



SHEFFIELD CITY COUNCIL

Cabinet Report

Report of: Simon Green: Executive Director PLACE

Date: 8th May 2013

Subject: Endcliffe Park Café - Proposed Lease Renewal

Author of Report: David Cooper (2734350)

Summary:

This report seeks Cabinet approval for the Council to enter into a new 5-year Lease agreement at Endcliffe Park Café. Endcliffe Park is held charitably and therefore consent from Cabinet Members acting as Charity Trustees is required for this renewal. In line with the charitable conditions applicable, all income received by the City Council from the café operation is directly reinvested back into the park to assist with its upkeep and maintenance.

Reasons for Recommendations:

The current lessee / business operator continues to provide a popular café in Endcliffe Park and enjoys considerable community support. This proposal satisfies the charitable objects applicable to the park, provides for a fair and equitable market rent to be achieved and ensures the continuation of the existing café service enjoyed by park users.

Recommendations:

That Cabinet acting as Charity Trustees for Endcliffe Park:

R1: Approve the grant of a new lease for the café subject to the approval of the Charity Commission on the terms outlined in this report and delegate authority to the Director of Capital & Major Projects in consultation with the Director of Culture & Environment to complete negotiations to agree terms and conclude this matter.

R2: Authorise the Director of Capital & Major Projects to instruct the Director of Legal & Governance to prepare and complete the necessary legal documentation in accordance with the agreed terms and Charity Commission requirements.

Background Papers:

Category of Report: Open / Part Closed – ‘Appendix One is not for publication because contains exempt information under Paragraph 3 of Schedule 12A of the Local Government Act 1972 (as amended)’

Statutory and Council Policy Checklist

Financial Implications
YES: Paul Schofield
Legal Implications
YES: Andrea Simpson
Equality of Opportunity Implications
NO
Tackling Health Inequalities Implications
NO
Human rights Implications
NO:
Environmental and Sustainability implications
NO
Economic impact
NO
Community safety implications
NO
Human resources implications
NO
Property implications
YES: Nalin Seneviratne
Area(s) affected
South West
Relevant Cabinet Portfolio Leader
Cllr Isobel Bowler
Relevant Scrutiny Committee if decision called in
Economic and Environmental Wellbeing Scrutiny & Policy Development Committee
Is the item a matter which is reserved for approval by the City Council?
NO (Cabinet acting as Charitable Trustees)
Press release
YES

ENDCLIFFE PARK CAFÉ – PROPOSED LEASE RENEWAL

1.0 SUMMARY

- 1.1 The existing operator, Mr Ashley Charlesworth, has been running the Endcliffe Park Café for a number of years and continues to enjoy significant popular support from park users. He is keen to continue with this successful business.
- 1.2 The previous tender process in 2007, carried out in line with Charity Commission requirements to obtain “best consideration,” found that Mr Charlesworth was not the highest bidder. However, subsequent community support, including an 825 named petition, to retain him as operator encouraged the Cabinet acting as Trustees to approve the granting of a further Lease below market rental value in the best overall interests of the Charity. This Lease has now come to an end and a temporary agreement has been entered into pending the Cabinet’s decision whether to grant a new Lease or to carry out a fresh tender exercise.
- 1.3 Further discussions have been held with the Charity Commission regarding the required tender processes for park cafes in general though not with specific reference to this lease. Moreover, in the Council being able to demonstrate “best consideration” in light of the local circumstances and the significant community interests arising last time. Subsequently, revised terms have now been agreed in principle for a new extended 5-year lease to be offered to the existing lessee. The new arrangement will include the payment of a market rent and additional repairing obligations. These renewal terms, which have also been agreed in principle with the lessee, are now subject to Cabinet’s approval as Trustees to proceed.

2.0 WHAT DOES THIS MEAN FOR SHEFFIELD PEOPLE

- 2.1 The existing popular café service will be maintained within the park by way of a new 5-year lease at a market rent. The lessee will also be responsible for opening and closing the adjacent public toilets, reporting any damage and additional /supplementary cleaning in conjunction with the parks service and customer needs.

