

**Executive Board – 18 June 2024**

<b>Subject:</b>	Acceptance and expenditure of Green's Windmill MEND fund grant for the Nottingham City Museum Service
<b>Corporate Director(s)/Director(s):</b>	Colin Parr, Corporate Director for Community, environment and Residents Services
<b>Executive Member(s):</b>	Councillor Sam Lux, Executive Member for Carbon Reduction, Leisure and Culture
<b>Report author and contact details:</b>	Rachael Evans, Museums Development Manager
<b>Other colleagues who have provided input:</b>	
<b>Subject to call-in:</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Key Decision:</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Criteria for Key Decision:</b>	
(a)	<input checked="" type="checkbox"/> Expenditure <input type="checkbox"/> Income <input type="checkbox"/> Savings of £750,000 or more taking account of the overall impact of the decision
<b>and/or</b>	
(b)	Significant impact on communities living or working in two or more wards in the City <input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Type of expenditure:</b>	<input type="checkbox"/> Revenue <input checked="" type="checkbox"/> Capital If Capital, provide the date considered by Capital Board Date: 8 <sup>th</sup> May 2024
<b>Total value of the decision:</b>	<b>£761,227</b>
<b>Section 151 Officer expenditure approval</b>	Has the spend been approved by the Section 151 Officer? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/a
	Spend approval will be sought during the first 8 months of the project when the NCC procurement process is followed to tender for the professional team and main contractor.
	Spend Control Board approval reference number: N/a
<b>Commissioner Consideration</b>	Has this report been shared with the Commissioners' Office? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Any comments the Commissioners wish to provide are listed below.
<b>Wards affected:</b>	<b>All</b>
<b>Date of consultation with Executive Member(s):</b>	<b>20<sup>th</sup> May 2024</b>
<b>Relevant Council Plan Key Outcome:</b>	
Clean, Green and Connected Communities	<input checked="" type="checkbox"/>
Keeping Nottingham Working	<input type="checkbox"/>
Carbon Neutral by 2028	<input type="checkbox"/>
Safer Nottingham	<input type="checkbox"/>
Child-Friendly Nottingham	<input type="checkbox"/>
Living Well in Our Communities	<input type="checkbox"/>
Keeping Nottingham Moving	<input type="checkbox"/>
Improve the City Centre	<input checked="" type="checkbox"/>
Better Housing	<input type="checkbox"/>
Serving People Well	<input type="checkbox"/>
<b>Summary of issues (including benefits to citizens/service users):</b>	
	Proposals are being made to: <ul style="list-style-type: none"> <li>• Agree total project costs of £761,227 to deliver a programme of urgent repairs at Green's Windmill over the next three years.</li> </ul>

- Accept a secured grant of £685,104 from the Arts Council England Museum Estate and Development Fund (MEND) and enter into a 15-year grant funding agreement with the Arts Council.
- To commit confirmed partnership funding of £76,123 towards the total project costs, funded from earmarked reserves totalling £40,000 and Arts Council England National Portfolio Organisation grant funding 2024-2026 of £36,123.
- To approve the expenditure of the grant and partnership funding against the programme of urgent repairs.

Green's Mill is a Grade 2 listed building. The programme of urgent repairs to make the building wind and watertight is essential to protect the building, collections, staff and visitors and fulfils a statutory duty of compliance.

**Does this report contain any information that is exempt from publication? No**

**Recommendation(s):**

- 1 To accept Grant funding of £685,104 for the Arts Council England for the programme of repairs at Green's Mill and to approve expenditure totalling £761,227 (£685,104 grant and £76,123 match funding) on the programme of repairs (subject to s151 approval being obtained prior to spend).**
- 2 To delegate authority to the Corporate Director/ Director of Sports & Culture/ Director of Legal Services to enter into a Funding Agreement with Arts Council England [ACE] including a Deed of Covenant restricting the title of Green's Mill for a period of 15 years, without prior consent of ACE.**
- 3 To delegate authority to the Director of Sports & Culture to procure, award and enter into contracts with suppliers required to deliver the programme, and enter into appropriate agreements with the Green's Mill Trust (subject to prior consent of ACE where applicable).**
- 4 To approve the replenishment of the Council's match funding requirements [earmarked reserves] from donations and additional fundraising.**
- 5 To note the funding is subject to a commitment to ensure that Green's Mill remains a non-National accredited museum on completion of the repairs for the period for the Funding Agreement.**
- 6 To incept the Green's Mill project in the General Fund Capital Programme with the capital budget increased as detailed in the report.**

**1. Reasons for recommendations**

- 1.1 The backlog of repairs to Green's Windmill (because most working parts of the Mill are at least 35 years old and exposed to the elements) has meant this working site has deteriorated and is very much at risk.
- 1.2 Deterioration of the mechanics and fabric of the fan-tail and sail frame became such a risk to staff and visitors that they have been removed and as a result milling is limited.
- 1.3 Repairs to machinery, roofs, rainwater goods and windows are a key priority as outlined in the site's condition report completed in March 2023 in order to make the building wind and watertight.
- 1.4 Repairs to Green's Windmill will ensure it can remain open to the public.
- 1.5 Funding has already been secured to deliver the programme of repairs.

