

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

<b>Report to:</b>	<b>TRUSTS AND CHARITIES COMMITTEE</b>
<b>Report of:</b> <b>Date of Decision:</b>	<b>ASSISTANT DIRECTOR – STREET SCENE</b> <b>22 January 2020</b>
<b>SUBJECT:</b>	<b>INTRODUCTION OF CAR PARKING CHARGES IN CITY PARKS - VICTORIA COMMON</b>
<b>Wards affected:</b>	<b>NORTHFIELD</b>

**1. Purpose of report:**

To seek approval to the introduction of car parking charges at Victoria Common, which the Council owns as sole trustee, as part of the Council's overall strategy to introduce charges across parks in the City and to approve a programme of ongoing maintenance and improvement works as set out in Appendix 5 (the "Works") in order to safeguard facilities at Victoria Common for the benefit of park users.

**2. Decisions recommended:**

That the Committee:

- 2.1 notes that approval was given by the Committee to a report introducing charges for car parking at Cannon Hill Park in trust on 1st March 2017 and that the Business Case appended to the report '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 now approves the introduction of car parking charges at Victoria Common in line with the Full Business Case (in so far as it affects Victoria Common) taking the following into account:
  - all revenue derived from car parking charges at Victoria Common will be used to offset the costs of maintaining Victoria Common;
  - any surplus revenue generated (over and above the total annual costs for Victoria Common), will be returned to the Trust and earmarked for Victoria Common;
  - the Parks Service will consult with the Trust about the use of surplus revenue for future improvements to Victoria Common; the Parks Service will provide regular updates to the Trust on any such improvements;
  - undertaking any further consultation and obtaining all other approvals and consents, required to implement the scheme.
- 2.3 approves Birmingham City Council to undertake the proposed Works estimated at £0.07m to improve the security, layout and facilities at Victoria Common as detailed in Appendix 5, as well as ongoing maintenance of the car park and carriageway
- 2.4 delegates to the Assistant Director of Property authority to negotiate any agreements required to facilitate the proposals at 2.2 and 2.3 above, provided that all appropriate restrictions are included in the terms to properly safeguard at all times the interests of the Council acting as Sole Trustee
- 2.5 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
- 2.6 notes the Highways Department of BCC will introduce an off-street Traffic Regulation

Order to enable the introduction of parking charges at Victoria Common. The Traffic Regulation Order will be in place prior to the introduction of charges.

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### **3. Compliance:**

#### **3.1 Consultations:**

##### Internal

Victoria Common is managed as a park on a day to day basis by Neighbourhoods Directorate. The Council fully support the proposals developed to improve Victoria Common in the Full Business Case. Ward Members for the area (and surrounding areas) were consulted by email on 9th November 2018 and again on 7 March 2019 (Appendix 1), as well as on 27-28th June and 12th and 19th July 2019 in advance of the informal public consultation:

- Northfield
- Kings Norton South
- Kings Norton North
- Longbridge & West Heath
- Rubery & Rednal
- Frankley & Great Park
- Allens Cross
- Weoley & Selly Oak.

The Cabinet Member for Street Scene and Parks was consulted with in May, June and September 2019 in Cabinet Member Briefings and is fully supportive of the proposals.

The project team attended the Northfield ward meeting on 17th October to update the ward member and local residents on the initial findings from the informal public consultation.

##### External

The proposals for the introduction of car parking charges were shared with the Birmingham Open Spaces Forum (Friends of the Park) by the District Parks Manager in individual meetings over the past year and they support the proposals to improve control of the car parking in the vicinity.

Consultation has taken place (through meetings and email) with the Trustees of the Birmingham Friends Halls (Society of Friends) who own the carriageway to Victoria Common between November 2018 and February 2019, as improvement works to the carriageway are proposed as part of the scheme to resolve the long-standing road safety issue of inconsiderate parking along the carriageway which forces pedestrians into the path of oncoming traffic. We have received written approval from the Society of Friends for the production of a pedestrian walkway with bollards to prevent inconsiderate parking and to resolve the health and safety/road safety issue.

Consultation has taken place with local stakeholders i.e. businesses and organisations in the vicinity of Victoria Common between March and May 2019, through the circulation of a stakeholder note (detailing the proposed charging scheme and associated Works) and follow-up meetings with individual stakeholders. The stakeholder consultation also included the residents on Church Road who have garages off the carriageway into

Victoria Common and access over it, to address any concerns they may have. Details of the stakeholder consultation can be found in Appendix 2.

Informal discussions have taken place with the Victoria Common Friends Group in Summer 2017 when car parking charges in parks was formally agreed by Cabinet. A stakeholder note detailing the proposed introduction of charges and the Works at Victoria Common was shared with the group in February 2019 and the District Parks Manager attended a Friends Group meeting that month. The Friends do not have an issue with charging given the current parking issues. The Friends made the following suggestions at the meeting in February 2019:

- Consultation around potential for traffic restrictions on local roads to include Heath Road South (currently problematic due to hospital displacement and conflict at peak times for school pick up and drop off)
- Would prefer first hour of parking to be free (e.g. charging from 8am) but a reduced rate is acceptable i.e. 50p for first hour, £2 for 4 hours, £3 for 4 hours plus
- Any signage should include the following statement, "Income from this car park is spent on maintaining Victoria Common" as visitors will then be more accepting of the scheme
- An all-day rate should be in place to capture staff of local businesses and to guarantee income levels.

