



Devizes
Town Council

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DEVIZES TOWN **COUNCIL**

You are summonsed to attend a meeting of the Devizes Town Council held remotely at the following date and time.

Date: Tuesday 26 May 2020

Time: 6.00 pm

<https://us02web.zoom.us/j/82141177232?pwd=Rld1SkNlcnp4bllwY05KaXhibFJWQT09>

Meeting ID: 821 4117 7232

Password: 659920

Enquiries: Town Hall - Tel: 01380 722160

Councillors:	Bridewell	Burton	Corbett
	Carter	P Evans	S Evans
	Gay	Geddes	Giraud-Saunders
	Godwin	Greenwood	Hopkins
	Johnson	Nash	Parsons
	Pennington	Rose	Rowland
	Shaw	Stevens	Von Berg

AGENDA

Please not that Standing Order No 5 (members to stand when speaking) is suspended for digital meetings

1. MINUTES

To approve as a correct record and authorise the Chairman to sign the minutes of the Statutory Meeting of the Council held on the 14 May 2020

2. APOLOGIES FOR ABSENCE

3. DISCLOSURE(S) OF INTEREST

To receive any disclosures by a Councillor(s) and/or Officers in matters to be considered at this meeting in accordance with the provisions of Sections 94 or 117 of the Local Government Act 1972 or the National Code of Local Government Conduct.

4. To receive announcements and communications.

5. To answer questions (if any) under standing order No. 15.

6. REPORT FOR DECISION – TO APPROVE THE “ASSET TRANSFER AND SERVICE DEVOLUTION AGREEMENT” WITH WILTSHIRE COUNCIL

Recommendation

The Council agrees the Asset Transfer and Service Devolution Agreement” with Wiltshire Council, which should come into effect from the 1st of June 2020.

Purpose of the Report

That the Council authorised officers to finalise the Asset Transfer and Service Devolution Agreement” with Wiltshire Council.

Background

The principle of taking on new services and assets from Wiltshire Council through an “Asset Transfer and Service Devolution Agreement” was agreed by this Council in November 2018 which was then agreed by Wiltshire Council in the same year.

Regrettably the negotiations were particularly protracted and were compounded by TUPE implications that applied to the agreement. Fortunately, once the negotiations reached the legally bound timeframe for dealing with staffing matters, we were able to press for some clarity which has given officers the confidence to complete the negotiations and make its recommendation.

Set out below is a summary of the key terms of the Asset Transfer and Service Devolution Agreement and details of the Property Transfers. *A full copy of the agreement is circulated alongside the agenda for information. It will not be put into the public domain as we are bound by a confidentially agreement*

The overall intention of the agreement is to transfer certain open spaces, play areas and The Shambles Market from Wiltshire Council to the Town Council and to also delegate certain obligations and services from Wiltshire Council to the Town Council. Particular provisions to be aware of are as follows:-

Clause 5

The Town Council agree to adopt a suitable management plan for the future maintenance upkeep and protection of Drews Pond Local Nature Reserve and going forward comply with any reasonable requirements and recommendations of Natural England.

Clause 6

Under the agreement Wiltshire Council delegate the powers and obligations to provide the services set out in the agreement to the Town Council. Broadly speaking the services consist of:

(i) the Maintenance Services – these include cleaning and waste disposal and verge maintenance of highways (but excluding hard surface maintenance and safety related services which stay with Wiltshire Council), grounds maintenance, cleaning and repair and maintenance and safety related services for all amenity land but in each case only to the minimum standards required by the relevant legislation. The delivery of the service has historically been carried out by a contractor on behalf of Wiltshire Council and the transferred service will in future be undertaken in house by Devizes Town Council employed staff. The changes in service delivery has implications for those staff who undertake the work and therefore these staff are protected by legislation and have a right to be transferred with the services provided they meet certain criteria. Agreed negotiations have resulted in 6 staff joining the Council's open spaces team.

The amenity land is all areas within Devizes where Wiltshire Council provided services immediately prior to the transfer of assets. This can include housing revenue account land as defined in the agreement but excludes highways.

(ii) the Market Management Services – these relate to the management of The Shambles Market.