## 2. **Background (including outcomes of consultation)**

### 2.1 The Site:

Green's Windmill (Grade 2 listed building) and Science Discovery Centre is one of Nottingham's most cherished heritage sites and is one of only a handful of city-central working windmills remaining in the UK. Greens Mill was built in 1807 by Mr Green. His son, George Green (inventor of Green's Theorem) inherited the Mill but after his death in 1841 it fell rapidly into disrepair. Acquired by the City Council, in 1985 it was restored as a working Windmill along with a Science Centre where visitors discover the importance of George Green. However, due to deterioration, the sails were removed in 2022. The activity focuses on repairing the sails, cap, stock, clamps, fantail, machinery, buildings' timber, brickwork and roofs.

### 2.2 Visitor Figures:

Green's Windmill is open, free entry, 5 days a week. It engages over 20,000 visitors, delivers over 140 events per year and engages a wide community of volunteers who dedicate over 4000 hours annually to the running of the site.

### 2.3 Operational Control:

Operational control is still maintained by the Service and all major repairs are met by the City Council, but the Green's Windmill Trust [Company Limited by Guarantee] makes a significant contribution to the annual running cost of the site and have engaged a project co-ordinator and Miller's Apprentice to support the long-term sustainability of the mill alongside the Council salaried Miller's post. A joint officer and Trust working group meets regularly to review progress. A rolling operational agreement is in place between the Trust and Nottingham City Council. Currently the terms for the new agreement are being negotiated with the Trust. Funders, Arts Council England have been consulted and are satisfied with the current operational arrangement.

### 2.4 Income Generation:

Green's Windmill is free entry and income is made through special events, activities, tours and through the commercial offer of milled flour on-site. However, since the removal of the sail frame milling by wind power has ceased and a minimal amount of flour is milled by electricity. The programme of repairs will ensure the sail frame can be repaired, reinstating the site as a working windmill enabling the site to remain open, risk free, to the public.

### 2.5 Condition Survey:

Green's Windmill Condition Survey was updated in March 2023 by The Morton Partnership and a programme was developed identifying priority areas for repair including machinery and structural repairs. The programme ensures the building is wind and watertight and can function as a working windmill. It is noted in the survey that these priority areas must be repaired within the MEND fund timeframe, therefore within 3 years.

### **3. Other options considered in making recommendations**

- 3.1 The principal alternative option would be to do nothing. This will mean the mill building and machinery will continue to deteriorate due to ingress putting staff, visitors, the building and collections at severe risk.

### **4. Consideration of Risk**

- 4.1 Due to the compact nature of the site and need for temporary roofing a phased approach, though considered, is not appropriate for this programme of repairs. However the spending plan includes £159,467 contingency for the possible impact of inflation during the period of works and possible cost over-runs mitigating risk. The project manager will also closely monitor the expenditure to identify possible cost pressures and if necessary stop works to avoid an overspend position.
- 4.2 Not delivering the programme of repairs within the funding agreement timeframe may result in the grant funding being returned and the site remaining at risk. Mitigated by a programme of repairs which includes a substantial time contingency in the event of any delays. The main contractor will be appointed promptly to enable a substantial lead in time for ordering materials and specialist parts for the mill machinery.

### **5. Best Value Considerations, including consideration of Make or Buy where appropriate**

- 5.1 The programme of repairs at Green's Mill will positively improve the service and site for Nottingham's communities.
- 5.2 The grant funded programme is Best Value economically. The repairs to the Grade 2 listed site are a priority to remain statutory compliant. Minimal Council resources are required to secure the 90% grant funding. The remaining 10% will be sourced from external fundraising including donations.

