

Commercial Property Disposals – Winsham Allotments and Band Hut

Executive Portfolio Holder: Councillor Tim Carroll, Finance and Spatial Planning
Strategic Director: Mark Williams, Chief Executive Officer
Assistant Director: Donna Parham, Finance and Corporate Services
Lead Officers: Donna Parham, Finance and Corporate Services
Ian Clarke, Legal and Corporate Services
Contact Details: donna.parham@southsomerset.gov.uk
ian.clarke@southsomerset.gov.uk

1. Purpose of the Report

1.1 The purpose of this report is to clarify the conditions that will be put in place as part of the agreement to the transfer of the former Winsham Band Hut and neighbouring allotment site to Winsham Parish Council at less than best consideration.

2. Public Interest

2.1 District Executive approved the transfer of the land on which the Band Hut sits, within the Winsham Allotment Site adjacent to Bakersfield to Winsham Parish Council in July 2012. Work has been carried out on the transfer but there remains a disagreement over the terms of an overage clause and the restrictions to which the land should be subject. The overage clause would mean that should the transferred land be developed in future or be used as an access to adjoining land owned by the Parish Council SSDC would receive a receipt that recognised and shared in any uplift in land value. The current value of the land is £20,000 but SSDC is not requiring a sum from the parish council only an overage clause which would apply should it be part of a future redevelopment. SSDC is also seeking a restriction in relation to commercial use.

3. Recommendations

3.1 That District Executive approve:

- a. the freehold transfer of the former Winsham Band Hut and neighbouring allotment site at Bakersfield, Winsham to the Parish Council for £1 such transfer to include an overage clause that should planning permission be granted for (i) commercial or business use (ii) residential housing or residential occupation (iii) use as an access to adjoining land (iv) any other use other than public recreation/allotments/community hall then the Parish Council could serve notice on SSDC requiring SSDC to allow such use to take place upon payment to SSDC of a sum equivalent to 50% of the increase in value of the land resulting from the grant of planning permission.
- b. that the freehold transfer includes the following restrictions of use namely that the land is not to be used for:- Any commercial or business use; use for residential housing or occupation of any description; use as an access with or without vehicles to any adjoining land other than for access solely and exclusively in connection with the use and maintenance of that adjoining land for public recreation purposes and in any event any use other than for public recreation and/or public allotments and/or as community hall and/or for some other Community Use **Provided Always** that the use of the land or any part thereof for community and public events and activities of whatever description that generates any income or profit for Winsham Parish Council shall be deemed not to be a breach of this covenant provided that the number of days the land or any part thereof is used for such events and activities does not exceed 28 in any 12 month period (without the prior written consent of SSDC).

4. Background

- 4.1 The original report and minutes are attached giving the background and original decision that was made in July 2012.

5. Report

- 5.1 The District Valuer in his original assessment recommended that the land was transferred preferably on a long lease with strict usage clauses. However, the Parish Council requested that to secure funds to bring the band hut back into a good state of repair that the freehold be transferred to them. The District Valuer had also made a recommendation regarding a freehold disposal if the preferred leasehold transfer was not to be pursued namely that the transfer contained restrictions on future use. In fact the District Valuer recommended that SSDC grant a long lease as opposed to a freehold transfer to “retain control over the future use of the site and adjoining land should, for example, a new access be required for the adjoining playing fields.”
- 5.2 The report to the July 2012 District Executive meeting was not absolutely clear about the overage requirements or restrictions that would be imposed. The report states “*A restrictive covenant will be placed on the land to ensure the site is retained for allotments and a community hall/hut/facility, or an uplift consideration will be payable to the District Council.*”
- 5.3 The minutes reflect some debate but again were not absolutely clear about what was required although the resolution does outline “*with suitable overage provisions*”. The Solicitor to the Council’s view is that he does not expect the Committee to consider everything that would be required in the legal documentation. The steer as far as he is concerned was clear that if the land was used in a way (other than the community use behind the transfer in the first place) that increased the land value then the District Council would not stand in the way of that alternative use on the basis that it would share in the uplifted value. In addition there should be a restriction on use to reflect the reason why the land was being transferred and to secure the overage provisions. The proposed share in uplift in value between the parties is 50% each and this is considered a generous offer when no consideration at all will have been paid for the land on acquisition. In addition it is important to appreciate there is no obligation or requirement on the Parish Council to ever redevelop the land; it could remain as a public open space recreational and amenity area until the end of time!
- 5.4 Since the report was approved there has been ongoing correspondence with Winsham Parish Council regarding what the restrictions and overage may be. Initially a “ransom strip” was written into the agreement to prevent the land being used as an access to adjoining land without our agreement which would involve the payment of share of any increased land values but this was deemed totally unsuitable by the parish council who felt it would fetter them from investing in the plot. A compromise was offered which included an overage clause should this plot of land or access from this plot be utilised as access to the land owned by the parish council next to it. Again the parish council has rejected this because they feel that they will be increasing the value by investing in the plot which would add to the value to be shared with SSDC. Our response has been that if it is used within the restrictions set out and not sold, developed or used as access this will never be an issue. In addition it is not entirely understood why the Parish Council have concluded that sharing the increased value should the land be used as an access to adjoining land (owned by the Parish Council), amounts to a ransom when they have indicated that the adjoining land would never be developed in any event. The amount of value added by the Parish Council is essentially taken into account by the 50:50 sharing