(iii) the Closed Churchyard Services – these relate to maintaining and keeping the walls, fences, trees, paths, memorials and other features transferred in decent order and in good repair to a minimum statutory standard. Please see the definition of "Closed Churchyards" on page 2 of the agreement.

There is a provision in clause 6 for Wiltshire Council to serve notice on the Town Council at any time terminating the delegation of any or all of the delegated functions.

Clause 8

Wiltshire Council agree to use reasonable endeavours to procure performance of the current maintenance contract until its expiry on 1st June 2020 insofar as this is necessary to enable the Town Council to perform its delegated functions. From 1st June 2020 Wiltshire Council cease to have responsibility for delivering any maintenance services and responsibility transfers to the Town Council.

The Town Council agree to pay the contributions set out in Schedule 5 of the agreement to Wiltshire Council as a contribution towards the maintenance contract until its expiry.

Clause 8.7 – A map has been provided indicating the areas maintained by Wiltshire Council at the date of the agreement together with a live link going forwards. It is important to understand that Wiltshire Council do not warrant the accuracy of that map and there are provisions that allow Wiltshire Council to add new areas to the map going forwards. The Town Council's protection is that it only needs to maintain any additional areas to the minimum standards. Wiltshire Council have agreed in principle that if they add an area to the map in the future as a result of accepting land from a developer in return for receiving a maintenance contribution then they will pass on that maintenance contribution to the Town Council.

The Town Council have the ability to increase the scope of the services beyond the level set out in the maintenance contract but this will be the Town Council's responsibility.

Wiltshire Council retain a right to dispose or deal with any amenity land as they see fit but agree to consult with the Town Council first. However, the ultimate decision is down to Wiltshire Council.

Clause 9

The Town Council agree to provide the Closed Churchyard Services including being responsible for carrying out memorial inspections every 5 years.

The Town Council agrees to take all reasonable steps including legal proceedings if necessary (but the Town Council have discretion to decide what steps are taken as long as they take necessary action) to prevent antisocial behaviour at the closed churchyards and to ensure they remain a fit and safe space. There are rights for Wiltshire Council

to access the churchyards each year to check compliance with these obligations.

Ongoing maintenance is at the Town Council's own cost.

Clause 10

This provides that the Town Council will take over the Market Management Services. There is an obligation on Wiltshire Council to transfer all records relating to the market to the Town Council.

The Town Council will take over the market services at its own cost. If there were any arrears under any market leases that relate to the period prior to the transfer date these still belong to Wiltshire Council.

Clause 12

Section 106 Monies – Wiltshire Council agree within 28 days of the date of the agreement to pay the Section 106 monies set out in Schedule 3 to the Town Council. The Town Council must only use these monies in accordance with any restrictions in the Section 106 Agreements.

There is also a statement that in respect of any future Section 106 contributions received by Wiltshire Council, Wiltshire Council will decide at its own discretion whether it is appropriate to transfer any monies to the Town Council.

Clause 13

This clause makes it clear that Wiltshire Council are not required to make any payment to the Town Council other than the Section 106 monies referred to in clause 12 above and all costs shall be met by the Town Council.

There are also provisions to deal with compliance with state legislation. The Town Council agree that if any monies transferred from Wiltshire Council to it are considered unlawful state aid such monies will be repaid to Wiltshire Council within 20 business days. Please note that if the Town Council pass these monies on to a third party the Town Council need to include a similar provision in that document to enable the Town Council to recover these monies back in order to comply with the requirement to pay Wiltshire Council. The Town Council are responsible for any interest in relation to any monies paid to third parties (other than at the direction of Wiltshire Council).

Clause 14

There are provisions for either party to terminate the agreement in the event that either party commits a “Prohibited Act” as defined in the Agreement.

Clause 15

This clause makes it clear that the Town Council cannot rely on any representations given by Wiltshire Council in relation to any of the matters in the agreement.

Clause 16

This clause contains an indemnity from the Town Council in favour of Wiltshire Council against any losses incurred as a result of the Town Council’s failure to provide services or exercise their delegated functions or other breach of the agreement.

Wiltshire Council give a similar indemnity for any breach of the agreement by them.

There is a provision for the Town Council and Wiltshire Council to meet at least once a year to monitor the Town Council’s exercise of the delegated functions.

