

14 September 2015

Agenda Item: 9f

**REPORT OF SERVICE DIRECTOR TRANSPORT, PROPERTY &
ENVIRONMENT**

DANESHILL LAKES, RETFORD – LEASE TO SAILING CLUB

Purpose of the Report

1. To seek approval to the granting of a lease to Daneshill Sailing Club for use of Daneshill Lakes, Retford.

Information and Advice

2. Some information relating to this report is not for publication by virtue of paragraph 3 of Schedule 12A of the Local Government Act 1972. Having regard to the circumstances, on balance the public interest in disclosing the information does not outweigh the reason for exemption because divulging the information would significantly damage the Council's commercial position. The exempt information is set out in the exempt appendix.
3. Daneshill Lakes was created by the County Council to form part of a 73 Hectare Country Park following the purchase in 1981 of a former Royal Ordnance Factory site. Daneshill Lakes was thereafter leased to the Parish Councils of Lound, Ranskill, Sutton & Torworth under an Agreement dated 01 April 1986. In 1988, the Daneshill Sailing Club (DSC) was formed and permitted by the Parish Council consortium to sail on Daneshill Lakes. No agreement however was ever put in place to formalise this use.
4. The Parish Council consortium surrendered their lease back to the County Council in November 2005 and the DSC have continued to sail on the Main Lake, paying to the County Council the rent as previously agreed with the consortium. Initial discussions to formalise the use of the lakes were based on the DSC requiring a long lease to enable them to bid for funding for a clubhouse. This proposal has now been abandoned and discussions latterly have been protracted and centred around legal advice provided to the DSC by the Royal Yachting Association, that the DSC had a secure tenancy; this is disputed by the County Council. Further delays in negotiations have been due to the need to undertake simultaneous discussions with Daneshill Angling Club to ensure that both clubs Heads of Terms were compatible due to history of hostilities; which have subsequently improved considerably throughout this process. The Daneshill Angling Club's occupancy is based on a licence.
5. The Heads of Terms agreed with the DSC provide the County Council with the ability to extinguish any claim regarding security of tenure as the lease will be contracted out

of Landlord & Tenant Act 1954. The County Council shall also have the right to terminate the lease by giving twelve months' notice should it ever wish to do so. Meanwhile the rent reflects that the DSC provides both instruction and equipment free of charge to local schools, particularly St Giles Special School, on Wednesdays.

6. Negotiations have led to the following terms being provisionally agreed:

Property:	6.7 Ha or thereabouts of open water known as the Main Lake (the area hatched), car park and jetty (the area cross hatched) and the storage area (the area stippled)
Landlord:	The Nottinghamshire County Council ("NCC")
Tenant:	Daneshill Sailing Club ("DSC")
Term:	1 October 2013 to 31 October 2034 (21 years)
Rent:	See exempt appendix.
Rent Review:	NCC shall review the rent in line with RPI (Retail Price Index) in Year Three of the Agreement, with the new rent being payable from 1 April 2016. Time will not be of the essence.
Consents:	The DSC shall be responsible for obtaining and maintaining all necessary consents for their use of the Property and shall comply with all statutory requirements to the satisfaction of NCC.
Use:	<p>The DSC shall not be permitted to sail during the months November to February inclusive in each year.</p> <p>The DSC shall provide NCC with a copy of a valid planning permission evidencing that they are permitted to sail around the main lake in its entirety, including the 'channel' between the islands and the eastern shore, that can be sailed provided that the Club has checked to ensure Anglers are not fishing the water hatched in black on the attached plan. On receipt of the Planning Permission, NCC shall permit DSC to sail through the 'channel' on 1 March and 31 October only in each year.</p> <p>For the avoidance of doubt, no sailing at any times shall be permitted between the two islands.</p> <p>The DSC undertakes to use the Property in accordance with current RYA Guidelines and the Daneshill Lakes LNR Management Plan. NCC's decision shall be final as to whether use is in accordance with the said guidelines and management plan.</p> <p>The DSC shall use and maintain the Property as a site for a Nature Reserve and the purposes of public open air recreation in accordance with the Daneshill Lakes LNR Management Plan and as defined in the National Parks and Access to the Countryside Act 1949.</p>

The DSC shall be permitted to use the toilets within the Wardens Cabin, but shall undertake certain duties including cleaning associated with the DSC's use of this facility. These toilets are expressly not for public use.

The DSC shall maintain regular contact with the Site Warden (or Site Officer in their absence) and assist with reasonable conservation tasks in accordance with the Daneshill Lakes LNR Management Plan.

The DSC to allow the NCC's Children, Families & Cultural Services Department to use their facilities without charge.

The DSC to be permitted to charge a fair and reasonable fee to all other users of their equipment.

The DSC shall be permitted to use motor powered safety boats in accordance with the RYA Safety Guidelines and ratios as laid down in the RYA Operating Procedures, and with due regard for dynamic risk assessments carried out by the Duty Officer. Speeds will be kept to a minimum to minimise disruption to wildfowl, visitors and members of the Daneshill Lakes Angling Club.

The DSC to provide NCC with a copy of a valid planning permission which permits them to use the motor powered boats for providing 'on water' experience for schools and other groups. Thereafter, NCC shall permit such use on the basis that low speeds (maximum 4 mph) are to be maintained at all times and steps are taken to ensure that such activities do not cause unnecessary disruption to other Lake Users. NCC reserves the right to terminate the use of motor boats for this purpose on immediate notice.