An informal public consultation took place over a 4 week period between 22nd July and 18th August. During the consultation period, two face-to-face clipboard exercises were completed with users in Victoria Common/visitors to the car park. 70 responses were collected from these exercises. In addition, a BeHeard survey took place and 124 individuals registered their views.

Two drop-in sessions (one afternoon, one evening) were held for residents and park users. Letters were hand delivered to 460 households on roads surrounding Victoria Common inviting residents to the drop-in sessions and posters were displayed around Victoria Common's pedestrian and vehicular entrances. 31 attendees met with members of the project team to discuss the proposals and register their preferences for on-street traffic restrictions (Appendix 3). The project team will ensure that on-street traffic restrictions are in place (as deemed suitable and necessary by the local Highways engineer) prior to the implementation of charging.

A total of 194 views were collected as part of the informal consultation. Of the 194 views received, 98% were residents of Birmingham and 101 lived within a B31 postcode. Out of 194 respondents, 125 (64%) responded with a preference for the proposed rates or a new suggestion for a chargeable rate. 71 individuals (36%) expressed their preference for parking to remain free. A summary of the informal consultation findings can be found in Appendix 4.

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 Council holds the freehold interest of Victoria Common 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.

Birmingham City Council has procured a citywide Civil Parking Enforcement Contract with NSL; NSL are paid in accordance with that contract for providing the civil parking enforcement service. The Parks Service successfully use NSL for enforcement at Cannon Hill Park (another park asset held in trust by the Council) and propose to continue this arrangement as charges are rolled out to other sites including Victoria Common. The income from Penalty Charge Notices is used to cover all operational expenditure (including the cost of the civil parking enforcement contract) and any surplus funds are governed by Section 55 of the Road Traffic Regulation Act 1984, as amended by Section 95 of the Traffic Management Act 2004. This states that any surplus in parking revenue accounts, after running costs have been covered can be spent on:

- Providing additional parking facilities
- Public transport schemes
- Highway improvements
- Road maintenance
- Environmental improvements

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

The Committee has responsibility for ensuring the proper governance of the Victoria Common 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.

All capital and revenue costs of managing Victoria Common (and the other 16 parks in Trust) are currently covered in their entirety by BCC's Parks Service. Any income from parking charges over and above the aforementioned costs associated with managing Victoria Common (Appendix 5) will be ring fenced for the benefit of and reinvestment in Victoria Common.

As the carriageway is not Trust land and is an ongoing road safety issue for park visitors, improvement works (in the form of a pedestrian walkway) will form part of Phase 1 works – we have received approval to proceed from the landowners. These works are regarded as essential health and safety improvements and business as usual for the Parks Service.

Phase 1 works (improvements to the carriageway to Victoria Common) can be completed

within 1 month (weather dependent). Phase 2 infrastructure works for the car park (to support the introduction of car park charges) will begin following consultation and improve the car park surface to a suitable standard to enable charging – with the inclusion of disabled bays, surface levelling/potholing etc. This work will take approx. 2-3 months (weather dependent). It is Phase 2 of the Works that Committee approval is sought. The cost for phase 1 and 2 of the Works is continued within the project costs of £0.07m.

Car park operational costs for the site (Appendix 5) have been calculated using information from the Bills of Quantities and from information from the Parking Services Team (i.e. P&D machine maintenance and Parkfolio system fees). The projected income stream for Victoria Common (Appendix 5) has been calculated using information gathered from a data usage survey and feedback from the District Parks Manager. Works costs consist of phase 1 works (improvements to the carriageway) and (phase 2) formed of internal recharges (i.e. engineer's fees, TROs) and costs for surface works, machines and signage.

The project costs (£0.07m) will be met from service prudential borrowing. Revenue from the charging scheme will be used to fund the revenue prudential borrowing costs (Appendix 5) alongside the ongoing operational costs of maintaining Victoria Common. There will be no implementation costs to the trust.

#### 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. Any additional report which Birmingham City Council officers may be required to process will likely need an Equality Impact Assessment.

Following feedback from the Committee and Victoria Common Friends Group, we aim to protect regular park users by offering a reduced rate for the first hour. The proposed rates will be:

- 50p for first hour
- £2.20 for 2-4 hours
- £3.30 for 4 hours+

Chargeable rates have been captured as part of the informal public consultation.

Victoria Common opens at 7am each day. In order to enable regular park visitors retain access to walk dogs/exercise we propose a charging period of 8am – 6pm. The chargeable period has been captured as part of the informal public consultation.

#### **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 (Appendix 6). 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<sup>th</sup> December 1951 that a formal right of way was granted by the Trustees of the Birmingham Friends Halls (Society of Friends) who had also gifted 4.5 hectares of land to the park in 1914 and who still maintain a Friends Meeting House adjacent to Victoria Common.

4.2 The parcel of land containing the car parking area was gifted by Mrs E. M. Cadbury and others on 12<sup>th</sup> 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 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. 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. 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 these purposes is the various acquisition deeds referred to in section 4.1 and 4.2. 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 held in trust 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 ongoing 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 Victoria Common, control fly parking in the area blocking the access and to ensure compliance with the Trust's Objectives and that facilities remain primarily available 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. Ward member consultation report
2. Stakeholder consultation report
3. Traffic issue feedback from consultation and suggested restrictions
4. Summary of informal consultation
5. Plan showing proposed improvement scheme, project costs and operational costs
6. Trust plan of Victoria Common