of uplift. It is possible for the share in uplift to be 75% SSDC and 25% Parish Council with an allowance made for any enhanced value added to the market value by any works the Parish Council have undertaken post land transfer. However this would likely result in the Parish Council receiving much less in cash terms than under the proposed 50:50 sharing arrangement. The Parish Council also remain unhappy with the restrictions as advised by the District Valuer which were “The permitted use of the premises is to be that of allotments only in relation to the land, together, the use of the existing band hall for community purposes only and that land in front of the band hall for the parking of vehicles only in connection with the use of band hall and allotments”.

5.5 We have now got to the point that without further instruction from District Executive the transfer cannot continue. We have apologised to Winsham Parish Council for the lack of clarity at the outset which did involve a degree of wasted time and effort by them and SSDC will now pay for its own legal costs rather than recharge them. All officers are doing is protecting the Council's interests. The restrictions we recommend are put in place are:

5.6 *That the land is not to be used for any commercial or business use; use for residential housing or occupation of any description; use as an access with or without vehicles to any adjoining land other than for access solely and exclusively in connection with the use and maintenance of that adjoining land for public recreation purposes and in any event any use other than for public recreation and/or public allotments and/or as community hall and/or for some other Community Use Provided Always that the use of the land or any part thereof for community and public events and activities of whatever description that generates any income or profit for Winsham Parish Council shall be deemed not to be a breach of this covenant provided that the number of days the land or any part thereof is used for such events and activities does not exceed 28 in any 12 month period (without the prior written consent of SSDC).*

5.7 This allows the land to be used for the purpose for which it was required by the Parish Council i.e. for community recreational and amenity purposes. It also allow a limited amount of commercial activity to generate funds for the Parish Council and community groups and clubs.

5.8 The overage provisions we recommend are put in place should ensure that if planning permission be granted for (i) commercial or business use (ii) residential housing or residential occupation (iii) use as an access to adjoining land (iv) any other use other than public recreation/allotments/community hall then the Parish Council could serve notice on SSDC requiring SSDC to allow such use to take place upon payment to SSDC of a sum equivalent to 50% of the increase in value of the land resulting from the grant of planning permission.

5.9 Whilst ultimately this is a matter for members the recommendations are designed ensure that the land/ property remains in place for the use of the community but that should this site be developed or the adjacent site be redeveloped and access is required across this land SSDC receives one-half of any uplift in value given that the land value (with restrictions) is £20,000 and being transferred at £1 which is less than best value. Clearly members can agree should they wish to do so that the land is transferred free of any restriction on use and free from any overage provisions.

6. Financial Implications

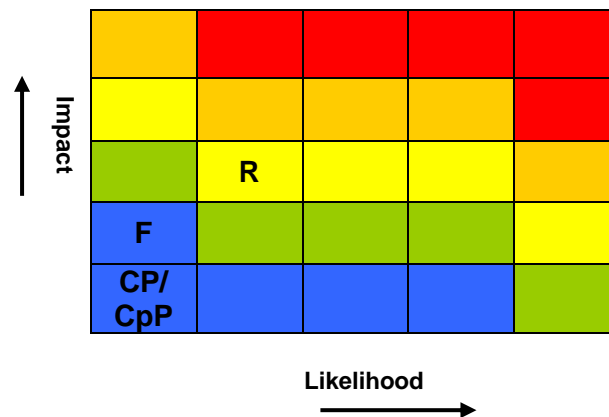
6.1 If members agree the recommendations SSDC will receive some recompense for any future uplift in value from any sale or redevelopment on or off-site where access is

required over this land. There will be no receipt if the land is forever retained by the Parish Council for the use of the community as outlined.

6.2 If Members agree to the freehold transfer without restriction or overage it will have no further influence on the use (other than as the LPA) or possible income from the sale/development/ access at a future date.

6.3 SSDC has already forgone the capital receipt of £20,000 in transferring this for less than best value. A freehold disposal for £20,000 included strict usage provisions.

7. Risk Matrix



Key

Categories	Colours (for further detail please refer to Risk management strategy)
R = Reputation	Red = High impact and high probability
CpP = Corporate Plan Priorities	Orange = Major impact and major probability
CP = Community Priorities	Yellow = Moderate impact and moderate probability
CY = Capacity	Green = Minor impact and minor probability
F = Financial	Blue = Insignificant impact and insignificant probability

8. Corporate Priority Implications

Delivering Well-Managed Cost Effective Services.
Provide even better value for money from our services

9. Carbon Emissions and Climate Change Implications

None.

10. Equality and Diversity Implications

The site will be transferred to the Parish Council who have local groups wanting and needing space. The Band Hut will meet this local need and bring a currently disused property back into use. As the Parish Council are keen to see the allotments occupied by Winsham residents this should become a community site for the benefits of all the residents in Winsham.

11. Background Papers

District Valuers' report
Report and Minutes District Executive July 2012