



Author/Lead Officer of Report:

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Report of: Mick Crofts
Interim Executive Director of Place

Report to: **Cabinet (acting as the Trustees of Forge Dam Park)**

Date of Decision: **17th February 2021**

Subject: **Lease of Forge Dam Café, Forge Dam Park, Fulwood, Sheffield**

Is this a Key Decision? If Yes, reason Key Decision:-	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	
- Expenditure and/or savings over £500,000	<input type="checkbox"/>		
- Affects 2 or more Wards	<input type="checkbox"/>		
Which Cabinet Member Portfolio does this relate to? Finance and resources			
Which Scrutiny and Policy Development Committee does this relate to? Economic and Environmental Wellbeing Scrutiny and Policy Development Committee			
Has an Equality Impact Assessment (EIA) been undertaken?		Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
If YES, what EIA reference number has it been given?			
Does the report contain confidential or exempt information?		Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
If YES, give details as to whether the exemption applies to the full report / part of the report and/or appendices and complete below:-			
<p><i>“Appendix 1 & Appendix 2 to this report are not for publication because they contain exempt information under Paragraph 3 of Schedule 12A of the Local Government Act 1972 (as amended).”</i></p>			

Purpose of Report:

This report seeks the approval of Cabinet acting as the Charity Trustee in connection with land and property at Forge Dam Park that is held as a charitable trust (“the Charity”) to the following:

1. to declare Forge Dam Cafe (“the Property”) surplus to the requirements of the Charity;
2. to grant a new lease of the Property to the current tenant Nicholas Dunn for a period of 25 years on the terms set out in this report after consideration of the contents of the Qualified Surveyor’s Report and satisfying itself that the proposed terms are the best that can be reasonably obtained in the circumstances.

Recommendations:

The following decisions are recommended to Cabinet acting as Charity Trustee:

- R1.** Approve the lease of the subject property to Nicholas Dunn based on the terms set out in Appendix 1 of this report
- R2.** agree that the Trustees are satisfied that the proposed terms are the best that can be reasonably obtained in the circumstances based upon consideration of the commercial details in Appendix 1 and the Qualified Surveyor’s Report in Appendix 2
- R3.** Approve the grant of a charge over the legal title of the Trust in relation to grant funding as set out in the report.
- R3.** Authorise the Chief Property Officer in consultation with the Director of Legal and Governance to negotiate the terms of the lease with the proposed lessee and the Director of Legal and Governance to prepare and complete all the necessary legal documentation in accordance with the agreed terms and in respect of a charge over title.

Background Papers:

Appendix 1: Confidential – Commercial Details

Appendix 2: Confidential - Qualified Surveyor’s Report

Appendix 3: Plan showing Lease Demise edged red

Lead Officer to complete:-		
1	I have consulted the relevant departments in respect of any relevant implications indicated on the Statutory and Council Policy Checklist, and comments have been incorporated / additional forms completed / EIA completed, where required.	Finance: Paul Schofield
		Legal: David Sellars
	<i>Legal, financial/commercial and equalities implications must be included within the report and the name of the officer consulted must be included above.</i>	
2	EMT member who approved submission:	Laraine Manley
3	Cabinet Member consulted:	Cllr Terry Fox, Cabinet Member for Finance and Resources Cllr Mary Lea, Cabinet Member for Culture, Parks and Leisure
4	I confirm that all necessary approval has been obtained in respect of the implications indicated on the Statutory and Council Policy Checklist and that the report has been approved for submission to the Decision Maker by the EMT member indicated at 2. In addition, any additional forms have been completed and signed off as required at 1.	
	Lead Officer Name: Tammy Whitaker	Head of Regeneration and Property Service
	Date: 8 th February 2021	

1. BACKGROUND

- 1.1 Forge Dam Park and the buildings therein is held as a charitable trust, (further details of which are set out later in this report) with Cabinet acting as sole corporate Charity Trustee. The Park is managed by the Parks & Countryside Service. Annual revenue expenditure for the running of the park is generally greater than revenue income and the City Council funds a significant annual deficit.
- 1.2 The property comprises a café, kitchens, stores and ancillary space and was previously let on a 21 year lease that was assigned in 2012 to Nicholas Dunn who has operated the café ever since. Terms for a new 25 year lease to Mr Dunn have been agreed as set out in Appendix 1 attached.

