

Committee Name and Date of Committee Meeting

Cabinet – 23 December 2019

Report Title

Temporary use of Boston Park (Part) by Yorkshire Water

Is this a Key Decision and has it been included on the Forward Plan?

No, but it has been included on the Forward Plan

Strategic Director Approving Submission of the Report

Paul Woodcock, Strategic Director of Regeneration and Environment

Report Author(s)

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Ward(s) Affected

Boston Castle

Report Summary

Yorkshire Water seeks approval for the temporary use, for up to two years, of land at Boston Park for soil storage to allow Yorkshire Water to replace the existing service reservoirs in their current locations.

Recommendations

1. That 8,880 m² land at Boston Park be temporarily utilised by Yorkshire Water by way of a short-term lease to store soil, materials and site accommodation, to allow service reservoirs to be replaced in their current locations on an adjacent site, subject to the granting of planning permission.
2. That the Assistant Director of Planning, Regeneration and Transport be authorised to negotiate on the fee and financial arrangements in consultation with the Assistant Director of Financial Services.
3. That the Head of Legal Services be authorised to negotiate and complete the necessary lease documentation.

List of Appendices Included

Appendix 1 Equality Analysis Initial Screening
Appendix 2 Site Location and Layout Plan

Background Papers

[Report on Boston Park Reservoir considered at Cabinet and Commissioners Decision Making Meeting on 12th December 2016](#)

Consideration by any other Council Committee, Scrutiny or Advisory Panel

None

Council Approval Required

No

Exempt from the Press and Public

No

Temporary use of Boston Park (Part) by Yorkshire Water

1. Background

- 1.1 Yorkshire Water (YW) needs to replace two existing reservoirs which are coming to the end of their asset life. Over 20,000 properties and Rotherham Hospital are directly supplied from the site. YW has considered various options and had previously concluded that building a new reservoir on an area of Boston Park next to the current reservoirs would be the most appropriate solution. However, following public consultation and a legal challenge regarding existing covenants which protect parkland at Boston Park, an alternative solution has been developed.
- 1.2 The previous proposal, agreed at Cabinet and Commissioners Decision Making Meeting on 12th December 2016, was to transfer existing parkland permanently to Yorkshire Water to allow new reservoirs to be built in exchange for the site of the redundant reservoirs being passed to the Council.
- 1.3 The new proposal is for temporary use of park land to be granted to Yorkshire Water from January 2020 for a period of two years and for the park land to be returned to the Council at the end of this period in a similar or improved condition to pre use.
- 1.4 Boston Park is Rotherham's oldest public park, opening on the centenary of the Declaration of American Independence on 4th July 1876. At its centre is Boston Castle, a shooting lodge built in 1775 by the Earl of Effingham. The castle was restored with Heritage Lottery funding and opened as a visitor heritage attraction in 2012.
- 1.5 The park is registered under the Historic Buildings and Ancient Monuments Act 1953 within the Register of Historic Parks and Gardens by English Heritage for its special historic interest. Registration is a 'material consideration' in the planning process, meaning that the Council must consider the impact of development on the landscape's special character. The park was also assessed as a 'high value' site of borough-wide importance in the Rotherham Green Space Audit (2010).
- 1.6 There is strong community interest in the park. The Friends of Boston Castle and Parklands exists to promote and improve the site and has worked in partnership with the Council for more than ten years to further its aims.

2. Key Issues

- 2.1 Yorkshire Water regards this as an urgent matter requiring prompt resolution to ensure continuity of water supply and has statutory power to acquire land compulsorily if necessary.

- 2.2 The project will generate large amounts of soil and other materials during the construction phase, which if not stored locally will need to be transported from site and then brought back later in the project. This would generate several hundred heavy vehicle movements both through the park but also along Boston Castle Grove. The temporary use of 8,880 m² of Boston Park to store this soil, offers a safer and less environmentally damaging option to off-site storage. However, the scale of this request would temporarily remove approximately 10% of the park from public access.
- 2.3 The main consideration in any agreement with Yorkshire Water is whether the proposed terms offer the best possible outcome for the Council and the local community, taking into account the impact on the land involved and the consequent loss of an area of existing parkland for two years.
- 2.4 A second consideration is whether the proposal is in keeping with the historic covenant which exists to protect the park for public recreational use.

