

Committee(s)	Dated:
Epping Forest Consultative Epping Forest and Commons	10 10 18 19 11 18
Subject: Commercial Wayleave Review (SEF 42/18b)	Public
Report of: Heritage	For Decision
Report author: Paul Thomson - Epping Forest	

Summary

A range of residences, community facilities and businesses rely on access across Epping Forest land, from land in their ownership or occupation to the public highway. These access arrangements are largely managed by personal licences known as Wayleave agreements. Within the Open Spaces Department there are approximately 1,300 Wayleave agreements providing vehicular and pedestrian access to residential and business properties, and a further 1,500 Services agreements allowing the placing or installation of various infrastructure and public utilities.

The Open Spaces Wayleave Review 2015 identified 25 wayleaves granted for non-residential access, including business premises, liveries, public houses and residential park homes. In May 2015, the Epping Forest and Commons Committee delegated to the Superintendent authority to appoint a Commercial Land Agent to provide valuation advice regarding the recommended approach and methodology for reviewing commercial Wayleave charges.

Advice from consultants suggested basing the revised wayleave fee on a percentage of the rateable value for businesses and a multiplier based on residential wayleaves for park home sites. Using this approach, sample contrasting commercial activities were considered. Applying the suggested business rates formula saw an uplift in annual fee from low historic levels to commercially comparable levels. It is proposed that this charging model is now applied to all 25 commercial wayleaves.

Recommendation(s)

Members are asked to:

- i. approve the new commercial wayleave fees immediately based on either rateable value or a council tax formula, applying further increases by Committee approval using a recognised multiplier formula.

- ii. tender a valuation contract with external valuers to value and negotiate the remaining wayleave agreements.
- iii. instruct the City Solicitor and Comptroller to assist in completing the necessary wayleave agreements.

Main Report

Background

1. A wayleave is a contract between a landowner (the grantor) and a third party (the grantee) permitting in return for a payment the access to land not in the grantee's ownership for the purposes of access and egress or for the installation and maintenance of utility supplies or apparatus. A wayleave is similar to an easement, but unlike an easement is not permanently attached to the land. Instead wayleaves possess termination clauses and are usually granted to named individuals.
2. Within the City Corporation's Open Spaces Department there are approximately 1,300 Wayleave agreements providing vehicular and pedestrian access to residential properties. A further 1,500 services wayleave agreements allow the placing or installation of various infrastructure and public utilities. Most of these wayleaves are located on Epping Forest land.
3. The 2015 Open Spaces Wayleave review identified several commercial wayleaves where access rights had been granted to various third parties enabling their use of Epping Forest Land and The Commons for business access purposes.
4. These Wayleave agreements were granted using artificially low nominal fees approved at that time and have not been routinely reviewed or valued for a considerable number of years.
5. The Epping Forest and Commons Committee of 11 May 2015, agreed to delegate authority to the Superintendent of Epping Forest in conjunction with the City Surveyor to obtain professional external valuation advice for further determination by your Committee.
6. Commercial Land Agents were appointed and instructed by your officers to consider the range of commercial activities for which Wayleaves had previously been granted and to provide a rationale and valuation model for setting revised charges for business activities. In addition, consultants were asked to indicate where considered necessary, a timetable for achieving any increases in charges where the gap between existing and proposed charges might require it.
7. The consultants considered sample Wayleaves of contrasting types to test this approach and to assess the likely cost of the overall exercise. Following confirmation of a satisfactory analysis of the issues and the potential level of increases for these test cases, it was hoped that the remainder of the Wayleaves

could then be considered by your officers with the Land Agents negotiating the proposed fee increases.

Current Position

8. 25 commercial wayleaves have initially been identified; 21 for Epping Forest and 4 for The Commons.
9. As anticipated by the Epping Forest and Commons Committee the valuation advice from the Land Agents identified the potential to generate significant additional income from revised commercial wayleave charges. A single valuation model, while important for future Wayleave applications, could not be expected to fit the wide variety of the commercial Wayleaves that had previously been agreed. Therefore, a case-by-case approach will need to be taken to examine the circumstances of each of these arrangements.
10. The consultant's proposal to base the wayleave fee on a percentage of the rateable value of the business, appears to be a consistent and reasonable approach in the majority of cases of commercial businesses. A different approach to businesses without a rateable value such as residential park home sites and care homes was promoted for less commercial businesses.
11. In most cases, without access across Epping Forest land to the site, the business is significantly affected to the point of being unusable as there is no other access into the site, therefore the impact on the rateable value is significant. It was advised that that it should be possible to achieve industry standards levels of between 10%-30% of rateable value. If the valuation advice was applied across the range of Commercial Wayleave accounts, there will be significant increase in income for reinvestment in Epping Forest.
12. A phased approach to introducing the revised fee could be considered over a period of say 5 years, which could lessen the impact of the increased charge and enable businesses to budget for the increase.
13. The government sets a 'multiplier' each year to estimate the actual business rates to be paid. The standard multiplier for 2018/19 is 49.3p, indicating the percentage or pence in the pound of the rateable value that will be paid in business rates. This represents a 2.9% increase on the multiplier of 47.9p in the previous year. The consultants did not recommend an annually set multiplier in their initial advice but inclusion of this approach within the proposed charging strategy would eliminate the need for routine and expensive revaluation advice.