### **6. Commissioner comments**

- 6.1 Commissioners are content with this report

### **7. Finance colleague comments (including implications and value for money/VAT)**

- 7.1 This decision seeks approval for expenditure for a programme of urgent repairs at Green's Windmill totalling £761,227. This expenditure will be resourced from Arts Council England Museums Estate and Development (MEND) Fund confirmed grant funding £685,104 and £76,123 match funding. The match funding will be resourced from earmarked reserves totalling £40,000 and Arts Council England National Portfolio Organisation [ACE NPO] grant funding 2024-2026 of £36,123. ACE NPO 2023-2026 grant funding expenditure has been

approved at a previous Executive Board [July 2023]. Additional fundraising will be undertaken across the course of the project to replenish the earmarked reserves.

- 7.2 The Capital Board meeting held on 8 May agreed for this project to proceed based on the funding arrangements outlined above.
- 7.3 The Arts Council England MEND grant has been awarded specifically for this project as outlined in the grant award letter and conditions. As a result, the grant will be treated as ring-fenced for this project, as any unspent grant must be returned by the Council. The Head of Service for Culture and Libraries will need to put measures in place to ensure compliance to the grant award conditions to avoid possible clawback of grant.
- 7.4 Subject to approval of this report, the Council's capital programme will need to be updated to include the Green's Mill programme of repairs. With the project budget forecast as follows:

	<b>2024/25</b>	<b>2025/26</b>	<b>2025/26</b>	<b>2026/27</b>	<b>TOTAL</b>
	<b>£m</b>	<b>£m</b>	<b>£m</b>	<b>£m</b>	<b>£m</b>
Forecasted Expenditure	0.205	0.245	0.235	0.076	0.761

- 7.5 The Council is making a VAT exempt supply of a right to occupy land in exchange for consideration, so therefore the input VAT incurred on the capital expenditure will need to be included in the Council's Partial Exemption calculation.
- 7.6 If the Council were to opt to tax the site to make the supply subject to VAT, this could be disapplied by the Trust as the site is being used for charitable purposes or by anti-avoidance regulations if the Trust did any fund raising towards the scheme so this is not considered to be a viable option.
- 7.7 Therefore, the Council will need to take steps to manage and mitigate this risk and avoid significant irrecoverable VAT costs in the event of a breach.
- 7.8 The Council has processes in place to monitor its Partial Exemption position which will enable it to identify if a breach is likely and put in place mitigating actions to ensure that no irrecoverable VAT costs are incurred.
- 7.9 These mitigating actions would include managing the phasing of some schemes within the capital program or changing the delivery of some ongoing activities.
- 7.10 There are a number of schemes within the capital program that are affected by this issue, this therefore reduces the scope of the Council to undertake expenditure on other assets that are used to generate VAT exempt income in the medium term.

Maria Balchin, Senior Commercial Business Partner  
Thomas Straw, Senior Accountant (Capital Programmes)  
Gary Robbins, Senior Accountant (Tax)  
17.05.2024

## 8. Legal colleague comments

- 8.1 Sections 12 -15 of the Public Libraries and Museums Act 1964 (the 1964 Act') provide local authorities with powers to maintain museums and art galleries. Section 12 specifically enables a local authority to provide and maintain museums and art galleries within its administrative area or elsewhere in England and Wales and gives local authorities the power to do all such things as may be necessary or expedient in connection with the provision or maintenance of such museums or art galleries.

Under section 14 of the 1964 Act a local authority may make contributions towards expense incurred by any person—

- (a) in providing or maintaining a museum or art gallery in any place within England or Wales, or
- (b) in providing advisory or other services or financial assistance for the benefit of a museum or art gallery in any such place.

This decision directly concerns the Local Authority in the exercise of the above powers in that it seeks to approve the taking of several steps that are necessary and expedient in connection with the provision of the Green's Mill Museum, including entering into a grant Funding Agreement for the acceptance of a restricted grant with the Arts Council for England and in a making a financial commitment to provide match "partner funding", towards the Agreed Capital Project Plan (as per MEND-00643364-R3 Offer Letter dated 14.03.2024)) for the benefit of the Green's Mill Museum.

The Funding Agreement with Arts Council England comprises:

1. Arts Council England's Standard Terms and Conditions – Museums Estate and Development Fund ('Terms and Conditions'),
2. the Additional Conditions and the Monitoring Schedule and Payment Conditions.
3. The Offer Letter and Schedule 1 (Agreed Capital Project Plan) and 2 (Payment Schedule)

Security for the grant is required under the Terms and Conditions as follows:

- Deed of covenant between Nottingham City Council and Arts Council England with restriction on title over the freehold of the Project Asset for a period of 15 years\*;
- Solicitors undertaking to register the restriction at the Land Registry within 28 days; and
- Provision of Certificate of Title\* and Cabinet approval or equivalent for the acceptance of the grant on the terms and conditions provided and delivery of the Agreed Project.

\*Specific legal advice on these aspects is provided below.