3. **Options considered and recommended proposal**

3.1 Allow Yorkshire Water to utilise land within Boston Park to store soil

There are two benefits to allowing soil storage within the park. Firstly, there will be significantly fewer heavy vehicle movements through the park and along Boston Castle Grove/Moorgate Road, and this has related environmental benefits. Secondly, a fee can be charged for use of the land (the exact amount will need to be negotiated), which could then be used to undertake further improvements to Boston Park.

The land that will be temporarily lost to use by the public is one of the largest flat areas of the park. In the past, this area has been used for events, as an overflow carpark and for occasional helicopter landings and informally as an area for dog-walking. However, the use of the land can be controlled through programming (for example, allocating events to other park venues in the borough).

It should be noted that the scheme currently being proposed by Yorkshire Water will have much less permanent impact in the park than the scheme proposed in 2016 and in this respect it will minimise the likelihood of a challenge related to the terms of the covenant, as set out in Section 7 of this report

3.2 Refuse Yorkshire Water's request to store soil within Boston Park

A refusal to allow Yorkshire Water's request would prevent any permanent breach to the existing covenant. It would ensure the parkland adjacent to the existing reservoir site remained untouched.

However, the number of heavy vehicle movements would be substantially increased through the park and along Boston Castle Grove/Moorgate Road, which would have a greater impact on local residents and Thomas Rotherham College, increasing the safety risk to park users, residents and students at the college. The vehicle movements will also have a negative environmental impact.

3.3 Recommended option

On balance, allowing Yorkshire Water to utilise land within Boston Park to store soil for up to two years, has fewer disadvantages to the local community than the alternative option.

This is therefore the recommended option.

4. **Consultation on proposal**

4.1 Yorkshire Water developed their own consultation plan, and this has ensured that the Friends of Boston Castle and Parklands (FoBCAP), local residents and other interested parties have been engaged. Consultation events took place on the 8th and 9th October 2019 to inform stakeholders of the proposals and the likely impact on park users and residents. Green Spaces Officers were also present during public consultation sessions and noted that there was no significant public resistance to the proposal.

4.2 Boston Castle Ward Members have been made aware of Yorkshire Water's proposal to replace existing reservoirs at Boston Park and the request to lease part of the park for storing materials and site facilities. Green Spaces has not received any negative feedback to date.

4.3 The Friends of Boston Castle and Parklands (FoBCAP) has previously been consulted (2016) regarding improvement plans for the park but have not felt able to support previous proposals to build a new reservoir within the park. Yorkshire Water met with FoBCAP and Green Spaces Officers in September 2019 to discuss their revised proposals. FoBCAP committee indicated that they were comfortable with the proposal for temporary use of the park for material storage.

5. **Timetable and Accountability for Implementing this Decision**

5.1 Following a decision to agree to Yorkshire Water's proposed terms for a short-term lease to occupy land at Boston Park, the Estates Manager would be instructed to negotiate and agree detailed terms with Yorkshire Water as quickly as possible.

5.2 Yorkshire Water has advised that execution of an agreement would be subject to them obtaining planning permission for the soil storage on site. However, they expect to start on site replacing their infrastructure in January 2020.

6. **Financial and Procurement Advice and Implications**

6.1 The original proposal set out in the Cabinet Report of 12th December 2016 identified that along with the capital receipt on the land, Yorkshire Water would provide the sum of £228,800 to cover the cost of repairs and improvement works to Boston Park. In addition, following the intervention of Sport England, Yorkshire Water agreed to an additional payment of £30,000 to cover the cost of a Playing Pitch Strategy.

6.2 The new proposal will cost Yorkshire Water more to deliver and will result in a lower impact on park users, therefore Yorkshire Water have argued that the financial recompense should be reduced. Furthermore, the new proposal involves the lease of the affected land, rather than a permanent land swap.

6.3 Yorkshire Water have agreed to:

- cover the costs of restoring the land they use to a similar or improved condition
- cover the costs of diverting any Public Rights of Way affected by the project
- pay a fee for the lease of the land they will be using (which will provide a revenue benefit to the Culture Sport and Tourism service).
- cover all the Council's legal costs associated with the project.