The DSC may test Outboard engines for short bursts to ensure compliance with the RYA Safety/Insurance Guidelines. These tests are to be undertaken in open water and must not interfere or cause nuisance to other site users. Testing is to be kept to a minimum.

The DSC shall provide NCC and Daneshill Lakes Angling Club with a copy of their Event Programme at the start of each season and undertake to notify both parties of any changes to the Event Programme during the season. This clause does not apply to normal 'club sailing' which can be undertaken at any time within the terms of the Agreement.

NCC shall have the right to temporarily exclude all or certain areas of the Property from use by DSC for reasons of public health and safety or nature conservation upon serving four weeks prior written notice.

Access:	The DSC shall be permitted to use the vehicular access leading from the entrance gates to the Main Lake for the purposes of loading and unloading equipment. The DSC shall be jointly responsible, along with Daneshill Lakes Angling Club, for keeping the main access barrier to the site locked at all times and shall ensure that all vehicles observe a 5mph speed limit around the whole Property.
Parking:	<p>The DSC shall be permitted to use the designated area shown cross hatched on the attached plan no 2 as car parking for their members only. The DSC shall not permit car parking outside this designated area and shall not obstruct the access or park in front of the Wardens Cabin. All other vehicles are to be parked in the public car park.</p> <p>The DSC shall be permitted to use the area shown stippled on the attached plan no 2 for storage purposes or for parking.</p>
Maintenance:	<p>The DSC shall be responsible for general maintenance and for health and safety in respect of their activities over the Property and any of their fittings or equipment to the satisfaction of NCC.</p> <p>The DSC shall obtain prior written consent from NCC for any maintenance or improvement operations they wish to undertake in respect of the Property.</p> <p>The DSC shall not cut down, lop or top any tree without prior written approval from the Site Warden or Site Officer.</p> <p>The DSC shall not alter or disturb any pipes, cables, sewers, wires or other apparatus which may be in, under or over the land.</p> <p>The DSC shall be jointly responsible, along with Daneshill Lakes Angling Club, for keeping the Property at all times free of all rubbish and litter associated with their use of the Property and to make proper and adequate arrangements for the disposal and removal thereof.</p>
Rates:	The DSC shall pay all rates, taxes and all other charges levied in respect of the Property in relation to their use.
Insurance:	<p>The DSC shall indemnify NCC from and against all actions, claims and demands which may be brought or made arising out of the use of the Property or by reason of the condition of the Property or DSC's use of the Property.</p> <p>The DSC shall maintain public liability insurance to a minimum of £5,000,000 at all times.</p> <p>The DSC shall send copies of all relevant insurance documents to NCC within 14 days of renewal.</p>
Alienation:	Assignment or subletting of whole or part shall be strictly

	prohibited.
Right of Entry:	NCC shall at all times have the right of entry onto the Property for all purposes so far as is not inconsistent with the rights given to DSC.
Determination:	<p>Either party shall have the right to determine the Agreement by giving not less than twelve months prior written notice.</p> <p>In the event that DSC is suspended or terminated by any relevant authority for breach of a condition of an award, NCC shall have the right to terminate the Agreement with immediate effect without prejudice to any other rights or remedies.</p> <p>In the event that the rent be in arrears or unpaid for twenty eight days (from the date of invoice), or if DSC shall at any time fail to perform or observe any of the lease covenants, then NCC shall have the right to terminate the Agreement upon giving DSC no less than seven days prior written notice.</p> <p>In the event that the rent be in arrears or unpaid for twenty eight days (from the date of invoice), or if in NCC's opinion; the DSC are in serious breach of their lease covenants (to be defined in the lease but will include; anti-social behaviour, breach of the peace, wilful damage, pollution or a negligent act) then NCC shall have the right to terminate the Agreement upon giving DSC no less than seven days prior written notice without prejudice to any other rights or remedies.</p> <p>If, following the serving of a three month warning notice by NCC, DSC are still in breach of any other lease covenant, then NCC shall have the right to terminate the lease upon giving DSC no less than seven days prior written notice without prejudice to any other rights or remedies.</p>
L&T Act 1954:	The lease shall be contracted out of the security provisions contained within s24-28 of the Landlord & Tenant Act 1954.
Costs:	Each party shall be reasonable for paying their own costs.

Other Options Considered

7. The County Council could seek to enforce the removal of the Sailing Club from Daneshill Lakes but this would be protracted and expensive and deny local schools the ability to access free of charge sailing activities and additionally deny the County Council a rental income.

Reason/s for Recommendation/s

8. The granting of a lease on the terms proposed provides the County Council with the ability to manage Daneshill Lakes in a flexible manner in the future.

Statutory and Policy Implications

9. This report has been compiled after consideration of implications in respect of crime and disorder, finance, human resources, human rights, the NHS Constitution (Public Health only), the public sector equality duty, safeguarding of children and vulnerable adults, service users, sustainability and the environment and ways of working and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

RECOMMENDATION/S

- 1) That approval is given to the granting of a lease to Daneshill Sailing Club for use of Daneshill Lakes on the basis as outlined in this report and exempt appendix.

Jas Hundal

Service Director – Transport, Property & Environment

For any enquiries about this report please contact:

Constitutional Comments (CEH 12.08.15)

10. The recommendation falls within the delegation to the Finance and Property Committee under its terms of reference.

Financial Comments (TR 24.08.15)

11. The financial implications are set out in the exempt appendix to the report.

Background Papers and Published Documents

12. None.

Electoral Division(s) and Member(s) Affected

13. Ward(s): Misterton

Member(s): Councillor Liz Yates

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SP: 2916

Properties affected: 62022 - Daneshill Lakes