

**SUBJECT: JOHN DAWBER GARDEN**

**DIRECTORATE: COMMUNITIES AND ENVIRONMENT**

**REPORT AUTHOR: STEVE BIRD ASSISTANT DIRECTOR, COMMUNITIES AND STREET SCENE**

## **1. Purpose of Report**

- 1.1 To consider a request to transfer, under a lease, the care and maintenance of the John Dawber Gardens from the City Council to a dedicated trust.

## **2. Executive Summary**

- 2.1 In 1986 the City Council formerly opened the John Dawber gardens, within the Lawn complex.
- 2.2 Although on City Council owned land, the funding for the project was a collaborative endeavour between the City Council and the John Dawber Trust.
- 2.3 The project celebrated both the City's twining links and the county's connection with the great plant hunter and botanist, Sir Joseph Banks.
- 2.4 Originally the gardens were associated with an adjacent heated conservatory, but due to the prolonged period of austerity, and associated Council funding restrictions, the conservatory has had to be removed. Funding for the garden has remained very basic. Consequently, the planting and infrastructure is 36 years old, and is now in need of a total refurbishment throughout.
- 2.5 In recognition that the Council is now entering yet another challenging period for funding, it has to be stated that there is no prospect of internal funding being available in the short/medium term.

## **3. Background**

- 3.1 The John Dawber Garden site has been an important part of Lincoln's green space assets for many years now. Sited at the Lawn, it has been popular with local people and visitors to the city alike.
- 3.2 The site was designed to note the city's formal international links, but principally to commemorate the work of Sir Joseph Banks. Sir Joseph Banks was a Lincolnshire born traveling companion to Captain Cook on his famous voyage to Australia and New Zealand, founding father of Kew Gardens, and president of the Royal Society for over 40 years.

- 3.3 The John Dawber Garden consists of a series of gardens within a garden, each relating to a different area of twinning for the city, relevant at the time of opening. Within the gardens the planting had a clear emphasis on those plants first recorded and named by Sir Joseph Banks, and which were considered to be suitably hardy.
- 3.4 Over time the gardens have developed, and many plants have now gone past maturity, as all planting will eventually. At this stage it would be usual to remove selected plants and to replant with young plants to retain the vigour and vibrancy of the site. It is also an opportunity to play with design, but unfortunately no budget is available for this work.
- 3.5 The current grounds maintenance contract is funded only for very basic maintenance work, and does not provide for refurbishment of planted areas. There is therefore no opportunity to undertake any of this work at this time, or in the foreseeable future.
- 3.6 In addition, numerous aspects of the built infrastructure, such as the pond and rose frames, have deteriorated significantly, and these now require repair/replacement.
- 3.7 Repairs/replacements to the built infrastructure would fall to the Council's corporate repairs and maintenance budget. As this budget is only funded adequately to address the highest priority health and safety work now, this work cannot be funded, meaning ongoing deterioration of the site's infrastructure is inevitable.
- 3.8 The net effect of the two scenarios outlined above is that, despite best efforts by officers, and more recently a volunteer group, the condition of the site can only best be described as in a state of managed decline, with no prospects for short/medium term improvement.

#### **4. The Proposal.**

- 4.1 The Council has recently received a request for a lease for the site. The request has come from a newly formed group dedicated to the care and maintenance of the site.
- 4.2 The group, who have applied for formal charitable trust status, comprises a number of interested parties including local residents, volunteers on the site previously, some with experience of charitable trusts such as Liquorice Park and the John Dawber Trust.
- 4.3 The newly formed Dawber Gardens Community Trust have submitted to the council an outline of how they would like to proceed. Suffice to say it proposes to rejuvenate the gardens by a combination of volunteer works, investment from businesses and groups of businesses within the city, and by seeking external funding.

#### **5. Strategic Priorities**

- 5.1 Let's enhance our remarkable place.

This approach offers the potential for adoption of an important open space by a well-intentioned community group. The group sports the necessary experience and

skills to manage the site, along with realistic potential for investment so as to drive improvements at this site that the Council cannot, at this juncture, afford to fund.

## 5.2 Let's address the challenge of climate change

Although a small site, a rejuvenated garden dedicated around Sir Joseph Banks' work offers the opportunity to promote and explain the importance of plants in our environment, in the widest possible sense.

## 6. Organisational Impacts

### 6.1 Finance

Last year the Council spent £6,921 on grounds maintenance works. As the group may still require some support, it is proposed that this sum remains in the budget, with any underspend being used to offset increasing tree maintenance costs in the city.

Meanwhile, corporate repair and maintenance spend on the site was £7,000. Due to budget pressures, it is proposed that the transfer of responsibility for this site be treated as for grounds maintenance, as a simple reduction in budget pressure, with the funds retained within area.

Although there is no mention in the proposal of any rent to be paid under the requested agreement/lease, it is assumed that any such arrangement will be for a nominal rent.

### 6.2 Legal Implications

In order to enter into any kind of leasehold arrangement with the Trust the Council must ensure that the Trust becomes formally constituted as a corporate/legal entity. If no such legal entity is in place this would require individual contractual arrangements with each 'trustee' which is not advocated..