6.4 There are no procurement implications arising from this report.

7. **Legal Advice and Implications**

7.1 The previous proposal, set out in the Cabinet report of 12th December 2016, resulted in a challenge related to a restrictive covenant on the Council's title prohibiting use of the Park for anything other than public recreation which could, in certain circumstances, be enforced by a neighbouring landowner. This new proposal, developed as a consequence of that challenge, minimises the risk of legal action.

7.2 Allowing Yorkshire Water to utilise any area of Boston Park for soil storage could still technically be in breach of the restrictive covenant referred to above. However, this covenant can only be enforced by parties owning the land with the benefit of the covenant, i.e. either descendants of the original owner, the Earl of Effingham if it has remained with that ownership or parties who have since acquired the relevant land. No-one has demonstrated to any legal standard that they do have the benefit of the restrictive covenant but it is a reasonable possibility that such a party or parties exist and are aware of it.

Throughout 2018, the Council was in correspondence with a direct descendant of the contracting Earl and half-brother to the current Earl who is a patron of the Friends group. In conjunction with the Friends, this individual initially opposed the transfer to YWS but has not been in contact since being informed that this transaction is no longer proceeding.

Meanwhile, the Friends of Boston Castle and Parklands have given their approval to the plan to use the field for soil storage whilst constructing the new reservoirs and they have agreed to work with Yorkshire Water to interpret the heritage of water on the site. Accordingly the descendant of the Earl has been written to by Legal Services to share progress on the new proposal.

Accordingly, Legal Services consider that the risk of the covenant being enforced is now low, especially considering the short timescale that the covenant will not be followed and the fact that the proposal has the support of the Friends group.

7.3 Other than the issue related to the covenant, there is no additional legal implication arising from this proposal.

8. Human Resources Advice and Implications

8.1 There are no direct HR implications arising from this report.

9. Implications for Children and Young People and Vulnerable Adults

9.1 There are minimal implications for Children, Young People or Vulnerable Adults arising from this report. As part of the consultation process, Yorkshire Water engaged with Thomas Rotherham College.

10. Equalities and Human Rights Advice and Implications

10.1 An initial Equalities Impact Assessment screening (Appendix 1) has been undertaken and it has been assessed that there are no communities with protected characteristics which will be affected disproportionately by this proposal.

10.2 For all users, this proposal minimises the risk to the long-term use of this part of the park and retains the long-term potential to provide a playing pitch in the future.

11. Implications for Ward Priorities

11.1 This project is identified as an issue in the ward action plan for Boston Castle ward. The proposed way forward is understood to be the solution which provides the lowest level of disruption to residents. Furthermore, this proposal reduces traffic movements on Boston Castle Grove and improves pedestrian safety in the area.

12. Implications for Partners

- 12.1 The building of the new reservoir will involve a temporary realignment of the Trans Pennine Trail. Public Rights of Way section within Highways has identified an alternative route through the park to avoid working areas.

13. Risks and Mitigation

- 13.1. The use of the land by Yorkshire Water will make it unsafe for use by members of the public. Yorkshire Water will be responsible for ensuring that the public cannot access the leased area and will provide adequate security during working hours and out of hours to maintain public safety.
- 13.2 Yorkshire Water identified that there was a risk of significant traffic to and from the site. This proposal enables a significant reduction in traffic by retaining material and equipment on site.
- 13.3 If the proposal is not approved and there are further delays to the construction schedule, Yorkshire Water have expressed concern that the provision of quality water services to 20,000 homes and the hospital will be at risk.

14. Accountable Officers

Andy Lee, Green Spaces Manager.

Steve Hallsworth, Head of Strategic Projects & Partnerships.

Approvals obtained on behalf of Statutory Officers:-

	Named Officer	Date
Chief Executive	Sharon Kemp	12/12/19
Strategic Director of Finance & Customer Services (S.151 Officer)	Judith Badger	04/12/19
Head of Legal Services (Monitoring Officer)	Bal Nahal	03/12/19

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