There is also provision that if either party receives a complaint or threat of claim from a third party in relation to a delegated function or service the matter shall be referred to the other party and no action shall be taken without the prior approval of the other party acting reasonably.

Clause 17

This clause states that any dispute will be referred to each party’s authorised representatives initially and then escalated to Wiltshire Council’s Corporate Director and the Town Council’s Mayor followed by mediation if necessary.

Clause 18

This clause states that if any third party makes a claim against either Wiltshire Council or the Town Council or threatens to do so notice must be given to the other. No liability must be admitted and the relevant party must allow the indemnifying party to take conduct of that claim. We have discussed with you that these provisions are unnecessarily restrictive in our view but Wiltshire Council have refused to negotiate this clause.

Clause 19

This clause requires the Town Council to maintain insurance in respect of any risks under the agreement.

Clause 20

This clause states that the Town Council may not assign the benefit of the agreement without the consent of Wiltshire Council acting reasonably.

Clause 21

This clause requires each party to comply with all data protection legislation in relation to the subject matter of the agreement and contains provisions for the sharing of personal data between the parties.

Schedule 1

This sets out the maintenance services in detail.

SUMMARY OF THE KEY TERMS OF THE PROPERTY TRANSFERS

The following properties are being transferred:

1. Alan Cobham Road Play Area and Osmund Road
Play area
(Title Number WT292859 – Whole)
2. Belvedere Terrace
Open space and
(Title Number WT315071 – Whole)
play area
3. Byron Road and Newman Road (Heritage Park)
Open space and
(Title Number WT291103 – Whole)
play area
4. Brickley Lane
Play area
(Title Number WT315071 – Whole)
5. Cowslip Close
Play area
(Title Number WT187154 – Whole)
6. Festival Close
Play area

DEVIZES TOWN COUNCIL
26 May 2020

- (Title Number WT243223 – Part)
7. Fruitfields Close
Play area
(Title Number WT246956 – Whole)
 8. Massey Road
Open space and
(Title Number WT241811 – Part)
play area
 9. Quakers Road and Palmer Road
Open space and
(Title Number WT318183 (Part) and WT301458 (Whole))
play area
 10. Spitalcroft
Open space and
(Title Number WT31087 – Whole)
play area
 11. White Horse Way
Play area
(Title Number WT293652 – Part)
 12. The Shambles
Covered market
(WT253893 – Whole)
 13. The Shambles Car Park
Service yard
(WT225569 – Part)
 14. Drews Pond Wood
Woodland
(WT164018 – Part)
 15. Broadleas Woodland
Queen Elizabeth
(Title Number WT259903 – whole) II
Field

The key provisions of the Transfers are as follows:

1. Use

The properties can only be used for the uses specified above or any other use for the benefit of the local community (such as

recreation areas, public open space, sports facilities and (if ancillary to the community use) car parking and the sale of food and drink).

If the use changes as above the Town Council must notify Wiltshire Council at least 20 working days before any change of use.

The properties must not be used in a way that causes a nuisance to Wiltshire Council or any adjoining land.

These restrictions apply forever.

Please note some of the properties already contain further restrictions on use as set out in the separate title summary report.

2. Cessation of Community Use

In the event that the Town Council ceases to use any part of any property permanently for community use the Town Council must notify Wiltshire Council and use reasonable endeavours to sell the relevant part of the property on the open market and pay Wiltshire Council 50% of the net sale proceeds. Note that Wiltshire Council have to agree the sale price.

3. Disposals

If the Town Council intend to dispose of any of the properties (meaning a transfer, lease where the Town Council cannot get possession on 12 months' notice or grant of easement or other legal interest) and the community use has not ceased the Town Council must obtain a Deed of Covenant from the disposee to agree to be bound by the provisions above.

The Town Council must also give Wiltshire Council notice within 20 days after any disposal.

There are minor exceptions allowing the Town Council to make a disposal of part of the properties to utility suppliers etc, without the transferee needing to comply with the above subject to various conditions.

There will be the usual restriction on the title register of each property to prevent the Town Council making a disposal without complying with the above.

The Town Council cannot charge any of the properties without the consent of Wiltshire Council.

If there is any dispute regarding the terms of the property transfers this is referred to arbitration.