2. HOW DOES THIS DECISION CONTRIBUTE?

- 2.1 The charitable objects of the Charity are *“the provision and maintenance of a park and recreation ground for use by the public with the object of improving their conditions of life”*.

The proposed disposal contributes to the provision and maintenance of

the park as follows:

- 2.2
- (a) Ensure continued provision of a café and associated facilities within the park.
 - (b) Cover the cost of ongoing internal maintenance and property insurance removing this liability from the Charity.
 - (c) Generate increased rental income which will be retained by the Charity and used for the purposes of the objects of the Charity, as set out at paragraph 2.1 above.
- 2.3 The continued provision of a café in the Park, aligns with the objectives of the Council's five year Better Parks Initiative and the agreed partnership principles.

Better Parks is Sheffield's five year initiative, which was approved by Cabinet in 2018, that seeks to sustain and improve our parks and green spaces by increasing commercial interest and income. Its vision is to deliver better services for Sheffield's parks and green spaces by growing economically viable ventures. For example, more and better catering opportunities, increased social value initiatives through complementary sponsorship and new franchises. The overall approach of Nicholas Dunn's proposal meets this criteria allowing investment and regeneration:

- Affordable public access
- Addressing inequalities and promoting activity and participation in our most deprived communities
- The Council maintaining policy and asset control
- Improving quality across all our facilities in all areas of the city
- Seeking and supporting partnerships that are aligned with the Council's priorities and values
- Ensuring potential partners are viable and sustainable.

Forge Dam, as part of the Porter Valley's recreational greenspaces which run from Endcliffe Park to Porter Clough, is also included within a further project called "Active Parks". Active Parks are high quality, well designed and managed green spaces, which have refreshments and toilets, provide a range of sport, leisure and recreational facilities that attract a wide range of users of all ages and abilities, and have the active involvement of a variety of community and sport groups. Nicholas Dunn's proposals will add key facilities that will make a significant contribution to Forge Dam's role as an active park. The provision of café and toilets are important to making green spaces more widely accessible, and consequently will encourage social interaction, visitors to stay longer in the outdoors, bring new users to the park and increase opportunities for the community connections needed to get people more active hence promoting Health & Wellbeing.

Further to Forge Dam having activities that attract people of all ages and abilities there are a number of developments in progress, which will help contribute, including:

- Playground improvements. With the support of the Friends of the

Porter Valley, there are ambitions to renew and improve the play value of this valued playground

- Sheffield City Council's P&C Service and Transport and Facilities Management service are working with the Friends of Porter Valley to deliver a dam conservation and restoration project which aims which if successful will make a significant impact on the quality of the forge dam environment for visitors and wildlife, and provide a sustainable solution to reducing future silting – which has been a significant issue for the dam in recent years.
- The combination of all of these improvements will support the ambition for Forge Dam to seek Green Flag award status. This award is the hallmark for quality parks and open spaces, both nationally and internationally.

3. HAS THERE BEEN ANY CONSULTATION?

- 3.1 Forge Dam is held in charitable trust and the leasing of land is counted as a disposal of open space for the purpose of the Local Government Act 1972 and therefore public notices have been displayed comments sought.

As there will be no change to the provision of facilities within the park by continuing with the existing operator there is no requirement to consult.

4. RISK ANALYSIS AND IMPLICATIONS OF THE DECISION

4.1 Equality of Opportunity Implications

- 4.1.1 The objects of the Charity are to provide the park and its facilities to all members of the public without restriction to or distinction between any person's characteristics including, but not limited to the protected characteristics identified and defined in the Equalities Act 2010. The property will be maintained in beneficial use for the whole of the community and there are no equality implications to be considered in the decision requested by this report on the proposed disposal.

4.2 Financial Implications

The proposed lease will contribute to reducing the net cost of operating the park whilst also providing facilities to make it attractive to users. The leasing of facilities in parks is in line with the Council's Budget strategy.

4.3 Legal Implications

- 4.3.1 Whiteley Wood Forge and Dam ("the Property") is freehold land,

registered to The Sheffield City Council at HM Land Registry under title number SYK632719.

