

Agenda Item No: 6 **Report No:** 75/16

Report Title: Devolution Update

Report To: Devolution Committee **Date:** 15 June 2016

Cabinet Member: Cllr Tony Nicholson

Ward(s) Affected: All

Report By: Head of Property and Facilities
Assistant Director of Corporate Services

Contact Officer(s)-
Name(s): Bee Lewis; Catherine Knight
Post Title(s): Head of Property and Facilities; Assistant Director of Corporate Services
E-mail(s): bee.lewis@lewes.gov.uk; Catherine.knight@lewes.gov.uk
Tel No(s): 01273 471600 ext 1101; 01273 471600 ext 1116

Purpose of Report:

To update committee members as to the state of progress on devolution of land to town and parish councils and to seek the Committee's endorsement of the approach being taken by officers towards overage.

Officers Recommendation(s):

- 1 To note the state of progress on devolution of land to town and parish councils.
 - 2 To note and endorse the approach being taken by officers towards the overage as set out in paragraph 3.5 of the report.
 - 3 To approve the recommendation that the overage period is reduced to 30 years; is triggered upon implementation of a planning decision; and that any restrictive covenants relating to maintenance and repair are stripped out of existing draft documents. Additionally overage is to apply only where there is an uplift in value of the transferred land.
 - 4 To approve the recommendation that the Head of Property and Facilities write to the towns and parishes asking for written confirmation that they are able to agree to the principles set out in paragraph 2.12 before any transaction commences and further, to set a deadline of 6 months for the transaction to complete to avoid protracted negotiations.
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1. Reasons for Recommendations

- 1.1 This is a quarterly progress report as required by Devolution Committee at its meeting on 26 October 2015.

- 1.2 To save unnecessary officer resource and legal costs in progressing devolution projects which ultimately fail for lack of agreement between the parties as to the terms of overage.

2. Information

- 2.1 The background to this project is set out in the report to Devolution Committee dated 26 October 2015. A further update report came to Committee on 2 February 2016. The purpose of this report is to make members aware that progress on devolution is proving far more onerous than had been anticipated. It is using up significant officer time for negligible output.
- 2.2 It is clear that this is for the most part due to the failure of the district council and the town/parish concerned to agree the terms of devolution regarding overage. In some cases negotiations have progressed to a very advanced stage before the town/parish has either raised misgivings or resiled from the deal. This has proved an inefficient use of district officer time resource. To date legal officers have spent in excess of 178 hours attempting to finalise devolution land transfers but to date only one (Hamsey Parish Council), is anywhere near completion.
- 2.3 The district council's inclusion of overage provisions in the transfers of property implements a recommendation which was made to the district council by the District Valuer (DV) specifically in connection with this project. The DV's office is well aware of how overage might be expected to be applied to public sector transactions and there does not seem to be any good reason for the district council failing to follow the DV's advice.
- 2.4 Accordingly, the Council's Cabinet has previously resolved in January 2014 that all devolution transfers must contain appropriate overage provisions:
- "Subject to satisfying the requirements set out ... below it is anticipated that open space sites within the special expenses proposals will be transferred at nil cost where the public use remains substantially the same."* and
- "Any future changes in use of land transferred at nil cost will trigger a market value payment for the transferred site and an overage clause payment."*
- 2.5 The Financial Update report to Cabinet in January 2014 also makes provision for a failure to agree:
- "If at any stage during the devolution process it seems that devolution of any site no longer accords with these principles, the in principle decision to devolve will be re-assessed"*
- 2.6 A meeting was held with town/parish clerks on 24 May. The Chief Executive of Sussex and Surrey Association of Local Councils was in attendance together with the district council's Head of Property and Facilities and the district council's Leader, Cllr Andy Smith. Cllr Smith also attended the meeting. The meeting was helpful in that it provided an opportunity for any remaining confusion about the purpose of overage and the way in which it operates to be cleared up.

- 2.7 Additionally, there was an opportunity for the towns and parishes to raise other concerns they had about the obligations that would rest with them as part of the land transfer. While the principle of overage was generally accepted, there are other matters which also need to be resolved as set out in paragraphs 2.8 to 2.11 below.
- 2.8 Central to the concerns expressed was the trigger for overage, and the length of time overage applies for after the transfer. The current drafting states that overage takes effect when planning consent is gained. However, the towns and parishes are uncomfortable with this point as they have no control over who submits a planning application on their land. A better mechanism would be for overage to take effect from planning approval implementation (ie a spade in the ground). This would significantly reduce any risk that the towns and parishes may be exposed to.
- 2.9 The current proposal for transfer sets an overage period of 50 years. Again, the towns and parishes felt that this was too long and would be seeking to reduce the overage period. However, it is important to note that if the trigger for overage moves to planning implementation, then a long overage period is recommended. It is recommended that a compromise position is agreed at 30 years.
- 2.10 There were lengthy discussions about the purpose of overage and the types of events that may trigger it. The District Council was clear that overage should only apply when there is an uplift in value, or change of use leading to an uplift in value, of the land. Any instances of wayleaves, easements, rental income or other revenue streams would not be of any interest to the District Council and it does not wish to complicate or interfere in the day to day management of the asset once it is transferred.
- 2.11 Similarly, the towns and parishes raised concerns that the District Council, by including a restrictive covenant in the Deed of Transfer relating to the repair and maintenance of the assets, was placing unreasonable obligations on the towns and parishes. After consideration, officers believe this is a point which can be conceded, removing a further obstacle to transfer. This recommendation would also help to deal with the complaint that the Council's preference for a one-size-fits-all Deed of Transfer was unworkable, particularly when considering the size and scope of each transaction – for example a play area is not comparable to a recreation ground.
- 2.12 It is therefore recommended that the overage period is reduced to 30 years; is triggered upon implementation of a planning decision; and that any restrictive covenants relating to maintenance and repair are stripped out of existing draft documents. Overage as currently drafted already works on the basis that it is only payable where there is an uplift in value of the transferred land. To allay concern on the part of towns and parishes, the drafting should in addition include an explicit statement that overage is to apply only where there is an uplift in value of the transferred land resulting from the planning decision.
- 2.13 It is also recommended that the Head of Property and Facilities write to the towns and parishes asking for written confirmation that they are able to agree to the principles set out in paragraph 2.12 before any transaction commences

and further, to set a deadline of 6 months for the transaction to complete to avoid protracted negotiations.

3 Financial Appraisal

- 3.1 The costs of maintaining sites at Newhaven, previously reported to Devolution Committee, have been removed from the Council's budget for 2016/17 on the assumption that these sites will be devolved early in the 2016-2017 financial year.
- 3.2 Should it prove not to be possible to devolve the sites as anticipated, a further report will be brought to Devolution Committee setting out the risks and implications.

4 Legal Implications

- 4.1 These are contained within the body of the report.

5 Risk Management Implications

- 5.1 The key risk to the Council arises from the transfer of land at nil value. The Council has a duty under Section 123 of the Local Government Act 1972 not to dispose of land for a consideration less than the best that can be reasonably obtained. Applying the principles of overage to the transaction will assist the Council to meet its obligations under the Act.
- 5.2 There are further financial risks to consider should it not be possible to transfer the sites as anticipated, however those risks will be set out in a further report if necessary.
- 5.3 There are no additional risks arising as a result of the recommendations within this report.

6 Equality Screening

- 6.1 As this is an update report, there are no additional equality impacts arising.

Background Papers

None

Appendices

None