

BIRMINGHAM CITY COUNCIL – COUNCIL AS TRUSTEE**PUBLIC REPORT**

Report to:	TRUSTS AND CHARITIES COMMITTEE
Report of:	SERVICE DIRECTOR - SPORTS, EVENTS, OPEN SPACES AND WELL-BEING
Date of Decision:	23rd January 2019
SUBJECT:	INTRODUCTION OF CAR PARKING CHARGES IN MAJOR PARKS - VICTORIA COMMON
Wards affected:	NORTHFIELD

1. Purpose of report:

To seek approval to the introduction of car parking charges at Victoria Common and to facilitate a programme of on-going improvement works safeguarding facilities in the Park for park users.

2. Decisions recommended:

That the Committee:

- 2.1 notes that approval was given to a report introducing charges for car parking at Cannon Hill Park in trust on 1st March 2017 and that the Business Case appended thereto 'Introduction of Charges for Car Parking in Major City Parks - The Place Directorate' included proposals for the rolling out of charges elsewhere including Victoria Common.
- 2.2 approves the introduction of car parking charges at Victoria Common in line with the Business Plan (in so far as it affects the park held in trust) subject to
 - funds generated from car parking income being applied to an on-going programme of investment in the facilities at or the wider management of Victoria Common held in trust
 - officers providing regular feedback to update Members on income and expenditure on Trust land to promote the objects and purposes of the charity
 - any further consultation and approvals required to implement the scheme
- 2.3 approves Birmingham City Council undertaking the proposed works to improve the security, layout and facilities provided in the park with Phase 1 as set out in Appendix 1
- 2.4 delegates to the Assistant Director of Property (Interim) authority to negotiate and agree any agreements required to facilitate the proposals provided that appropriate restrictions are included in the terms to properly safeguard the Trust
- 2.5 authorises the City Solicitor to place any formal advertisements required under s123 2(a) of the Local Government Act 1972 for the loss of public open space (if any) or required under any of the various statutes as may relate to the charitable status of the land including any appropriate consultation stages and to appraise the Committee of the results of that consultation
- 2.6 authorises the City Solicitor to make any further applications necessary for appropriate powers or approvals from the Charity Commission or other party or body as appropriate and to then prepare, negotiate, execute, seal and complete all necessary legal documentation to give effect to the above recommendations.
- 2.7 authorises the Highways Team to introduce a Traffic Regulation Order to enable the introduction of parking charges at Victoria Common.

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3. Compliance:

3.1 Consultations:

Internal

The Park is managed on a day to day basis by Place Directorate and officers in Birmingham City Council Parks Service fully support the proposals developed to improve the park. Ward Members have been consulted and the Cabinet Member for Homes and Neighbourhoods fully supports the proposals.

External

The proposals for the car parking were shared with the Birmingham Open Spaces Forum (Friends of the Park) in individual meetings and they support the proposals to improve control of the car parking in the vicinity. Consultation has taken place with the Trustees of the Birmingham Friends Halls who own the carriageway to the park and indeed improvement works to the carriageway are proposed as part of the scheme, to resolve the long-standing issue of inconsiderate parking along the carriageway and forcing pedestrians into the path of oncoming traffic, through the production of a pedestrian walkway with bollards to prevent inconsiderate parking. Consultation will take place with local stakeholders i.e. businesses and organisations in the vicinity of the park. A public consultation will follow once stakeholders have been consulted.

3.2 Are there any relevant legal powers, personnel, equalities, procurement, regeneration and other relevant implications?

The City Council acts as Sole Corporate Trustee for a number of charitable and non-charitable Trusts and has delegated day to day decision making to the Trusts and Charities Committee. The Trust holds the freehold interest of the parkland in trust as Sole Trustee and is responsible for ensuring the Trust is managed in accordance with the governing document and in accordance with charity law and relevant Charity Commission guidance. Charitable trust activity is regulated by the Charity Commission and any proposals relating to the estate will be governed by the Trust document as amended by any Scheme approved by the Charity Commission. There is no scheme in place for this area of trust land nor does the governing document provide any direct powers for the future management of the trust land. The terms of the Trust as set by the acquisition deeds are that the land is to be used for the purposes of a public park for the recreation of persons in the City of Birmingham and the general public together for the purposes of a playground or pleasure ground. However trustees are able to rely on the provisions of the Trusts of Land and Appointment of Trustee Act 1996 for sufficient powers to allow the proposed works to proceed.

