

Decision maker:	Director for economy, communities and corporate
Decision date:	8 March 2016
Title of report:	Confirmation of leasehold transfer of Queenswood country park and Bodenham lake
Report by:	Head of transportation and access

Classification

Open

Key Decision

This is not a key decision.

Wards Affected

Hampton, Queenswood and Sutton walls

Purpose

To finalise the leasehold transfer of Queenswood country park and Bodenham lake to Herefordshire Wildlife Trust and New Leaf Sustainable Development Limited.

Recommendation(s)

THAT:

- (a) 99 year leases of Queenswood Country Park and Bodenham Lake to Herefordshire Wildlife Trust and New Leaf Sustainable Development Limited are completed in line with the delegated authority confirmed by the cabinet member decision of 22 January 2015.**
- (b) a concession agreement be entered by the council with the above parties for the same duration as the leases. This concession agreement is to grant to those parties an opportunity to conduct business activity at the sites.**
- (c) that 'restricted' funding totalling £60,000 accrued by the council for the betterment of Queenswood country park be made available to the HWT/HNL and/or the future legal entity through the council's small grants process.**

Alternative options

- 1 Not to complete the transfer. This is not recommended as the principle of transfer has already been agreed, the conditions for transfer met, and there are no concerns which would justify a refusal to complete.

Reasons for recommendations

- 2 To implement the decision taken by the cabinet member for contracts and assets 22 January 2015 and to deliver the final savings required from the review of Countryside Services.

Key considerations

- 3 The leases of Queenswood country park and Bodenham lake and the associated concession agreement dealing with the transfer of equipment and issues including current employees have progressed.
- 4 The original decision to progress the transfer was subject to the following conditions:
 - No valid objections and/or alternative proposals received in response to statutory public notice ~ *complete* see (5) below.
 - Establishment of a legal entity to manage the sites. HWT/HNL have commenced the process of setting up a community interest company (CIC) which may take up the direct responsibility for managing the sites within a sublease arrangement under the main lease which will be with both HWT and HNL. As such, the transfer can take place prior to confirmation of the CIC as the main lease agreement will be with HWT/HNL and they will be responsible and accountable for managing the sites until a formal sub letting arrangement is agreed with the council.
 - Launch of a membership scheme – the ‘Friends of Queenswood and Bodenham Lake Friends’ scheme has been launched.
 - HWT/HNL must demonstrate financial capacity to cover operating costs for a minimum of 3 months and ongoing financial sustainability – a 3 year financial profile has been provided demonstrating financial capacity.
- 5 A public notification of the council’s intention to transfer the sites took place 19 February 2015 to 7 April 2015. Public open space notices in accordance with the Open Spaces Act and the requirements of the assets of community value regulations were placed on site and also advertised in the Hereford Times. A total of 45 responses were received, 42 of which were supportive and 3 raised concerns. Having assessed all the responses it was concluded that no valid objections were made and those identified as concerns raised no material reasons why the transfer should not progress. No responses were made providing details of viable alternative proposals.
- 6 Negotiations have been ongoing over the past year to clarify the details of the transfer such that a lease and business transfer concession could be drawn up and agreed. This process has enabled the council and HWT and HNL to work through a number of specific issues around:
 - a. Implications for staff,

- b. future liabilities of the tenants and the landlord,
 - c. the establishment of an arm's-length relationship such that the HWT and HNL could operate with maximum independence from the council as landlord; and
 - d. ensuring the public's ongoing enjoyment of the sites would be foremost in the management site over the period of the 99 year lease.
- 7 The council has now vacated the offices at Queenswood, relocating staff to the Plough Lane office and it has decommissioned services provided to the site. It has also assisted HWT and HNL by undertaking some accommodation works which would enable the generation of revenues as soon as the transfer takes place. These works have been funded from ring fenced fund which has been accrued over a number of years for the betterment of Queenswood Country Park
- 8 The balance of this fund would continue to be available to the partners after the transfer takes place in the form of 'restricted' grant funding pot totalling approximately £60,000. This funding has been made available to HWT/HNL subject to providing details of the intended use, demonstrating its contribution towards delivering the benefits that are agreed for the asset transfer and provision of appropriate evidence of expenditure. The HWT has submitted bids for the full amount of this fund which have been agreed in principle subject to the confirmation of the transfer.
- 9 HWT/HNL have launched their membership scheme, which will support their main revenue generating scheme.