3.0 OUTCOME AND SUSTAINABILITY

- 3.1 Successful cafés help to make successful parks. Quality cafes become part of the attraction, and add positively to the visitor experience and life of a park. Sheffield’s park cafes have become increasingly popular in recent years. They provide unique opportunities for local catering entrepreneurs to bring new jobs, fresh ideas and new eating experiences to parks. By being community focussed and innovative, contemporary café operators may also bring additional added value through mutually beneficial private/public sector partnership opportunities which in turn can support the Council, local interest and friends groups to maintain and further improve our parks.

4.0 ENDCLIFFE PARK DESIGNATIONS

- 4.1 Endcliffe Park is a major city park and held on Charitable Trust for 'Public Walks and Pleasure Grounds'. A café service provided by the Charitable Trustees themselves would be in keeping with this requirement but the grant of a lease to another person to operate the café is a disposal of the charitable land which must comply with legal requirements.

5.0 LEGAL, PROPERTY & CHARITY IMPLICATIONS

- 5.1 The principle governing the disposal of Charitable land is that the Charity Trustees must be satisfied that the terms on which the disposition is proposed to be made are the best that can reasonable be obtained for the charity. In order to satisfy this requirement for "best consideration" the Director of Culture & Environment instructed Kier Asset Partnership Services to negotiate new terms for a further Lease to include a fair and equitable market rent. These terms have been agreed in principle with the current lessee.
- 5.2 There is however no power within the conveyance to dispose of any part of the land and so it is necessary to obtain the approval of the Charity Commission to do so. In addition the Charities Act 2011 stipulates that the disposal of land held for a designated purpose is subject to a public notice requirement. However, no further Charity Commission consent is needed for a lease of 7 years or less. It is proposed in this case that a 5-year Lease will be granted.
- 5.3 Further details outlining the terms and conditions applicable are contained in Appendix One.

6.0 FINANCIAL IMPLICATIONS

- 6.1 A fair and equitable annual rent will now be payable to ensure that the best consideration that can be reasonably obtained is secured. In line with the charitable conditions applicable, all income received by the City Council from the café operation is directly reinvested back to assist with the Park's upkeep and maintenance. Securing a market rent is clearly beneficial to the Charity.
- 6.2 Further details of the financial arrangements that have been negotiated and agreed in principle are contained in Appendix One.

7.0 ALTERNATIVE OPTIONS CONSIDERED

- 7.1 The Council could market the property with a view to completing an open tender exercise, allowing other businesses the opportunity to run the café. However, any change of operator may present TUPE implications (Transfer of Undertakings: Protection of Employment regulations) for the staff currently employed. Any tender exercise together with marketing is likely to be a lengthy process, be publicly unpopular, will present additional costs, and expose the charity to significant risks. The current

operator continues to enjoy significant public support, and based upon the previous tender process, it is anticipated that any proposed change of operator for the Endcliffe Park cafe would be met with significant public interest and concern.

8.0 REASONS FOR RECOMMENDATIONS

- 8.1 The existing café operator is popular with the general public and encourages visitors to the park. Mr Charlesworth works well with the Council and has also been involved in supporting local fund raising activities to benefit the park and its users.
- 8.2 The lessee has performed his obligations under his previous Lease to provide an effective service. This service offer has now been expanded further, following investment to provide a new outdoor seating area for customers last year.
- 8.3 The revised extended terms now being offered, along with the market rental value agreed, better satisfies the Park's charitable conditions to achieve "best consideration" overall.

9.0 REASONS FOR EXEMPTIONS

- 9.1 This report is presented as a partially closed item because Appendix One contains exempt information under paragraph 3 of Schedule 12A of the Local Government Act 1972 (as amended). The reason for this exemption is because this contains information relating to the financial or business affairs of a particular person.

10.0 RECOMMENDATIONS

That Cabinet acting as Charity Trustees for Endcliffe Park:

- R1: Approve the grant of a new lease for the café on the terms outlined in this report subject to the approval of the Charity Commission and delegate authority to the Director of Capital & Major Projects in consultation with the Director of Culture & Environment to complete negotiations to agree terms and conclude this matter.
- R2: Authorise the Director of Capital & Major Projects to instruct the Director of Legal & Governance to prepare and complete the necessary legal documentation in accordance with the agreed terms and Charity Commission requirements.

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