Options

There are 4 main options available to your Committee:

14. Option 1 – Keep the Commercial Wayleave fee at the current fixed level. This route would not secure the optimum level of income and would be contrary to the duty of the representatives of Epping Forest Trustees and The Commons Trustees which is to act in the best interest of the charities. **This option, therefore, is not recommended**

15. Option 2 – Increase the Commercial Wayleave fee at the rate of Consumer Price Index (CPI). While representing a possible way forward, the addition of CPI would not provide a consistent methodology or address the historic ‘lag’ on revaluation and would be contrary to the duty of the representatives of Trustees to act in the best interest of the charities. Again, this route would not allow the Charities to secure improved income. **This option is not recommended.**
16. Option 3 – Using consultant’s advice apply new Wayleave fees immediately based on either rateable value or council tax. By applying the valuation advice, the Commercial Wayleave fees would be significantly increased. The full impact of an increased wayleave could be managed through a phased or stepped increase in Commercial Wayleave fees over a period of up to 5 years, after which further increases could then be agreed through an annually approved multiplier. Such an approach would allow businesses reasonable notice to accommodate new charges in their business plans over a reasonable period. **This option is not recommended.**
17. Option 4 – Using consultant’s advice apply new Wayleave fees immediately based on either rateable value or a council tax formulae, applying further increases by Committee approval using a recognised multiplier formula. **This option is recommended.**

Proposals

18. It is proposed to increase wayleave charges by instructing land agents to open negotiations with all the remaining wayleave holders.

Corporate & Strategic Implications

19. The proposed action in Option 4 supports the Open Spaces Department’s Vision by preserving and protecting our world class green spaces for the benefit of our local communities and future generations and improving our use of resources through increased income generation.

Implications

20. **Legal** - The City’s Wayleaves are by their nature, licences. They are granted on the express basis that the permission is personal to the licensee and that such permission continues during the pleasure of the City until determined by the City at any time by notice in writing. Licensees are asked to pay an annual licence fee.
21. The general position is that open space is inalienable and cannot be disposed of (s.8 of the Corporation of London (Open Spaces) Act 1878, section 7(2) of the Epping Forest Act 1878, section 13 of the Hampstead Heath Act 1871 and article 5 (2) of the London Government Reorganisation (Hampstead Heath) Order 1989). The granting of a licence does not bind the Open Space. Wayleaves granting permissions for access across the open space should continue to be

nothing more than licences which can be terminated and as such do not grant more permanent rights that would bind the open space.

22. Under Section 33(1)(iv) of the said Act of 1878 the Conservators have power from time to time to afford facilities and grant rights of way for access to inclosures within the meaning of the said Act of 1878.
23. **Financial:** The income would be credited to the appropriate Open Spaces local risk budgets for reinvestment in the Open Space which generated the income. Subject to negotiations income from the current level of £36,720 to potentially £124,799, excluding land agency fees,
24. Charity Commission advice 'The essential trustee' (CC3) outlines that Charity Trustees have a duty of prudence to administer a charity with a degree of care, skill and caution while acting in the best interest of the charity. Charity Commission advice 'Charity Finances' (CC25) indicates that trustees should ensure that charities should conduct regular rent reviews on investment land.
25. This option is preferred with the proviso that further evaluation is required to examine potential impacts of such increases on each business, including considerations under the Equalities Act 2010.
26. **Property:** We are maintaining adequate control over Epping Forest and The Commons property with Wayleaves but seeking to achieve increased income.
27. **Public Relations:** If the valuation advice is applied across the range of commercial Wayleave accounts, there will be significant increases in fees, which if applied immediately, without any element of phasing, could cause reputational damage to the City Corporation if it is portrayed as being unreasonable. Even with a phased approach the proposed increased charges may still present a considerable challenge to reputation. The high cost of managing such sites for London and the Nation; the reinvestment of all income in the relevant Open Space, and the charitable status of the individual charities would need to be emphasised strongly throughout the process.

Conclusion

28. Non-residential access wayleaves have not been reviewed for many years. As a result the current fees are not commensurate with the costs of managing and administration of the land, nor are they proportionately related to the values of the third-party businesses that the various accesses serve. It is proposed to tackle this backlog of cases by commencing negotiations immediately with two of these wayleave holders as test cases for the remaining wayleaves. Following the results of the negotiations for these two cases, a further report will be brought to your Committee setting out a firm basis for the future phasing and range of increases for the other wayleaves.

Appendices

- None

Background Papers

SEF 26/15 Wayleaves Review

Paul Thomson

Superintendent of Epping Forest

T: 020 8532 1010

E: paul.thomson@cityoflondon.gov.uk