Upon entering the Funding Agreement with the Arts Council, the Council will be committing Greens Mill Science Centre Windmill Lane, as the Project Asset, to be used as a non-National Accredited Museum after completion of the Agreed Project for the period set out in the terms and conditions i.e. 15 years (written confirmation of this is a condition precedent for payment of the initial grant instalment of £205,531.00).

It should be noted that the Funding Agreement contains a number of notable other conditions that the Council will be committing to when entering the agreement, which failure to comply with would put the Council in breach of the agreement and at risk of claw back of the grant funding.

The grant will be received in instalments as set out in schedule 2, subject to ACE receiving and approving any additional monitoring information and payment conditions. Instalments 1 and 4 are in fixed amounts as set out in schedule 2. Instalments, 2 and 3 are indicative and can be drawn down in line with project progress and expenditure incurred. Payment of instalment 1 is subject to the Council providing evidence of 5% local authority match funding having been received, alongside provision to ACE of the audited accounts for the last financial year (evidence of the remaining balance of match finding must be provided as a condition precedent for the release of instalment 3).

When procuring goods, works or services that are funded in whole or in part by the Grant the Council must

- have appropriate policies and procedures for obtaining quotes or competitive tendering in place for purchasing any goods, works or services costing more **than £12,000 (including VAT)** over the whole life of the contract, including any extensions (irrespective of how likely it is that they will be exercised).
- in procuring contracts for works of services, comply with the Public Contracts Regulations 2015 (as amended or replaced from time to time) (“PCR”) or the Procurement Act 2023 (PA 2023) as applicable. Any procurement activity that commences after the PA 2023 comes into force will be governed by the PA 2023 and not the PCR.

The Council must otherwise ensure it acts in compliance with its Contract Procedure Rules in relation to the procurement and award of relevant contracts for works and services associated with the Agreed Project.

By entering the Funding Agreement, the Council will at Clause 6.17 be acknowledging that *“the grant comes from public funds and confirm that the support provided is compliant with the Subsidy Control Regime”*. The Council is therefore advised to undertake its own assessment of applicability and compliance with the Subsidy Control Act 2022 prior to entering the Funding Agreement and must also ensure that in its use of the grant funding that it complies with the Subsidy Control Regime. In the event that it is deemed by a competent court or other regulatory authority to be non-compliant with the Subsidy Control Regime, the Council will be agreeing to repay the entire grant (and any other sums due) immediately, under the Funding Agreement terms.

Notwithstanding the specific Security (Clause 8) and Land Legal requirements (Clause 9), the Council must under clause 10 seek ACE prior written consent if it wishes to sell, let, sub-let or otherwise deal with or dispose of the Project Asset(s) within fifteen (15) years from the date of the Funding Agreement at this grant funding level. Although, the report author has indicated a new SLA and licence agreement are being negotiated with the Trust and that ACE are satisfied with the current operational arrangements, the Council should ensure formal prior written consent of ACE is obtained prior to any dealing with the property being finalised, including a new licence, (noting that ACE is not contractually bound to provide such consent). To that end, the Council should also ensure in its decision making that officers have in place appropriate delegated authority to negotiate,

agree and commit the Council to a licence and SLA in favour of Greens Mill Trust, subject to such consent being given.

Richard Bines, Solicitor, Contract and Commercial Team, Legal Services  
20.05.2024.

- 8.2 It is outside the legal department's experience to comment on whether the amount of funding is sufficient or whether the organisation providing the grant is suitable.

The funding agreement is not a disposal of property that would trigger any s123/best consideration requirements.

A condition of receiving the grant is that the council must obtain the funder's consent to any disposal of the property (essentially any transaction involving the property) for 15 years from the date of the grant. The information from the funder does not describe any criteria for the funder to grant or withhold its consent meaning the funder appears to have total discretion in deciding whether to give its consent. I understand the funder has agreed that, if required, a lease may be granted to the trust which operates the windmill but the funder is not contractually bound to provide its consent to this or any other transaction. You must consider whether this restriction would be unduly restrictive or jeopardise any possible dealings with the property in the next 15 years.

The logical conclusion is that purpose of the restriction is to secure repayment of the grant if the council disposes of the property within 15 years of the grant being made. However, the funder is unable to provide any details of its policy for repayment of grant funds so it is unclear whether the grant would have to be repaid in full or on a decreasing scale over time. The funder has indicated in separate correspondence that it does not have a clear policy and would exercise discretion depending on the circumstances of the disposal. You should consider whether this uncertainty could restrict or prevent the council being able to deal with the property.

