

**Wiltshire Council**

**Individual Cabinet member Delegated Decision**

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**Subject:** GRANT OF LEASES OR LICENCES TO TOWN & PARISH COUNCILS FOR PLAY AREAS IN WILTSHIRE

**Cabinet member:** Toby Sturgis  
For Strategic Planning (Strategic and Development management), Operational Property, Waste and Strategic Housing

**Key Decision:** Yes

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**Purpose of Report**

- 1.1 To delegate authority to the Associate Director for Business and People in consultation with the cabinet member, to grant either leases (to a maximum of 7 years) or licences to Town or Parish Council's for the future management of play areas across the County. The decision is subject to satisfactory discharge of the conditions in s123 of the Local Government Act 1972 in respect of disposal of open space.

**Background**

- 2.1 On 21<sup>st</sup> February 2017, Full Council agreed a budget proposal to reduce the funding for the inspection and repairs of play areas throughout the County (item GA3 of the budget book, reducing the budget line from £60k to £30k). With over 150 play areas this equates to a spend of less than £200 per play area, or an unfunded provision as the cost of removing the equipment or closing the area will be greater than the allocated budget.
- 2.2 Wiltshire Council have also made the decision to review the process for transferring assets to Town and Parish Council and have temporarily suspended the transfer of single assets to these authorities.
- 2.3 A number of Town & Parish Councils have approached Wiltshire Council to take over the ownership and management of play areas, including Trowbridge and Westbury. In addition the Council are aware of other Town or Parish Councils that may look to take on the provision.
- 2.4 In most cases ownership of the play area rests with Wiltshire Council by way of freehold, but some sites are maintained via dedications or s106 requirements.
- 2.5 Several of the play areas are on "fields in trust", being King George V or Queen Elizabeth II in which cases consent from the Charity Commission is required for any transfer of ownership, including short term licences.

## **Main Considerations for the Council**

- 3.1 Wiltshire Council's decision to reduce the funding available for the maintenance of play areas puts itself in a difficult position, with a lack of funds potentially resulting in play equipment being condemned or having to be removed, or where safety surfaces are no longer usable, the area closed.
- 3.2 Should Town or Parish Council's be willing to take on responsibility, this will ensure that maintenance of the play areas and equipment is undertaken by the respective Council.
- 3.3 The proposal is for the grant of the lease for a period of seven years (less a few days); although Wiltshire Council has the ability to bring the lease to an end earlier should if the site forms part of a wider asset. In some instances a licence agreement will be entered into, although this will have the same net effect.
- 3.4 The leases will be granted on a peppercorn rent (£1 pa) and be on a full repairing basis. A model lease and licence is being drafted to provide consistency across the County governing occupation.
- 3.5 As mentioned in 2.4, the freehold of some play areas does not rest with Wiltshire Council and in these instances the proposal is that a management agreement or service delegation will be entered into to transfer responsibility from Wiltshire Council.
- 3.6 The extent of the play area will need to be carefully considered, as Wiltshire Council is not looking to transfer recreation areas or playing fields at this time. The extent of the play area needs to be defined, with the following being the criteria (in priority order) to determine the extent:
  - a) fences and gates enclosing the play equipment
  - b) where no fences - hardstanding that sites the play equipment
  - c) where no fences or hardstanding area - natural boundaries on the ground, eg paths or hedge lines (this is to ensure that grass cutting regimes are consistent in the immediate area)

## **Safeguarding Considerations**

4. There are no direct safeguarding issues associated with this decision, as it ensures that play areas continue to be maintained by Town or Parish Councils.

## **Public Health Implications**

5. There are no direct public health issues associated with this decision, as it ensures that play areas continue to be maintained by Town or Parish Councils.

## **Environmental and Climate Change Considerations**

6. There are no direct environmental and climate change issues associated with this decision.

### **Equalities Impact of the Proposal**

7. There are no direct impacts on equality and inclusion issues associated with this decision.

### **Risk Assessment**

8. Various risks have been identified should the decision be taken or not and summarised below.

#### **Risks that may arise if the proposed decision and related work is not taken**

- 9.1 The following risks have been identified if the decision is not taken:
- 9.1.1 The Council would continue to fund the repairs or removal of play equipment, leading to overspend and Highways and Streetscene not meeting their budgets.
- 9.1.2 With the service in effect being unfunded play areas will either be closed if they are deemed unsafe for use or equipment being removed. This leads to a reputational risk for Wiltshire Council due to shortage of play facilities for local residents.

#### **Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks**

10. The following risks have been identified if the decision is taken:

<b>Risk</b>	<b>Action to mitigate the risk</b>
1. Council subject to challenge under s123 of Local Government Act	The proposed lease is contracted out for the term less than seven years, making it exempt from “best consideration” requirements under s123.
2. Charity commission consent is not obtained	The proposed use remains as a play area, which will meet the objectives of the “fields in trust” objectives and the fact that Town or Parish Councils will be taking on the responsibility should satisfy the charity Commission requirements.

### **Financial Implications**

- 11.1 The transfer of play area to Town and Parish Councils assists with ongoing revenue pressures for Highways and Streetscene, with their budget being reduced to a level where no maintenance is possible.
- 11.2 The leases or licences will be granted at £1pa with all other costs associated with the maintenance and management passing to the Town or Parish Council.

- 11.4 Highways and Streetscene may provide a commuted sum for the future maintenance of the play area, capped at £1,000 per site. This is subject to review and budget pressures. The limited play area funding will be prioritised to funding the transfer of play areas.

## **Legal Implications**

- 12.1 The lease will be a term of 7 years less 5 days and contracted out of the Landlord and Tenant Act 1954 meaning the Council are not obliged to offer a new lease. In some instances the play area forms part of a wider ownership, eg within a larger recreation field, in which cases a break clause will be included should Wiltshire Council decide to do anything with their wider holding.
- 12.2 Consent from Charity Commission will be required for sites held as “fields in trust”.
- 12.3 Disposal of any open space will need to be advertised under the Local Government Act 1972 (“the Act”), including the grant of short terms leases. A general advert for the disposal will be undertaken on a town by town basis, with adverts placed in the relevant local paper. Licences are except from this requirement, as they are not interests in land but a right to use.
- 12.4 The Act requires the Council to consider any objections to the proposed disposal which may be made to them. Therefore, the authority to grant the leases or licences contained in this Report is subject to the Council taking into consideration any such objections to the transfer of the play areas to local town or parish councils.
- 12.5 The disposal of play areas in Trowbridge and Westbury are being advertised, as referenced in 12.3, in the Wiltshire Star and comments are invited by 16 March. Any objections received, as referenced in 12.4, will be considered by the Associate Director for People and Business, who will be delegated to consider the validity of those objections.

## **Options Considered**

13. Not grant of leases to Town and Parish Councils, but this will result in either lack of maintenance of play equipment or closure of a number of play areas due to budget pressures resulting in an inability to fund essential repairs to the equipment.

## **Conclusions**

- 14.1 Authorise the grant of either leases or licences, as set out above, to respective Town and Parish Councils.

**Carlton Brand**  
**Corporate Director**

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### **Background Papers**

The following unpublished documents have been relied on in the preparation of this report:

None

### **Appendices**

None

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