3.3 How will decisions be carried out within existing finances and resources?

The Committee has responsibility for ensuring the proper governance of the Trust in accordance with the objects of the trust and charity law. The Trustees must act with prudence and must ensure that the charity is and will remain solvent and that appropriate cost controls are in place. Principal revenue costs for the trust Estate are covered by the Birmingham City Council Parks Service. The proposed improvement works will be paid for by Birmingham City Council from projected receipts from the car parking, subject to Committee approving this report.

3.4 Main Risk Management and Equality Impact Assessment Issues (if any):

Not applicable. The statutory functions discharged by the Council as Trustee are subject to a separate and distinct statutory regime underpinned (principally) by the Charities Act 2011, Trustee Act 2000 and relevant Charity Commission guidance. These are non-executive functions and are therefore not subject to the Equalities Act 2010 provisions.

4.	Relevant background/chronology of key events:
4.1	Victoria Common is registered charity no. 1073595. The Common was first opened as a private park of by George Cadbury in 1897. That land was gifted to the local authority in 1905. The public open space at Victoria Common now extends to approximately 8.8 hectares but the trust element comprises approximately 7.45 hectares formed from four gifts of land. While there are several pedestrian access points into the Common the sole vehicular access is by a right of way from Church Road. While a permissive right was allowed in the very first acquisition over this route it was only on 17 th December 1951 that a formal right of way was granted by the Trustees of the Birmingham Friends Halls who had also gifted 4.5 hectares of land to the park in 1914 and who still maintain a Friends Meeting House adjacent to the Park.
4.2	The parcel of land containing the car parking area was gifted by Mrs E. M. Cadbury and others on 12 th March 1930. The car park area was formed sometime in the 1950's and has remain unchanged since.
4.3	Approval was given to a report introducing charges for car parking at Cannon Hill Park in trust on 1 st March 2017 and that the Business Case appended thereto 'Introduction of Charges for Car Parking in Major City Parks - The Place Directorate' included proposals for the rolling out of charges elsewhere including Victoria Common. This report seeks approval to progress those proposals at Victoria Common to foster improvements at the park, to overcome existing parking issues and to form a long term revenue stream.
4.4	Aims and Objectives of the Trust Each property in trust is held as a separate trust and decisions need to be in the best interests of that trust. The assets of the Trust should at all times assist the Trust to comply with the objects of the trust. The terms of the Trust are that the land is to be maintained and used as a public recreation ground or open space. The original trust deeds require that Birmingham City Council shall hold the land for the provision of public open space for the purposes of healthful recreation but the classification of the registered Charity including it purposes, beneficiaries and method of operation includes general charitable purposes, amateur sport and provide buildings, facilities. There are additional covenants against sale of alcohol and for the provision of fences etc.
4.5	Trustee Powers A trust's constitution is set out within the executed Trust Deed for each property which for Chamberlain Gardens for these purposes is the acquisition deed dated 12th March 1930. There has been no subsequent amendment by any Scheme agreed with the Charity Commission nor is one required to implement the car parking proposals though it is appropriate to seek authority to obtain a Scheme should the need arise.
4.6	Trust Finances The land is open parkland with no other assets (except the car park and one of the few remaining Sons of Rest establishments), nor revenue stream. The trust is not able to fund the proposed works and the proposal by Birmingham City Council provides the opportunity to secure improvements and resolve on-going issues.
5.	Evaluation of alternative option: To do nothing is not an option. The car park is very well used but the majority of the users are shoppers and nearby office workers attending the adjoining Open Reach (BT) offices seeking to avoid charges levied elsewhere in the vicinity and to the exclusion of the genuine park or nearby Library user. Parking frequently spills out to restrict the already narrow entrance road and has reached the point that the effective management of the Common is now being compromised. The trustees consent to works on the Trust land does not have to be given in this instance if they choose otherwise but the introduction of charges and controls and improvements are all dependent on each other and it is considered appropriate to allow the proposals to proceed.

6. Reasons for Decision(s):

- 6.1 To secure improvements to the park, control fly parking in the area blocking the access and to ensure compliance with the Trust Objects such that facilities remain in fully available primarily for park users.

Signatures:

Chief Officer(s):

Dated:

List of Background Documents used to compile this Report:

1. Deed of Conveyance 12th March 1930
2. Report introducing charges for car parking at Cannon Hill Park in trust on 1st March 2017 and that the Business Case appended thereto 'Introduction of Charges for Car Parking in Major City Parks - The Place Directorate'

List of Appendices accompanying this Report :

1. Plan showing proposed improvement scheme
2. Plan showing extent of Trust land in Victoria Common