Community impact

- 10 The aim of this transfer is to protect the current community enjoyment of two of the county's most prized open space community assets whilst enabling the community to play a bigger role in their management and future visitor experience. This is in line with government policy on the transfer of assets and the council's own adopted policies. The transfer and the improvements proposed for the site directly support the corporate plan including:
- a. Enable residents to live safe, healthy and independent lives – work with the community to devolve services and assets where quality can be improved through local delivery
 - b. Secure better services, quality of life and value for money – review management of our assets in order to generate on-going revenue savings, focusing on reducing the cost of ownership

Equality duty

- 11 The service is proposed to transfer on an as is basis. On this basis, it is not envisaged that there will be any negative impacts upon any groups sharing protected characteristics. As the service and transfer are to be controlled through a lease, then there will be a condition included requiring that any subsequent changes to the service that are likely to impact upon such groups must be subjected to an equality impact assessment prior to implementation.

Financial implications

- 12 The transfer of the Queenswood Country Park and Bodenham Lake Site identified a revenue saving of £150k and a full year saving was assumed when setting the 2015/16 budget. Whilst some of this saving has been achieved, the delay to the transfer has created a budget pressure of £100k during 2015/16. The full saving will only be realised from 2016/17 rather than 2015/16 as originally planned.
- 13 The transfer of these sites, as set out in the terms of the lease and concession agreement, clarifies that the council will have no ongoing financial liability for the sites other than in respect of its legal responsibilities as a landlord.
- 14 The HWT and HNL have provided financial projections clarifying that they will be able to operate the sites with a small surplus in each of the first 3 years.
- 15 A 'restricted' grant fund balance of £60k exists, as outlined at paragraph 8, has been made available to the HWT/HNL through the council's small grants process towards delivering the benefits that are agreed for the asset transfer.
- 16 The council's costs associated in support of the transfer covering accommodation works at Queenswood amount to £15,134.60. This has been funded from the remaining Queenswood 'restricted' grant fund.

Legal implications

Leases

- 17 The council is empowered pursuant to section 123 of the Local Government Act 1972, to dispose of its property assets which includes via lease. The council is required when doing so to obtain the best consideration that can reasonably be obtained in the market for the land. An undervalue transaction as is proposed in this instance is permissible provided either the council has obtained the express consent of the secretary of state or if the disposal meets the criteria of the General Disposal Consent (England) 2003).
- 18 The General Consent permits disposals at an undervalue if the local authority considers such a disposal will help to secure the promotion or improvement of the economic, social or environmental well-being of its area, and the value of the site does not exceed £2 million.
- 19 The aggregate value of the financial assistance or gratuitous benefit provided by the disposal together with any other financial assistance or gratuitous benefit provided previously by the council in the same financial year must not exceed £10m. The value of the financial assistance or gratuitous benefit provided by the disposal is the difference between the open sale value of the land to be disposed of, and the value of the consideration received by the council for the disposal. 'Open sale value' means the amount which the interest disposed of by the council would realise on the open market with vacant possession by a willing vendor, but disregarding any restriction on the purpose for which the property may be used. If the valuation of the sites was undertaken some time before the leases are due to be completed this should be updated if the original valuation could now have changed.
- 20 Under the open spaces Act 1906 ('OSA') there are obligations on the council to maintain open space land namely the council is to –

'hold and administer the open space or burial ground in trust to allow, and with a view

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to, the enjoyment thereof by the public as an open space within the meaning of this Act and under proper control and regulation and for no other purpose: and (b) maintain and keep the open space [or burial ground] in a good and decent state'.

- 21 The grant of the leases will not remove this liability.
- 22 Any disposal of open space requires that a local authority advertises its intention in a local newspaper for two consecutive weeks and considers objections (*sections 123(2A) and 127(3), LGA 1972 and section 233(4), Town and Country Planning Act 1990*). This has taken place.

23 Lease terms

Both leases of the sites are on the same key terms. These are:

- a. 99 year term excluded from the security of tenure provisions of the 1954 landlord & tenant act which means the lease ends without the tenant having a statutory right to another lease;
- b. No assignment of the leases other than to HNT;
- c. Full repair liability other than asbestos in existing buildings for which council retains liability;
- d. No subletting other than to an approved community interest company;
- e. Landlord's right to terminate early if tenant ceases to operate in accordance with its charitable objects/loses its charitable status and also if an individual trustee ceases to act in accordance with its objects there is a 3 month period for remediation after which the lease can be terminated.