SPECIFIC PROPERTY RIGHTS, RESERVATIONS AND COVENANTS

The following properties have the benefit of the following specific rights but are subject to the following specific reservations and covenants affecting the property:

1. Drews Pond Wood

Rights granted for benefit of property

- A right of way at all times on foot only in connection with use of the property over the access way shown coloured brown on the plan attached to the transfer.
- The free right of passage of utilities through any service media currently existing under Wiltshire Council's retained land (but not the right to lay new service media or make new connections) together with ancillary rights of entry. Wiltshire Council have the ability to divert the route of any service media
- Rights of entry onto the retained land to erect or maintain currently existing boundary features which the Town Council are responsible for

Rights over the property

- The right (subject to the prior consent of the Town Council acting reasonably) to connect into and the right (subject to the prior consent of the Town Council as to location acting reasonably) to lay and construct service media on the property together with the free rights of passage of utilities together with ancillary rights of entry. The Town Council have the ability to divert the route of any service media.
- A right of way at all times and for all purposes over the property as a means of access to Green Lane, Wick Lane and Pans Lane.

We have discussed with you that these rights amount to full development rights

Positive covenants

- The Town Council must maintain in good repair and condition a continuous post and wire boundary fence along the southern boundary of the property between points marked A, B and C on the plan attached to the transfer.

2. The Shambles

Rights granted for benefit of property

- The right (subject to the prior consent of Wiltshire Council acting reasonably) to connect into and the right (subject to the prior consent of Wiltshire Council as to location acting reasonably) to lay and construct service media on Wiltshire Council's retained land together with the free rights of passage of utilities together with ancillary rights of entry. Wiltshire Council have the ability to divert the route of any service media

Rights over the property

- The right (subject to the prior consent of the Town Council acting reasonably) to connect into and the right (subject to the prior consent of the Town Council as to location acting reasonably) to lay and construct service media on the property together with the free rights of passage of utilities together with ancillary rights of entry. The Town Council have the ability to divert the route of any service media

Positive covenants

- The Town Council are responsible for the occupational leases at the market with effect from 1st April 2019.

3. The Shambles Car Park

Rights granted for benefit of property

- A right of way (with or without vehicles) at all times in connection with use of the property over the access way shaded brown on the plan attached to the transfer. Wiltshire Council have the ability to divert the access way in the future.

- The right (subject to the prior consent of Wiltshire Council acting reasonably) to connect into and the right (subject to the prior consent of Wiltshire Council as to location acting reasonably) to lay and construct service media under the access way on Wiltshire Council's retained land together with the free rights of passage of utilities together with ancillary rights of entry. Wiltshire Council have the ability to divert the route of any service media.

Rights over the property

- The right (subject to the prior consent of the Town Council acting reasonably) to connect into and the right (subject to the prior consent of the Town Council as to location acting reasonably) to lay and construct service media on the property together with the free rights of passage of utilities together with ancillary rights of entry. The Town Council have the ability to divert the route of any service media.

4. White Horse Way

Rights granted for benefit of property

- A right of way (with or without vehicles) at all times over the access way currently constructed or to be constructed on Wiltshire Council's retained land in order to gain access to the property but not for any other purpose.
- The right (subject to the prior consent of Wiltshire Council acting reasonably) to connect into and the right (subject to the prior consent of Wiltshire Council as to location acting reasonably) to lay and construct service media on Wiltshire Council's retained land together with the free rights of passage of utilities together with ancillary rights of entry. Wiltshire Council have the ability to divert the route of any service media
- Rights of entry to erect or maintain boundary features which the Town Council are responsible for or for maintaining or erecting any structure on the property which is not otherwise accessible.
- Rights of support from Wiltshire Council's retained land and all buildings on it for the property.

Rights over the property

- The right (subject to the prior consent of the Town Council acting reasonably) to connect into and the right (subject to the prior consent of the Town Council as to location acting reasonably) to lay and construct service media on the property together with the free rights of passage of utilities together with ancillary rights of entry. The Town Council have the ability to divert the route of any service media
- Rights of entry to erect or maintain boundary features which Wiltshire Council are responsible for or for maintaining or erecting any structure on Wiltshire Council's retained land which is not otherwise accessible.
- Rights of support from the property and all buildings on it for the benefit of Wiltshire Council's retained land.

