

Report to:	TRUSTS AND CHARITIES COMMITTEE
Report of:	Director of Property
Date of Decision:	9th NOVEMBER 2016
SUBJECT:	CANNON HILL PARK – FLOOD ALLEVIATION WORKS - WAYLEAVE AGREEMENT TO THE ENVIRONMENT AGENCY
Wards affected:	Moseley and Kings Heath

1. Purpose of report:

To seek approval to the installation of new drains in part of Cannon Hill Park to assist the alleviation of flooding in the wider Selly Oak area

2. Decision(s) recommended:

That the Committee

- 2.1 agrees to the installation of a new large bore pipe under part of Cannon Hill Park adjacent to the Birmingham Wildlife & Conservation Park
- 2.2 agrees that the installation be formally documented by the grant of wayleave or easement agreement or lease together with the grant of a right of way over the access road known as Zoo Drive, on terms to be agreed.
- 2.3 agrees to the formation of a contractors compound for the duration of the works on a location and terms to be agreed
- 2.4 to recommend to the next available meeting of the Council as Trustee that the matters listed in 2.1, 2.2 and 2.3 be approved.
- 2.5 That the Director of Property be authorised to negotiate and agree the terms of the leases and wayleaves.
- 2.6 That the City Solicitor and Monitoring Officer be authorised to prepare, negotiate, execute, seal and complete all necessary documentation to give effect to the above decisions and to place any formal advertisements required under either s123(a) of the Local Government Act 1972 or various statutes as may relate to the charitable status of the land in the granting of these leases and wayleaves.

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3. Compliance Issues:

3.1 Consultations

The Statutory Undertakers have existing powers sufficient to require the landowner to permit these works but is seeking to negotiate the most acceptable resolution for all parties since this is a small part of a wider scheme of works taking place alongside the Bourn Brook and River Rea and connected waterways. Both Cannon Hill Park and Birmingham Wildlife & Conservation Park (formerly known as the Nature Centre) are held in trust and it is appropriate that the matter be considered via the Trusts & Charities Committee once officers in the Parks Service have considered all practical issues. The Strategic Director of Local Services and the Executive Member and Ward Councillors for Selly Oak are supportive of the proposals going forward. The Parks District Manager is supportive and is consulting with the 'Friends of the Park'.

3.2 Relevant legal powers, personnel, equalities, procurement, regeneration and other relevant implications?

As landowner and sole corporate trustee Birmingham City Council is responsible for the management of the Park and day-to-day management is delegated to the Parks Service via the Strategic Director of Local Services.

The original trust deeds require that Birmingham City Council shall hold Cannon Hill Park as public walks or pleasure gardens provided and maintained by them under s.64 of the Public Health Act 1875 but in addition to the general law applying to charitable trusts and the powers under the Trustees Act 2000. S83 -85 of the West Midlands County Council Act 1980 specifically permits the grant of leases within Cannon Hill Park not exceeding two acres to any body incorporated or not whose objects are charitable and comprise or include the provision of an art or cultural centre but not otherwise.

The delegations to the Trusts & Charities Committee allow them to make many decisions but disposals which includes the grant of a wayleave or easement or a lease require approval from Full Council as Trustee. In many cases trustees can rely on the power contained in the Trusts of Land and Appointment of Trustees Act 1996, commonly called the statutory power but otherwise will require an application to the Charity Commission for approval to a scheme allowing a general power of disposal and other appropriate powers to enable the more efficient operation of the Park.

3.3 Finances

It is a requirement of the Trustees Act 2000 and the Charities Acts that the Trust achieve best value in any disposal though there are exceptions for this when dealing with other charities. Terms for the agreement with the Environment Agency will be negotiated by Birmingham Property Services valuers.

3.4 Public Sector Equality Duty

None. The statutory functions discharged by the Council as trustee are subject to a separate and distinct statutory regime and therefore are not subject to the Equalities Act 2010 provisions.

4. Relevant background/chronology of key events:

- 4.1 Cannon Hill Park was formed from the original core gift of 57 acres from Miss Louisa Anne Ryland on 18th April 1873 who also gave money for it to be laid out as a park and opened on 1st September 1873 but was soon extended by a number of other gifts and purchases to form the current Park of approximately 80.66 acres (32.65 hectares). The substantive part of the original gifted land is listed by English Heritage in the Register of Parks and Gardens of Specific Historic Interest in England.
- 4.2 The proposed pipe will pass through two of those acquisitions being 7 acres from Sir John Holder on 10th June 1896 and 5 acres from the Hon Mrs F H Anstruther-Gough-Calthorpe on 8th July 1925. It is of note that the adjoining area of land known as Queen's Ride was gifted by Lord Calthorpe on 28th November 1898 on condition the River Rea was straightened and the Bourn brook diverted into the same channel.
- 4.3 The work to install these underground services will be disruptive and will require managing by the Parks operatives. Works will mainly be contained in the roadway known locally as Zoo Drive a private service road for the Park and Nature Centre but alternative arrangements for this can be put in hand. There should be little impact on the public areas of the Park or the operation of the Nature Centre.
- 4.4 The works will require a small compound to be formed either in the Park or in a disused part of the nature Centre. Proposals for this are being discussed and will be subject to a licence to be negotiated. It is requested that the works proceed urgently and this will suit parks as the Autumn/Winter is less busy than other times of the year and outside of the events season. All appropriate local consultation will be completed including appropriate advertisements for the temporary loss of access to the open space during the contract.

5. Reasons for Decision(s):

- 5.1 To safeguard the Trust's assets, secure legitimate occupation and demonstrate continuing support for the local community. Decisions made by a charity must be expedient in the interests of the charity at all times. It may be argued that the installation of pipework through trust land is not in the interests of the trust but if this work proceeds it will assist in the alleviation of flooding in the area and is clearly for the public good, is at no cost to the trust and accords with the original gifting of Queens Ride which included essential works on the river as a condition of the conveyance.

Signatures:

Chief Officer(s):

Chairman

Dated

List of Background Documents used to compile this Report:

None

List of Appendices accompanying this Report (if any):

1. Plan of the scheme
2. Redline Plan of the overall area affected