Concession Agreement

- 24 The Council has the power under the Localism Act 2011 to enter into concession agreements. The Council is currently not obliged to conduct a competitive procurement (e.g. a tender) for a concession unless there is 'cross-border interest' in the opportunity. Given the nature of the activities, there is unlikely to be cross-border interest in this opportunity
- 25 The concession agreement provides for the grant of a business opportunity to HWT and HNL.

26 Key terms

- a. HWT and HNL bear their own economic risks in relation to the concession activities. The Council is not legally obliged to pay HWT and HNL for these activities.
- b. There is no obligation of the Council to pay HWT and HNL for the services.
- c. Concession agreements often require the concession holder to pay the grantor of the concession (in this case, the Council) ongoing concession fees.. In this particular case, it was felt that it was not appropriate at this time to require HWT and HNL to pay the Council a concession fee, given the charitable nature of

HWT and HNL, and the relatively few income generation activities currently carried on.

- d. There is no fixed specification with which HWT and HNL must comply in carrying out the concession activities due to the timescale of the agreement. Instead, the concession agreement requires HWT and HNL to produce annual 'site management plans' for the Council's approval. .
- e. The Council gives HWT and HNL a broad indemnity if any individual claims a right to a TUPE transfer against HWT and HNL.:
 - i. There is a potential scenario (though the risk is low) of 2 rangers arguing they have a right to a TUPE transfer. These individuals, former employees of the Council are expected to be engaged by HWT and HNL on commencement of the concession. If they claim that there is a TUPE transfer and HWT and HNL promptly make them redundant, HWT and HNL could then call on the indemnity and the council would be liable for the cost of such redundancy plus any pre-transfer liabilities but any liability would be reduced by those amounts already paid pursuant to compromise agreements with those individuals.
- f. The concession agreement and the leases both expire (or can be terminated) at the same time. The concession agreement contains the rights of the Council to terminate for an event of default of HWT and HNL.

Risk management

- 27 The ongoing financial risk beyond a transfer is managed through the terms of the lease and lies solely with HWT/HNL.
- 28 The risk to the council of the third sector organisation failing in its statutory requirement is tied into the lease provision by suitable step-in powers to protect the council against potential legal intervention / prosecution from regulatory agencies (in particular Natural England). The concession agreement includes requirements for the HWT/HNL to provide a management plan for the sites for the council's approval. This will secure oversight of the management of the sites such that the council would be in a position to raise concerns in advance of a technical default on the terms of the lease.

Consultees

- 29 Statutory public consultation was carried out through the formal disposal notice process (see paragraph 5 above).
- 30 Local members and the Queenswood Coronation Fund have been kept informed and consulted through regular update meetings and emails.
- 31 Herefordshire New Leaf carried out an online survey in March 2014 to find out whether, in principle, visitors were supportive of the transfer, future involvement and the use of parking charges to generate funds for the upkeep. 211 responses were received providing the following key findings:
 - a. 84% support for the sites being managed by a community group
 - b. 81% supported the aims of the transfer proposals

- 32 Between 3 March and 7 April 2015 HNT/HNL undertook a detailed public consultation regarding the proposed transfer of management responsibility for Queenswood & Bodenham Lake from Herefordshire Council to a partnership between New Leaf Sustainable Development Ltd and Herefordshire Wildlife Trust. Key elements of the consultation and feedback include:
- a. Consultation included an online survey and events open to the public at 6 locations in and around the area.
 - b. Opportunities to learn more and comment were made widely available to all interested people and organisations and were strongly promoted in local media, onsite information, social media, websites and through parish councils and other interest groups.
 - c. Governance, proposed management structures and car park charges were included in the consultation, no major objections to parking charges providing the income was used to manage and enhance the sites.
 - d. Key representatives from parish councils, as well as local residents expressed their support for the partnership going forward.
 - e. Due to the important biodiversity of both sites, there was much support that an experienced nature conservation organisation with transparent governance was leading on the habitat management elements of both sites.

Appendices

None

Background papers

None