

Executive

14 February 2019

Report of the Assistant Director of Transport, Highways and Environment & Assistant Director of Regeneration and Asset Management

Portfolio of the Executive Member for Culture, Leisure and Tourism

Consultation on Disposal of Open Space at Rowntree Park Lodge & Update of Financial Business Case

Summary

1. Following the Executive Decision in January 2018 to convert the upper two floors of Rowntree Park Lodge into holiday let accommodation; this report sets out details of the comments received under Section 123 of the Local Government Act 1972 in relation to the proposed disposal of open space at the Lodge.
2. Under the Local Government Act 1972 such a change in use is considered a disposal of public open space. The Act requires the local authority to advertise "*the disposal*". In this context, disposal does not mean the sale of the property but rather its use by a 3rd party, with the Lodge remaining within Council ownership and long term management control.
3. The report also updates the financial business case for the proposal.

Recommendations

4. The Executive is asked to:
 - a) Consider the objections raised and seek approval to continue with the proposal previously endorsed by Executive in January 2018 to convert the upper two floors into holiday let accommodation.
 - b) To recommend to Full Council, the allocation of a further £110,000 capital budget, funded from prudential borrowing, to facilitate the regeneration of the property in accordance with the revised business

case. This capital allocation will be funded from the revenue receipts from the holiday lets together with funds from existing budgets to deal with property maintenance.

- c) Note that all net revenue generated will be ring fenced for the benefit of Rowntree Park as per the Executive decision in January 2018. Further, note that the public will have an input in setting priorities for the use of the fund, which is projected to deliver £380,000 over the next 15 years.
- d) Note that the Explore Reading cafe will be closed for a period of 12 weeks during the development works.

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

Background

- 5. The full background to the Park and the Lodges' history is set out within the January 2018 report (see Annex 1). The January report set out the ongoing challenge facing the Council in respect of financing the Park and detailed that expenditure on the care of parks and open space has needed to be reduced over time. The impact of this has seen a 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.
- 6. The report also set out that, like all parks across the country, making best use of park assets to assist with their care and development has become the norm. In respect of the Lodge building, which incorporates provides for the Reading Cafe at ground floor level, the retirement of a Public Realm employee has resulted in the self contained two upper floors of the Lodge becoming vacant. This presented an opportunity to consider future uses which could compliment the Park and potentially generate a new source of income for the Park, by ring fencing any additional income.
- 7. The previous report set out a number of options which were considered as potential uses for the Lodge. It was recommended that a holiday let use be pursued with capital allocated to refurbish the accommodation, which would be paid from anticipated income generated. Alternative uses dismissed by the previous report included; selling the property;

leasing the property for private or social housing; leasing to a commercial occupier; using as an expansion to the cafe/ library and use for a park keeper.

8. Options previously considered by Executive and which were agreed as unsuitable were to sell the long leasehold of the property; lease the property as private or social residential accommodation or use the property for a commercial use. Furthermore, it was considered that the library / cafe use to the upper floors would be complex and expensive requiring either a lift or extensive remodelling to the exterior to create ramped public access given that access to the upper floors via external and internal stairs.

Update

9. Since the Executive decision in January 2018, architects employed by the Council have designed a scheme to convert the upper two floors of the property into accommodation suitable for a high quality holiday let, commensurate with the setting of Rowntree Park which is seen as highly desirable for a holiday let location. Planning consent is needed for the removal of an external door and fire escape along with a change of use. As the process involves a Council planning application to a Council property the matter will be considered by a Planning Committee later in the year
10. The architects have proposed a design to maximise the useable space by converting a large area of the Lodge currently used as storage space into a third (master) bedroom; there are currently two bedrooms in the upmost floor of the Lodge. (See existing and proposed floor plans in Annex 2). The proposal also incorporates the provision of a good-sized kitchen diner by opening up the existing kitchen and second living room. The architects' design includes a reconfiguration of the entrance hallway and interaction of this and the reception rooms whereby the rear fire escape would no longer be needed. This enables the external stairwell from the store to the garden to be removed, freeing up the rear walled garden which can be used potentially by the Park "Friends" and/ or the Reading cafe.
11. As detailed in the January Executive report, the consent of Nestlé is required for the proposal, given that there are covenants governing the use of the Park which Nestle are considered to have the benefit of. Nestlé's agents have confirmed that they are supportive of the proposal

to use the Lodge as a holiday let where the profits will be ring fenced to support the upkeep of the Park.

12. The proposal has faced complexities during the design stage given asbestos containing materials (ACM's) were identified within the property following pre construction surveys. Consequently the presence of this material will affect the ongoing repair and maintenance of the building and its removal would need to be undertaken through controlled conditions. Given that some of the ACM's are present under the floor of the Lodge, works to the Lodge will require the closure of the whole facility, including the Reading Cafe to clear the ACM's. The presence of the ACM's has had an impact on the costs of the project which are detailed within in the "Business Case Update" section.
13. Explore have been kept informed throughout about the process and continue to support the project.