If the council requires certainty from the funder it could seek to amend the terms to provide necessary clarity. The funder may only provide funding on its standard terms but that is not currently known.

The funder requires a certificate of title in respect of the property in its standard form. A quick review does not identify any particular concerns for the council to provide this report but it has not been submitted to the funder and is subject to any further comments or enquiries the funder may raise.

James Christian, Senior Solicitor, Conveyancing Team, Legal Services  
20.05.2024

## 9. **Other relevant comments**

- 9.1 Procurement comments: Suitable consultants & contractor will be procured in compliance with Contract Procedure Rules to carry out the repairs. As this is grant funded work, savings from a procurement exercise may not be allocated in respect of the Council's corporate savings target for procurement but will be returned to the funder or reallocated within this programme.

Jonathan Whitmarsh, Lead Procurement Officer, Procurement & Contracting



17.05.2024

- 9.2 Conservation comments: Green's Mill is a highly significant Grade II listed building and is integral to the character and appearance of the city's views. The restoration of this mill is a key target with the city's Heritage Action Plan 2023-25. The building was first listed in 1972 on account of its architectural design and historical associations.

It was built in 1807 by Mr Green, a local baker, who later built a family home immediately adjacent at Green's Mill House (also Grade II listed). The mill was briefly targeted during the 1831 Reform Bill Riots and Mr Green's son, George, became a notable mathematician whose theorem is still used by scientists and engineers all over the world. The mill ceased to work in 1862 with technological developments that negated the need for wind power, and in 1947 a disastrous fire left only the brick tower standing. In the 1985 the mill was restored following a committed campaign by conservationists. Functioning as a key tourist destination and local science museum it has since played an important part of the city's cultural and educational offer, particularly with regard to its functioning as a working mill producing domestic flour.

Architecturally the building is a brick round tower with various sensitively renewed timber fittings, such as Yorkshire sliding sash windows, circular wooden gallery, ogee wooden cap with finial and fantail. Internally the working machinery was reinstated from other mills.

At the summit of Windmill Hill, the views of the mill are considered as strategically important in local planning policy documents, such as within the Nottingham Urban Design Guide and Wasterside SPD. Green's mill is one of few examples in Britain of surviving windmills within a city environment. The other examples being Lincoln and Norwich.

- 9.3 Given the scale of the intended works outlined in the structural survey this application will require an application for Listed Building Consent. Proposals should be carried on a like-for-like basis with little or no significant changes to its material structure or overall appearance, unless justified with public benefits that outweigh the harm caused. It is recommended that a reputable heritage consultancy is consulted to ensure a rigorous application.
- 9.4 If the works are not carried out in the immediate future then this will have negative impact upon the heritage of the city, its local cultural and educational offer, the working aspect of the mill, the production of domestic flour and various views of the city. Green's Mill is also positioned within a deprived area of the city and its continued deterioration will adversely affect those who are most in need of cultural, community and education services.

Chris Matthews, NCC Conservation Officer  
24.04.2024

## 10. **Crime and Disorder Implications (If Applicable)**

10.1 N/a

## 11. **Social value considerations (If Applicable)**

11.1 Social value will be taken into consideration during the procurement process for contractors.

## 12. **Regard to the NHS Constitution (If Applicable)**

12.1 Green's Windmill plays an important role in connecting people and nature with the community gardens. There is clear evidence that contact with nature has positive effects on people's physical and mental health.

12.2 Contact with nature has been shown to have lots of positive effects on people's health and fitness, lowering blood pressure and reducing recovery times from illness. It helps people cope with stress and maintain concentration, to have a positive outlook and to generally feel satisfied with life. (Natural England 2012)

12.3 Green's Windmill will help support the Nottingham Health and Well-being strategy action plan.

## 13. **Equality Impact Assessment (EIA)**

13.1 Has the equality impact of the proposals in this report been assessed?

No

An EIA is not required at this stage. The Equalities and Diversity Team has a representative on the Museums Service Oversight Board and there will be full consultation at each stage to ensure there is access for all.

Yes

## 14. **Data Protection Impact Assessment (DPIA)**

14.1 Has the data protection impact of the proposals in this report been assessed?

No

A DPIA is not required because data will not be collected.

Yes

## 15. **Carbon Impact Assessment (CIA)**

15.1 Has the carbon impact of the proposals in this report been assessed?

No

A CIA is not required because at tendering stage for the Main Contractor the published tender will require responses to submit a Carbon Reduction Plan.

Yes

## 16. **List of background papers relied upon in writing this report (not including published documents or confidential or exempt information)**

16.1 N/a

## 17. **Published documents referred to in this report**

17.1 N/a