept that a Holiday Let be put forward and would prefer to see a social enterprise / not for profit company managing the letting if possible.

Council Plan

38. This proposal will support and contribute to Council Plan priorities:

- A prosperous city for all
 - Everyone who lives in the city can enjoy its unique heritage and range of activities.

Implications

39. Implications

- **Financial.** The improvement works will need to be funded through prudential borrowing which would be paid back over 15 years. Income from option 6 is estimated in the region of £1,000 to £1,300 per week, for 70% of the year. This would potentially give a net income in the range £4,000 - £5,000 depending on the cost of the improvements.
- **Human Resources (HR)** There are no HR implications.
- **One Planet Council / Equalities** There are no Equalities implications.
- **Legal:** The Lodge (and Park) is subject to various encumbrances/third party rights including a covenant contained in Conveyances dating from 1919 which prohibits the land from being used for purpose other than a public park, public pleasure ground, public playing fields or other like purposes of public recreation. In addition the Property is subject to a covenant that no buildings within the land may be used for the sale or distribution of alcohol, nor used for betting and gaming. Any of the options would thus need the consent of the benefactor of the covenant.

- Section 123 of the Local Government Act 1972 prohibits local authorities from 'disposing' of 'open space' unless they have first advertised the proposed disposal in a local newspaper in two consecutive weeks and considered any objections received (disposal would include the granting of a lease, including for use as holiday accommodation). As Rowntree Park has been used by the general public for recreational purposes for many years the Park is clearly 'open space'. The general public however have not enjoyed access to the Lodge (since it was occupied by the former caretaker of the Park). However, despite this, it could therefore be considered that (pursuant to a recent High Court decision) the Lodge could still be classed as 'open space' for the purposes of the relevant legislation because it was constructed within Rowntree Park and used for a purpose ancillary to Rowntree Park's function of an outdoor public recreation facility.
- Section 10 of the Open Spaces Act 1906 ('Section 10') obliges local authorities which own open space to hold and administer it in trust to allow the enjoyment of it by the public as open space 'for no other purpose'. The effect of this 'statutory trust' (according to the High Court decision referred to above) is that local authorities have a duty to allow general public access to their open space (including by the city's residents) with the consequence that any disposal of open space property by a local authority should ensure/reserve a right for use by the general public for recreation. When the Lodge was needed as, and in use for, park keeper's accommodation it was necessary to exclude public access to it. Now that the Lodge is not being used for that purpose, any new use should be public recreation. A library is (according to case law) capable of being a 'public recreation' use.
- However it is considered that the other options referred to in this report may not be classed as public recreation use, including holiday letting, since it could be considered to restrict access to those persons who might be willing to and able to afford the fee for hiring the Lodge for their private holiday accommodation. This is however not dissimilar to the ability to book exclusive use of the Tennis Courts. Use for residential or commercial accommodation would definitely not comply with the public recreation use requirement. The risk for the holiday let option therefore needs to consider the ability of the public to access the Lodge, all be it at a cost and thereafter for a defined period have exclusive access to part of the park. This principal is an extension of chargeable Car Parking, Hiring Tennis Courts and allowing clubs such as the Canoe Club to have exclusive use of elements of the park. Ultimately interpretation of the legislation will be a matter for the Courts.
- Any money generated from Rowntree Park (including the Lodge) can only be used towards the upkeep of Rowntree Park. The courts have made it clear in

various cases that a local authority cannot make a profit from any open space land which it owns – monies received from such land must be reinvested in maintaining it for public recreational use with the holiday letting proposal maximising the benefit to the park and public recreation.

- **Crime and Disorder:** Keeping the building in use prevents deterioration of the asset, and provides a presence in the park which in turn provides passive surveillance.
- Whilst The Lodge is not at risk of flooding, the surround park can and does flood to a level just below the cafe veranda. For safety reasons the park is closed when the risk of flooding reaches the base of the flood protection wall and only reopens when water levels recede. People are excluded from the park in case the flood wall fails in which case a sudden inundation would occur. If the park does flood it is kept closed whilst the clean up operation takes place. To prevent people entering potentially dangerous situation permanent security fencing is being installed at either side of The Lodge.
- **Information Technology (IT)** - None.
- **Property** See main body of the report.
- **Public Health** – “Access to open spaces ... has direct and indirect impacts on people’s physical and mental health, but can also enable people to build social capital” (Kings Fund)
- **Planning (Conservation and Design)** – During 2000-2002 much of Rowntree Park was refurbished with the assistance of the Heritage Lottery Fund. As part of this work a design template for the Park was established; this included exterior finishes to buildings and a colour template. Any exterior alterations would need to follow this design template. As long as the building stays in residential use and in its current form planning permission would not be required.

Risk Management

40. In compliance with the Council’s risk management strategy, the main risks associated with the reuse of the upper floors of the Lodge are as follows:

- Option 1, 2, 3 and 4 are clearly not capable of being considered as available for public recreation and therefore the risk of legal challenge cannot be mitigated.

- The quality of public recreational space at Rowntree Park is at risk in the current Public Sector Funding Environment. The opportunity to make available for the Lodge to be periodically occupied by the public for a fee and provide revenue to enhance the wider park mitigates against this risk.
- The use of the Lodge as a building designed and constructed as a domestic dwelling for an open public access facilities has significant risks of being detrimental to the aesthetic of the building and creating a low quality public building.
- In discussion with York Explore the current provider of the library within the wider Lodge building, they considered on balance due to the difficulties of adopting the building structure of the Lodge the public recreation opportunities through enhanced investment in the park for events such as literary festivals would be a better outcome for the future of the library service.
- Operational – failure to find a suitable managing agent and therefore the Council having to directly manage bookings, and,
- As with the principal of listed buildings the functional use of buildings is the best mitigation against deterioration and loss of building and structures and therefore due to the prohibitive costs of opening the Lodge to public use, the use of the Lodge as a holiday let is the best risk option for the preservation of this building.
- Reputational – the building remains unused, visibly deteriorates and detracts from the wider park experience.

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Report Date 08.12.17
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Wards Affected: List wards or tick box to indicate all

All

Micklegate, plus Guildhall and Fishergate (to reflect the park usage)

For further information please contact the author of the report

Background Papers:

Decision Session – Executive Member for Economic Development & Community Engagement, in consultation with the Executive Members for Environment, and Culture, Leisure & Tourism. 10th May 2016 Supporting the Local Delivery of Improvement to York’s Parks, Gardens, and Open Spaces

Annexes –

Annex 1 Location plan
Annex 2 Lodge photographs

List of Abbreviations Used in this Report:

CVS – Council for Voluntary Services

DDA – Disability and Discrimination Act

VAT – Value Added Tax

YUMI - York Unifying Multicultural Initiatives