Loss of Open Space

14. As detailed within the January 2018 Executive report, 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, even short-term lettings for use as holiday accommodation).
15. The general public however have not enjoyed access to the Lodge (given it was occupied by the former caretaker of the Park) but 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 Park's function as an outdoor public recreation facility.
16. A Section 123 Notice, advertising the Council's proposal to rent out the upper two floors of the Lodge for holiday accommodation was published in the York Press on 22nd November and 29th November and invited comments from the public with a deadline date of 12.00 Noon on 20th December 2018.
17. 42 responses have been received, including three after the deadline, all of which objected to the proposals. The key points raised in the responses fall into to broad areas and are set out below;

Objections on the grounds of

- (i) The proposed 'disposal' would go against the intention of gift of the Park by Rowntree that the entirety of the Park, including the Lodge, be available for use by the people of York.
- (ii) That the use of part of the Lodge as a holiday let is incompatible with the Parks War Memorial status.
- (iii) That the proposal is the start of a wider selling off of the Park
- (iv) The hirers may cause noise/engage in anti-social behaviour disturbing nearby residents or potentially damage the Park. Both during construction and once operational.
- (v) That a thorough financial assessment has not been carried out and is risky if the returns are not met.
- (vi) There has not been sufficient public consultation
- (vii) The decision being taken is not transparent
- (viii) Impact upon wildlife living in the Park, including any bats who might be in roof space of the Lodge

Objections suggesting alternative uses:

- (ix) As a community centre / craft venue
- (x) Base for Friends activities
- (xi) Expansion of the Reading Cafe
- (xii) Return to Park Keepers accommodation
- (xiii) Use for social housing

18. Representation on behalf of local residents has been made by Cllr Hayes. Additionally the Friends of Rowntree Park Committee have raised a number of concerns on the planning application and development in general. The planning issues will be dealt with under due planning process and hence it is not appropriate to comment but other concerns are;

- Financial. A concern that the January 2018 reported income projections could be optimistic and that net income may not be substantial.
- Use. That if reasonable returns are not made then alternatives should be considered.
- Nuisance. Concerns over occupiers causing a general nuisance and also by using the vehicular access via Richardson St, which is a narrow residential street leading, via a very tight corner, into the park and to the parking spaces. Concerns are made in respect of local residents being

disturbed by frequent comings and goings, especially if the renters were to be allowed access to all four of the parking spaces, in the relevant area. The café also needs parking, for deliveries etc. Parking is requested to be limited to 2 bays for the holiday let.

- Security. The renters will be inside a locked park after hours. The park is largely unlit overnight, and there are often intruders after hours (as observed by local residents); this presents a few issues for the use as a holiday space.
 - The renters will not have access to the main areas of the park after hours, and it should be a condition that this is made clear to renters, and all reasonable precautions made.
 - The renters should be required to lock the Richardson St gates after using them, after hours.
 - New railings and gates are to be installed near Richardson St. These will replace the current temporary fence panels used during flooding episodes which prevent access to the flooded areas, but allow access to the café. It should be a condition that these railings and gates are indeed installed before letting begins, that they should harmonise with the existing railings/gates and that the renters do not have access to keys for them.
 - A condition should be to include an undertaking to make it quick and easy for renters to contact the management (or a security firm), in the case of overnight intruders in the park, vandalism etc. The park keeper used to fulfill this security function and now, with the lack of Council staff, anti-social behavior has become prevalent, particularly on summer evenings.
 - Bats and birds. Birds have been observed using the roof spaces of the Lodge for nesting. In addition, it is very likely that bats are also using the roof spaces; there are many bats in the park, and this is one of the few built structures with suitable roosting space. It is requested that there is a condition that bat and bird surveys are done, before work starts, with whatever mitigation is required being done before work starts.
19. Addressing the concerns, the following information is provided in response;
- (i) The management of the accommodation will be undertaken by a local agent and as part of any letting occupiers will have to abide by a set of rules governing their behaviour. The high quality nature

of the proposed accommodation combined with the location is unlikely to be appealing to hen and stag parties.

The management company will be available 24/7 for any issues which arise.

Occupiers of the holiday let accommodation will have a requirement to lock the Richardson Street gates after hours as part of the hire agreement if they use the gates after they are locked by council staff at Park closure time. Guests will not have access to the wider Park after hours.

