

Agenda Item No: 6 **Report No:** 15/15
Report Title: Devolution of Open Spaces to Town and Parish Councils
Report To: Devolution Committee **Date:** 27 January 2015
Cabinet Member: Councillor Andy Smith
Ward(s) Affected: All
Report By: John Magness, Director of Finance
Contact Officer(s)-
Name(s): John Magness
Post Title(s): Director of Finance
E-mail(s): John.magness@lewes.gov.uk
Tel No(s): 01273 484467

Purpose of Report:

To provide information on matters raised at the last December meeting, that require further consideration.

Officers Recommendation(s):

- 1 That the Devolution Committee gives further consideration to the matters identified at the last meeting.
 - 2 That the Devolution Committee makes recommendations to Cabinet.
-

Reasons for Recommendations

- 1 At its meeting on 9 December 2015 the Committee identified several points for further consideration
- 2 **Information**
 - 2.1 The areas highlighted for further consideration following the last meeting were:
 - Provision of site plans for the remaining open space sites.
 - How the District Council might share information and due diligence with the relevant authorities, including site surveys.
 - Any reserves and balances that might be considered for transfer with devolved assets.

3 Provision of Site Plans

- 3.1** Site plans for the open spaces subject to Special Expenses are attached at Appendix A.
- 3.2** The Committee is requested to consider if there are reasons why the sites or part of any site should not be considered for devolution to Town/Parish Councils.
- 3.3** The site plans for Seaford have been excluded at this point in time because the Town Clerk has advised that the Town Council's resources are committed to delivering existing projects.

4 The due diligence process.

- 4.1** Each party to a commercial transaction will undertake its own diligence to ensure that all facts are established and understood before deciding whether to conclude a transaction. Each party needs to make its own assessment because there will be factors unique to each party that will affect the decision whether to proceed.
- 4.2** Whilst Lewes District Council cannot carry out the due diligence process for a Town/Parish Council, a framework was prepared and circulated to the Town/Parish Clerks last year. The Committee considered this at its last meeting.
- 4.3** In order to assist Clerks further, information held by the District Council can be shared with them in order to provide a better understanding of each site to be considered for transfer. This would include any asset management plans and details of expenditure incurred in recent years on maintenance and repairs.
- 4.4** There will be specific sites with unique circumstances that need to be taken into account. For example, one of the Newhaven open space sites is a former landfill site. In this instance any files held by the District Council can be shared with the Town/Parish Council.
- 4.5** Requests may arise during the devolution discussions where the District Council is asked:
 - to fully fund or contribute towards site survey costs.
 - to provide an indemnity should liabilities arise at a future point following transfer

The Committee may wish to provide Cabinet with its views on such requests.

5 Reserves and Balances

- 5.1** There are some reserves and developer contributions held within the Council's accounts that could be considered as part of a devolution package.

- 5.2** The previous phases of devolution to Seaford Town Council provide a precedent for considering the transfer of site specific reserves and balances and to whether any other time limited financial support would be appropriate in specific circumstances.
- 5.3** Appendix B sets out all of the Developer Contributions for the whole District; currently received and accounted for within the Council's financial accounts. The list is sorted by the site that generated the contribution. The listing shows the purpose of the contribution and whether it is due for payment to the District Council or to East Sussex County Council.
- 5.4** Often there are triggers in Developer Agreements that specify when payments become due e.g. on large housing developments the trigger may be after occupation of "x" homes. Please note that contributions due but not received, are excluded from this list. It is a specific list of the balances in the Council's accounts. The majority of these contributions have been allocated for use to specific projects.
- 5.5** Within the Council's earmarked reserves there are two amounts held for specific open space areas:
- £41,000 is held for Southover Grange Gardens, Lewes, and
 - £48,000 is held for the West Quay areas in Newhaven.
- 5.6** The only other specific reserve is that funding play equipment renewal across all sites. The reserve receives an annual contribution of £10,000 and the reserve balance at April 2015 is estimated to be £78,000.
- 5.7** Any uncommitted source of time limited funding in the budget could also be used to facilitate the devolution process. In recent years there has been such provision in the annual estimates. The November 2014 Medium term Finance Update to Cabinet indicated a provisional amount of £110,000 for 2015/2016.

6 Financial Appraisal

- 6.1** Already referred to in the above paragraphs.

7 Legal Implications

- 7.1** Reports on title will be prepared for all sites covered by special expenses, should Towns and Parishes wish to accept devolution. The first phase of this work covers sites in Lewes, Newhaven, Ringmer and Hamsey. The reports will enable Town and Parishes to understand details of the legal title being transferred, and assist with the legal procedures for transferring sites authorisation is given to proceed to completion.
- 7.2** Devolution Committee does not have authority to authorise the disposal of land. However, the Committee can make recommendations to Cabinet.

7.3 These sites are open space. Section 123 of the Local Government Act 1972 imposes a statutory duty on the Council to advertise proposed disposals and consider any objections before a decision is made as to whether or not to dispose of the land. Section 123 applies to disposals from one authority to another.

7.4 Further legal advice is set out in the attached exempt appendix.

Sustainability Implications

I have completed the Sustainability Implications Questionnaire and there are no significant effects as a result of these recommendations.

8 Risk Management Implications

Risk

The Town Councils have a valid concern that by taking on devolution and increasing their precepts, they will be caught by the excessive council tax rise criteria, determined each year by the Secretary of State. They have asked for a solution to be found in the event this happens.

Mitigation

Any Council caught by the criteria can appeal to the Secretary of State. If there is a straight transfer of tax raising from one tier of council to another, this might be accepted as a valid reason for exemption from the excessiveness criteria.

The District Council has made a consultation response to the 2015/2016 Local Government Finance Settlement suggesting that Devolution between tiers of Councils is exempted from Government council tax setting controls in certain circumstances. A copy of the response is attached at Appendix C.

9 Equality Screening

An equality screening analysis has been conducted on this report. The proposals in this report have no impacts on equality.

10 Background Papers

None

11 Appendices

Appendix A: Open Space Site Plans.

Appendix B: Developer contribution balances recorded in the Council's Accounts.

Appendix C: 2015/2016 Local Government Finance Settlement consultation response.

Appendix D: Exempt Legal Advice Appendix