

Committee(s)	Dated:
Epping Forest and Commons Hampstead Heath, Highgate Wood and Queen's Park Open Spaces and City Gardens	11 May 2015 18 May 2015 10 June 2015
Subject: Wayleaves Review SEF 26/15	Public
Report of: Superintendent of Epping Forest Superintendent of Burnham Beeches, Stoke and City Commons Superintendent of Hampstead Heath	For Decision

Summary

A wide range of residential properties, farms, community facilities and businesses rely on access across City of London land, either from the public highway or City land itself, to land in their ownership or occupation. This access may be for pedestrian or vehicular purposes and / or for the passage of utility services. Access requirements for new or existing 'enclosures' created by the City of London's acquisition of land are largely managed by Wayleave agreements.

The current expected annual income from Open Spaces Motorgate and Handgate Wayleaves is approximately £18,000 per annum which is credited to the local risk budgets of the respective Superintendents.

The arrangements for issuing Wayleaves across the Open Spaces, including the fees, have not been reviewed since 2005. Wayleave charges are standardised across the Open Spaces Department and since 2005 have stood at; Motorgate £50 per annum, Handgate £5 per annum, Services £10 per annum, with an administration fee of £50 and £25 respectively being charged to establish each new Wayleave.

This report seeks approval to put in place a more structured and uniform approach to charges and to the management of our Wayleave agreements.

Recommendation(s)

Members are asked to:

- Approve Option 2 of this report which links the charging of Motorgates to existing Council Tax bandings, and increases Handgates from £5 per annum to £10 per annum.
- Delegate authority to the Superintendent of Epping Forest in conjunction with the City Surveyor to obtain professional valuation advice on a number of commercial access Wayleave agreements for further determination by your Committee.

Main Report

Background

1. A wide range of residential properties, farms, community facilities and businesses rely on access across City of London land, either from the public highway or City land itself, to land in their ownership or occupation. This access may be for pedestrian or vehicular purposes and / or for the passage of utility services. Access requirements for new or existing 'enclosures' created by the City of London's acquisition of land are largely managed by Wayleave agreements.
2. Wayleave agreements have been favoured by the City to ensure that those parties seeking access do not acquire prescriptive rights which would be contrary to the legislation applying to each of the Open Spaces which generally provides that the City shall not sell, demise or otherwise alienate any part of the lands in question, except as provided for.
3. The arrangements for issuing Wayleaves across the Open Spaces, including the fees, have not been reviewed since 2005. Wayleave charges are standardised across the Open Spaces Department and since 2005 have stood at; Motorgate £50 per annum, Handgate £5 per annum, Services £10 per annum, with an administration fee of £50 being charged to establish each new Motorgate Wayleave and £25 for each Handgate or Service Wayleave.
4. The majority of Handgates at Epping Forest are 4-yearly agreements; any increase in Handgate fees will therefore take 3 years from the next renewal date of 1st October 2015 for the full increase in income to be realised.
5. At Burnham Beeches the Handgates continue until the ownership of the property changes.

Current Position

6. The expected annual income from Open Spaces Motorgate and Handgate Wayleaves is approximately £18,000 per annum:

	Motorgates	Handgates	Total income
Epping Forest	£11,760	£2,765	£14,525
City Commons	£850	£2,095	£2,945
Hampstead Heath	N/A	£330	£330
			£17,800

7. In addition to the above, there are various Wayleaves granted for 'non-standard' access, for example serving multiple properties or business activity. These may require individual valuation for which the Superintendent may need assistance from external consultants to help assess the most appropriate tariff.
8. There are also approximately 1,500 Service Wayleaves with an estimated annual income of £12,500. The annual fees for these agreements vary enormously, particularly those granted for utilities where many can be as little as £0.05p. A

separate review of these agreements at a later date will be required, ahead of implementing any changes to the fees.

9. Current charges, although standardised across our Open Spaces do not raise funds that are commensurate with the cost of managing and administration of the land and the services provided. This report proposes adoption of a fairer and more structured approach to charges.

Options - Charging Model Proposals

10. The open spaces Senior Management Team was asked to consider two charging models:

Option 1 (Not Recommended).

- A universal 100 percent increase across the Open Spaces Motorgates and Handgates Wayleaves. This would result in a projected increased in the annual income from £17,800 to £35,600.

	Motorgates	Handgates	Total income
Epping Forest	£23,520	£5,530	£29,050
City Commons	£1,700	£4,190	£5,890
Hampstead Heath	N/A	£660	£660
			£35,600

- This charging model was used in 2005 when the Wayleaves were previously reviewed and is therefore a tried and tested approach. The process is simple, quick and achievable within the given timescale to meet the next annual renewal date of 1 October 2015.
- However, the charging model is controversial and may be considered inequable by some as all properties of different size and value will pay the same charge.
- The increased projected income of £17,800 is not considered to be sufficient to meet the increased income from Wayleaves being proposed in the Service Based Review, with £25,000 additional income being included for 2015 / 2016.