- (ii) Construction traffic will be minimised as part of the proposals and the contractor appointed will work with local residents to address concerns.
- (iii) Whilst an initial bat survey has found no evidence of bats, wildlife surveys during construction will also be undertaken to ensure there is no undue disturbance of wild life and mitigation works will be undertaken.
- (iv) The disposal of the Lodge is purely for short term holiday lets. The Council will retain the freehold ownership of the property in its entirety. Whilst it is anticipated that this should be a successful use for the Lodge, should the Council wish to cease its operation it could do so at short notice and could consider other uses. The disposal notice has therefore been published to advise of the intent to offer short term letting disposals and is not a permanent disposal, when compared to a proposed sale or long lease of a property.

The issue of the public having use of entirety of the Park is unlikely to have ever existed. Throughout the parks history, areas of the park have not been open to the public without the payment of a fee – for example the swimming pool, bowling greens, tennis courts and car park. Buildings within the Park have never been accessible to the public – maintenance facilities and the Park keeper accommodation.

- (xiv) The ground floor space of the Reading cafe already provides a community facility and there are other community facilities nearby (Clementhorpe Community Centre, Lower Ebor Street and Clements Hall, Nunthorpe Road). As detailed in paragraph 8

above, access to the upper floors is via flights of external and internal stairs and hence linking this to the library at ground floor would be complex and expensive and could result in a loss of ground floor space in the Reading cafe.

- (xv) Parking will be provided to ensure that there is sufficient capacity for the Reading cafe and Lodge users. The spaces previously used by the Park Keeper being available for Lodge users. There is also a nearby car park on Terry Avenue within the Park.
- (xvi) Low level access lighting will be included as part of works programme. This will also aid evening use of the Reading Cafe.
- (xvii) Income projections have been refined through the tendering of works and appointment of York based letting agents who have advised on costs attainable on the latest plans (See Business Plan Update Paragraphs 20 to 30).
- (xviii) Any alternative community uses would require considerable capital investment to facilitate access and transform the rooms to their new purpose. Such uses would unlikely provide any significant income to cover the costs of initial capital and ongoing building maintenance and there would likely be an issue in respect of the ability to provide access for such a use (see paragraph xiv above).
- (xix) In parallel with this development plans to install fences and gates to either side of the Lodge to replace the current temporary measures have been under discussion with the Friends for a few years. These are designed to keep the public out of the park in time of flood and at the same time allow use of the cafe. Installing permanent gates will allow out of hours use of the Reading cafe and define the Lodge area. This work will be undertaken in spring 2019 and funded from the Public Realm repair and maintenance budget.

General security in the park generally remains good. If issues arise then report routes are open and action can be taken by Public Realm staff, Neighbourhood Enforcement Officers and North Yorkshire Police.

Business Case Update

20. The original business case reported in January 2018 anticipated income achievable for a holiday let at the Lodge of between £1,000 and £1,300 per week with an average annual occupancy assumed at 70%. Capital expenditure on the refurbishment of the Lodge was anticipated at £150,000. This provided a potential profit of just over £4,000 per annum after costs.
21. Having developed the proposal as detailed earlier in the report, with a view of maximising the floor space and utilising the storage space in the Lodge, a greater area of accommodation can potentially be provided which creates added value. Letting agents have advised that the property should be designed and finished to provide a 5 star specification of accommodation which is commensurate with the unique and desirous holiday location that the Lodge would provide. The Council has appointed a York based agent to manage the lettings and having regard to the proposals. The weekly income is now projected to range £2,000 to £3,000 per week depending on the time of year from the proposal with an annual average occupancy rate of 75%. This increase reflects the specification and large sleeping capacity which the Lodge could offer once refurbished. Flexibility will be provided within the sleeping capacity by using zip beds which can be used for double and single beds, to cater for families with children.
22. Project costs have increased following the discovery of asbestos and the proposed changes to the internal layout to achieve greater utilisation. It is considered that the asbestos would have to be removed in any event in the future and hence removing it in a planned manner now as part of the planned works is recommended.
23. In order to provide certainty in respect of the costs, a specification of works has been drawn up by quantity surveyors and has been tendered. 11 companies have expressed an interest in the project, reflecting the high profile nature of the project.
24. Costs for the refurbishment of the Lodge are £180,000, plus an anticipated £25,000 for fit out and £15,000 for fees.
25. Costs for the removal of the asbestos, reinstatement of the cafe and covering cafe costs during closure (given the removal of the asbestos would necessitate in the temporary closure of the cafe for approximately

12 weeks) would be £34,000 for reinstatement plus £50,000 for removal plus cafe compensation £30,000, totalling £114,000.