4.3.2 The Park was acquired by Conveyance dated 14 April 1939 made between (1) Ernest Denton and another, (2) John George Graves and three others, and (3) The Lord Mayor Aldermen and Citizens of the City of Sheffield, under the powers of the Public Health Act 1875 and the Open Spaces Act 1906, for the purpose of public recreation.

4.3.3 The Park is held as a charitable trust, which is not registered with the Charity Commission. The objects of the charity are “the recreation of the public as public walks and pleasure grounds”.

4.3.4 The Council is the sole corporate trustee (“Trustee”) and all decisions concerning matters related to property or assets held by the Council on trust are made by the Cabinet.

4.3.5 The Forge Dam Café (“the Café”), forms part of the Property and the law sets out clear requirements to ensure that the lease of the Properties is properly managed in the charity’s interests and that the Trustees obtain the best price reasonable in the circumstances.

4.3.6 By virtue of an Order by the Charity Commissioners for England and Wales, dated 22 January 2004, a Scheme empowers the Trustees to grant a lease of 480 square metres of land with the buildings known as Forge Dam Café and Cottage.

4.3.7 Use of this power is dependent on the Trustees:

- complying with the requirements of s117-121 of the Charities Act 2011
- complying with the standard of care set out in the Trustee Act 2000

4.3.8 The restrictions of s117-121 of the Charities Act 2011 are complied with as follows:

- by the consideration of the written report on the proposed lease from a qualified surveyor instructed by the Trustees and acting exclusively for the charity. A qualified surveyor’s report (‘QSR’), compliant with the requirements of section 119 has been obtained and is attached to this report at Appendix #;
- the QSR advises that it would not be in the best interests of the charity to advertise the proposed disposition. This complies with the requirement to advertise for such period and in such manner as is advised in the surveyor’s report; and
- by the Trustees deciding that they are satisfied, having considered the surveyor’s report, that the terms on which the disposition is proposed to be made are the best that can reasonably be obtained for the charity.

4.3.9

As the land is held on trust for a specific purpose (i.e., designated land), the Trustees must follow the additional procedural steps of s.121. The Trustees must:

- give public notice of the proposed disposal, inviting representations to be made to them within a time specified in the notice, being not less than one month from the date of the notice; and
- take into consideration any representations about the proposed disposal made to them within that time.

4.3.1

This notice is additional to the requirements of s.119 referred to above. A copy of the public notice and representations are attached at Annexe #.

4.3.1

1

Other relevant powers governing the disposal of open space land include:

- Section 123 of the Local Government Act 1972, which provides that the council may dispose of land held by it in any manner it wishes subject to certain conditions including that it should not be disposed of for less than the best price that can reasonably be obtained in the market and that the council must advertise its intention in a local newspaper.
- Section 10 of the Open Spaces Act 1906 (the 1906 Act), which provides that the council that has acquired control over any open space to which the 1906 Act applies shall, subject to certain conditions, hold and administer the open space in trust to allow the enjoyment of it by the public as an open space and for no other purpose.

4.3.1

2

The lease will be excluded from the provisions of part 2 of the Landlord and Tenant Act 1954. As a result, once the lease comes to an end the tenant will have no rights to request a renewal or compensation should they come out of possession.

4.4 Other Implications

4.4.1 The grant of the proposed new leases to Nicholas Dunn will align with the Council's strategic aims under The Better Parks Initiative.

5. **ALTERNATIVE OPTIONS CONSIDERED**

5.1 It is considered that renewing the café lease is the best option available to the Charity.

6. REASONS FOR RECOMMENDATIONS

6.1 The proposal to grant a new lease to Nicholas Dunn will achieve:

- Continued provision of a café and associated facilities within the park
- Removal of liability for the cost of internal maintenance and property insurance from the Charity.
- Increased rental income which will be retained by the Charity and used for the purposes of the objects of the Charity, as set out at paragraph 2.1 above.
- Contribution to costs of operating public WCs on site
- Contribute to enhancement of the quality and attractiveness of the park as a valuable asset for visitors
- occupation for the purposes of the charitable objects of the Trust
- compliance with the provisos contained within the power granted to the Trustee by the Scheme and with the statutory provisions contained within the Act and further with the requirements of the Charity Commission.

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