Option 2 (Recommended)

- This model links the charging of Motorgates to the existing council tax bandings, A-H.
- Officer research has found that there is a standard percentage escalation between council tax bands nationally.
- The table below identifies the number of Motorgates within each banding; the difference between the Motorgate bandings reflecting the percentage increase between local authority council tax bandings.
- The Motorgate fee charged for properties in council tax banding 'A' setting the benchmark of fees from £70 per annum, which represents the current value of £50 when linked to the retail price index over the last 10 years.

Council Tax Banding	Quantity of Motorgates	Revised Fee	Increase between bandings	Projected Total Income
A	7	£70.00		£490.00
B	0	£81.00	16.67%	£0.00
C	9	£93.00	14.29%	£837.00
D	22	£105.00	12.50%	£2,310.00
E	82	£128.00	22.22%	£10,496.00
F	53	£151.00	18.18%	£8,003.00
G	51	£175.00	15.38%	£8,925.00
H	29	£210.00	20.00%	£6,090.00
				£37,151.00

- The Handgate Wayleaves to increase from £5 per annum to £10 per annum resulting in an increased income for Handgates from £5,190 pa to £10,380 pa
- The total increase in income for Motorgates and Handgates will be approximately £30,000 pa.
- This proposal represents a progressive approach on a well-established and well-accepted model for property sizes, which may again be seen as inequable by some.
- However, the higher valued properties in council tax bands E – H will see their Motorgate Wayleave charge being increased from the current fee of £50 to between 157% and 320% more.

Issues

11. The charging model proposals do not come without risk:

- The principle of moving from a uniform to a progressive charge based on property value will involve a debate on the relative fairness of such a charge.
- The proposed increases could be damaging to service continuity, public goodwill and could impact on the City's income and reputation.
- Increased pressure on administration resources to deal with enquiries and complaints.
- There would be greater potential (and inherent costs) for enforcement action being required in respect of persistent non-payers (See Wayleave Enforcement Policy).

Wayleave Enforcement Policy

12. To address the persistent non-payment of Wayleave fees by some property owners, your Committee approved at your meeting of 8 July 2013, a trial Wayleave Motorgate enforcement policy at Epping Forest.

13. Enforcement would be undertaken by warning letters, potentially followed by, as a last resort, the withdrawal of Wayleave agreements and the obstruction of wayleaves with concrete barriers until both outstanding debts and the cost of enforcement are fully settled. A charge of £350 would be made to cover enforcement obstruction costs.

14. The revised percentage increases proposed above, in particular in the higher valued properties in Charging Model 2 in council tax bands E – H, have the potential to generate a greater number of non-payers of Wayleave fees, resulting in exposing to staff to potential risks of abuse and violence which would be fully Risk Assessed and managed through a Safe System of Work (SSoW). Professional bailiffs may be employed to support staff in the management of enforcement action; the costs of which should be recoverable through the enforcement process.

Implications

15. **Corporate & Strategic Implications:** The proposed action in Option 2 supports the Open Spaces Department Business Plan by protecting Open Spaces for the enjoyment of future generations, improves our use of resources through increased income generation and further meets the City Together vision of a World Class City by protecting, promoting and enhancing our environment.
16. **Financial:** £25,000 pa additional income from Wayleaves for 2015 / 2016 was proposed in the City's Service Based Review.
17. **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.
18. 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 and should not grant more permanent rights that would bind the open space.
19. **Property:** Although there may well be an argument that the value of cross-overs should be the same no matter where they are situated, established valuation principles recognise that the value of land used to provide access to third party property is related to the value of the property that the access serves.
20. Therefore it does not seem unfair or unreasonable to make use of the Council Tax Banding system as the basis to calculate various access cross-over tariffs for the least to the most expensive dwellings, bearing in mind that the charges should remain affordable at the lower end of the tariff and any increase such that it does not meet wholesale opposition.
21. **Public Relations:** the planned increase in Wayleave fees will not be well received by the Motorgate Wayleave holders and any enforcement action taken could result in negative publicity for the City of London. Answers to an anticipated list of Frequently Asked Questions will be posted on the City's website.

Conclusion

22. Wayleave fees have not been reviewed for 10 years. There is a need to strike a balance between maintaining rights to the land and achieving an income that is commensurate with the cost of managing and administration of the land and the services provided. The recommended Charging Model proposes adoption of a more structured and fair approach to charges, whilst significantly raising the annual income for the Open Spaces department.

Appendices

- None

Background Papers

OS/02/05/OS – Wayleaves for Handgates and Motorgates – review of current arrangements

SEF 28/13 - Epping Forest Pilot Wayleave Enforcement Policy

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