26. Contractors were also asked to price for the replacement of the roof on the dormer section of the Lodge given it is considered necessary to improve its thermal insulation levels to provide suitable accommodation and to ensure that any future re roofing would not interrupt future lettings. The cost of this would be £18,000.
27. In addition the contractor has included a contingency of £40,000 and hence this may not be needed.
28. It is proposed that the cost of removing the asbestos and roof works £132k is funded from the removal of asbestos budget held within Facilities Management and the asset structural maintenance budget within Property Services. These can be contained within current budgetary approvals.
29. The revised scheme cost and funding is shown in the table below

All £'000s	Original Budget	Revised Budget	Change
Project Costs			
Lodge Refurbishment inc. fees	150	220	+70
Asbestos Works/ compensation		114	+114
Roof		18	+18
Contingency		40	+40
Total Capital Cost	150	392	+242
Proposed Funding			
Prudential Borrowing	150	260	+110
Removal of Asbestos*		90	+90
Asset Management*		42	+42
Total Funding	150	392	+242

* These are current approved budgets and the costs of the work can be funded from within current approvals.

30. The overall additional costs require further budget £110k funded from prudential borrowing which is shown to be affordable based on latest income projections shown in the table below

Prudential Borrowing	£260k
Net Rental Income 75% Occupancy	£80,192
Expenditure	
Letting Agent	£9,623
Running costs	£19,920
Revenue cost of borrowing	£25,133
Total Expenditure	£54,676
Net Profit	£25,516

Over the course of the Prudential Borrowing period (15 years) this would generate a projected net profit of £380,000 for use in the Park. Once the borrowing is paid off then the net profit would increase which in turn would generate additional funds for use in the Park.

Council Plan

31. 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

32. Implications

- **Financial.** Funding for the improvement works will be funded through prudential borrowing which would be paid back over 15 years. This is set out in paragraphs 20 to 30 above.
- **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 beneficiary of the covenant. As mentioned above it is considered that Nestle are the current beneficiary and their Agent has confirmed that Nestle do not object to the upper two floors of the Lodge being let out for use as holiday accommodation.

- 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'. Although the general public have not enjoyed access to the upper two floors of the Lodge (since it was occupied by the former caretaker of the Park), it could still be considered that (pursuant to a recent High Court decision) the upper two floors of Lodge is '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. As mentioned above, the proposal to hire out the upper two floors for use as holiday accommodation was therefore advertised in the York Press on 22nd November and 29th November. The specified deadline for submission of any objections or other comments was 12.00 Noon on 20th December.
- Executive must duly consider the comments/objections that have been received by that deadline before deciding whether the Council should proceed with hiring the upper two floors out for holiday accommodation use.
- **Crime and Disorder:** Keeping the building in use prevents deterioration of the assent, and provides a presence in the park which in turn provides passive surveillance.
- **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.

Risk Management

33. In compliance with the Council’s risk management strategy, the main risks associated with the reuse of the upper floors of the Lodge are in line with those previously reported in January 2018 follows:

- **Wider Park care** - 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 this risk.
- **Funding** – the project costs have now been tendered and, therefore, accurate pricing (including a contingency) has now been allowed for. This considerably reduces the risks associated with the project costs being over budget.
- **Financial** - Although the income projections are estimated, these are based on advice sought from the appointed specialist holiday letting agent and the expected profit is well above the original estimated figures contained in the January 2018 Executive Report.
- **Operational** – possible management problems associated with guests staying at the lodge will be mitigated by the holiday letting agents (which have now been appointed) providing rules which guests need to abide by and by the agents being available 24/7 to deal with any issues that may arise. The council will, therefore, not need to manage the lettings directly. Safety will also be improved by new fencing and gates to separate the lodge and cafe from flood risk areas of the park in times of flood along with enhanced lighting around the lodge/cafe.

- Reputational – the building remains unused, visibly deteriorates and detracts from the wider park experience. 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 iconic building
- Alternative use - York Explore the current provider of the library within the wider Lodge building, 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.

Contact Details

Authors:

Nicholas Collins
 Head of Commercial &
 Operational
 Asset Management
 Tel No. 552167

Dave Meigh
 Operations Manager Public
 Realm
 Tel No. 553386

Chief Officer Responsible for the report:

Ian Floyd
 Deputy Chief Executive / Director of
 Customer & Corporate Services

Report **Date** 30/01/19
Approved

Specialist Implications Officer(s) List information for all

Implication Financial
 Name David Gladders
 Accountant
 Tel No. 01904 551101

Implication Legal
 Name Gerard Allen
 Senior Solicitor (Property)
 Tel No. 01904 552004

Wards Affected:

Micklegate, Guildhall and Fishergate (reflecting Park usage)

For further information please contact the author of the report

Background Papers:

Future Operation of Rowntree Park Lodge and Park Executive 25 January 2018

Annexes:

- Annex 1 Future Operation of Rowntree Park Lodge and Park Executive 25 January 2018
- Annex 2 Existing and proposed floor plans

List of Abbreviations Used in this Report:

ACM's - asbestos containing materials