Except as set out above the properties do not have any further rights over any other land of Wiltshire Council. If there are any other rights that are needed please let me know.

TITLE MATTERS

Wiltshire Council are registered as the legal owner of all of the properties with title absolute.

A separate report has been provided to you summarising the title issues relating to each property.

The properties are transferred subject to any matters that affect each property and anything that could have been discovered by an inspection of the property or by carrying out searches.

Wiltshire Council will not answer property enquiries so we cannot be certain there are no third party rights.

Wiltshire Council have also been unable to confirm whether they make payments to any third parties in relation to any of the properties.

SEARCHES

You asked us not to carry out any searches, therefore we cannot confirm matters such as:

- (i) the planning history of each property
- (ii) whether each property directly adjoins the public highway

SHAMBLES MARKET AND EPC

Wiltshire Council are not willing to provide an EPC for the Shambles Market. You have confirmed that you are happy to proceed without this. You should be aware that it is possible you will be required to produce an EPC for future lettings of the Shambles Market and if the EPC rating is less than the minimum standard (currently an "E" rating) and the building does not fall within an exemption you may have to carry out works to increase the energy efficiency of the building before leases can be granted.

SHAMBLES MARKET AND REFURBISHMENT WORKS

The Town Council will be receiving an assignment of the benefit of two Construction Contracts as follows:

- (i) Contract dated 31st October 2011 with Steele Davis in relation to works to the roof and external joinery.
- (ii) Refurbishment Contract with Steele Davis dated April 2015.

Unfortunately, Wiltshire Council would not answer any questions or provide any further information on these Contracts. We have discussed with you that we are therefore not aware if there are any issues with the works carried out under these Contracts. Please also note that we have never received full copies of all of the Contract documents which means in reality it is very hard to know exactly what the contractor agreed to do and for the Town Council to take any action if there were any issues.

SECTION 106 AGREEMENTS

In relation to the Section 106 Agreements affecting the various properties our solicitors are trying to seek clarification from Wiltshire Council's planning team that there were no outstanding issues under any of the agreements.

MARKET PLACE

The transfer of the Market Place has been deferred and does not form part of this transaction

Options Considered

The committee needs to decide if it accepts the agreement as drafted or wishes to walk away from the “Transfer and Service Delegation Agreement”. It should be noted that no further negotiation will be entered into.

Implications and Risks

Financial and Resource Implications

The financial implications are set out in both the agreement and have been discussed and agreed in the 2020/21 budget.

Legal Implications and Legislative Powers

The Council will be considering this matter under its General Power of Competence

Environmental Implications

Officers are unaware of any environmental implication for the Council associated with this decision.

Risk Assessment

The risk implications are set out in the report. Officers are now satisfied that the risks are now manageable which they were not prior to officers recommending adoption of the agreement.

Crime and Disorder

Officers are not aware of any issues the Council should consider under crime and disorder

10. TO PASS THE FOLLOWING SEALING RESOLUTION

THAT the Common Seal of the Council be affixed to or the Town Clerk do sign on behalf of the Council where appropriate any Orders, Deeds or Documents necessary to give effect to any of the matters and recommendations contained in the reports received and adopted at this meeting or other decisions of the Council thereat.

11. QUESTION TIME

A short time is allowed at the discretion of the Town Mayor for councillors to ask questions on matters which are not on the current agenda but which are related to matters which have been previously discussed on an agenda relevant to the committee.

At least 24 hours' notice must be given to officers of the intended question. All other matters should be raised on an agenda and the request should be submitted through the Town Clerk

12. PUBLIC PARTICIPATION

At the Chairman's discretion, members of the public attending the meeting will be allowed to ask questions addressed to the Chairman concerning the administration, function or responsibilities of the Council or upon a matter, which was the subject of debate at the meeting. A person may also be permitted to make a statement or address the Council upon a matter of concern to that person which is relevant to local government, or to the Council's administration or upon a subject, which may be of general interest to the Council. A time limit of 5 minutes per person will be permitted, but this may be extended at the Chairman's discretion and a maximum period of 20 minutes has been allocated by the Council for this item of business.

Councillor Andy Johnson

Town Mayor