If the Council were to grant a lease this would constitute a disposal and, by virtue of Section 123 (2A) Local Government Act 1972, a council may not dispose of any land consisting or forming part of an open space unless before disposing of the land they

- (i) give notice of the proposed disposal specifying the land in question and advertising this for two consecutive weeks; and
- (ii) consider any objections received to the proposed disposal.

Alternatively, the Council could grant a Management Agreement incorporating licence for the Trust to use, manage and maintain the property pursuant to, and in fulfilment of, the terms of the Management Agreement. This would not be a disposal as would not grant to the Trust a legal interest in the property.

### 6.3 Equality, Diversity and Human Rights

The Public Sector Equality Duty means that the Council must consider all individuals when carrying out their day-to-day work, in shaping policy, delivering services and in relation to their own employees.

It requires that public bodies have due regard to the need to:

- Eliminate discrimination
- Advance equality of opportunity
- Foster good relations between different people when carrying out their activities

This policy does not adversely impact on equality, diversity, or human rights issues.

### 6.4 Human Resources

N/A

### 6.5 Land, Property and Accommodation

The details of the proposal from the Trust do not refer to a specific arrangement, e.g., they refer to a lease/agreement and do not provide any further detail as to the type or length of any agreement, nor do they mention any proposed rental payment. However, they since verbally stated that their preference is for a lease, although not what the duration of any lease would be. A lease generally sets-out a framework, matters and responsibilities in a landlord/tenant relationship, but usually allows the tenant wide autonomy in its quality standards, hours of operation and general modus operandi etc. If a lease is intended, and if the Council wishes to retain close control over the Trust's work, it is suggested that the Trust be required to produce an operational management and refurbishment/maintenance plan for the Garden for agreement, up-front, by Community Services. Such Plan to be reviewed and agreed by the service area at regular intervals throughout the lease and, unless otherwise agreed by the Council from time to time, the Trust to work to that agreed Plan as part of its lease obligations.

A lease of open space (regardless of the length of lease) is a disposal that must go through the open space disposal notice procedure (see legal implications).

Any disposal by way of lease for more than 7 years must be at best rental consideration unless Secretary of State's consent is obtained, however, the Local Government Act: General Disposal Consent (England) 2003 gives consent for disposal at an undervalue in circumstances where the local authority considers that the purpose for which the property is to be disposed is likely to contribute to the achievement of any one or more of the promotion or improvement of economic, social or environmental well-being in its area. In deciding this, it is expected that authorities will also have regard to their community strategy/strategic plans and act reasonably and prudently to fulfil their general fiduciary duty in a way that is accountable to local people.

It is suggested that the term of the lease be 5 years with the potential to review. This enables both parties the ability to ensure that the arrangement is working

without tying it into a longer term, with any resulting liabilities that may arise from that.

## 6.6 Significant Community Impact

N/A

## 6.7 Corporate Health and Safety Implications

The Dawber Gardens Community Trust would assume all responsibility for the site, including taking out all appropriate insurances for public access, and volunteer working.

## 7. Risk Implications

### 7.1 (i) Options Explored

1. Do not support the long lease request.
2. Support the long lease request (preferred option).
3. Consider an alternative arrangement of a management agreement.

A Management Agreement would not constitute a transferable interest in the property in the hands of the Trust or offer the Trust any security of tenure beyond a reasonable notice period for termination. In the absence of a lease (typically requiring 25 years), the Trust may be unable to raise finance or accept grant funding if needing to be secured against a longer term interest in the property.

Also, the Trust would have less autonomy in using, managing and maintaining the property as these would be exercisable only for the purpose and fulfilment of the terms of the Management Agreement. Whilst significant contractual responsibilities for management, maintenance etc. could be attributed to the Trust under a Management Agreement, similar to those between landlord and tenant under a lease, the Council as landowner would essentially retain contingent potential liabilities including upon default by the Trust - although suitable insurance/indemnities from the Trust may mitigate any risks. This would be a suitable option if the Council wants close control over the Trust's management and maintenance, quality standards, hours of operation and general modus operandi.

As a Management Agreement persists by will of the parties, it is more conducive to an ongoing collaborative approach and expectation that the Council may be actively consulted on any intended plans/works.

A management agreement would not be considered a disposal under the Section 123 of the Local Government Act and as such would not require the Council to advertise of disposal of open space. Neither would there be any requirement to ensure best rental consideration.

7.2 (ii) Key Risks Associated with the Preferred Approach

The group do not obtain charitable status, and do not generate the volunteer and financial support to which they aspire.

The result would be either a request to surrender the lease and hand back responsibility to the Council, or the Council would enforce this subject to the terms of the lease. By that point, if the group had failed, the site could be in a worse condition than at hand over necessitating greater investment to reverse its fortunes.

**8. Recommendation**

- 8.1** That the Council agree a 5 year lease in principle as the basis of terms with the Dawber Gardens Community Trust, subject to the findings of the advertisement, delegating the decision to proceed, and final format of any legal agreement to the DCE, the CFO and the CS.

<b>Is this a key decision?</b>	No
<b>Do the exempt information categories apply?</b>	No
<b>Does Rule 15 of the Scrutiny Procedure Rules (call-in and urgency) apply?</b>	No
<b>How many appendices does the report contain?</b>	None
<b>List of Background Papers:</b>	None

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