
Individual Cabinet Member Delegated Decision

Cabinet Member for Housing, Strategic Assets, Asset Transfer – Cllr Phil Alford

Housing and Commercial

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Reference: HSAAT-01-21

Service Devolution & Asset Transfer Package - Bradford on Avon

Purpose of Report

1. To amend the recommendation associated with the final package of services and assets to transfer and to Bradford on Avon Town Council (BoA TC), as made by Cabinet on 24th March 2019, through removing reference to novation of contracts and delegating to a new Director to implement the decision.

Relevance to the Council's Business Plan

2. The council has a Business Plan objective to transfer packages of assets and services, where applicable, to parish and town councils.

Background

3. Following the completion of the Salisbury City package transfer in April 2017 the Service Devolution and Asset Transfer policy was agreed by Cabinet in November 2017 (appendix 2); it sets out clear guidelines for the packages and provides a more streamlined process including the use of standardised service delegation agreements, lease agreements and freehold asset transfer documentation.
4. On 24 March 2019, Cabinet approved the final package of services and assets to transfer to BoA TC, as set out in the copy Cabinet paper in Appendix 1. The Cabinet paper had a series of Proposals:
 - a) Consider and approve the list of services and assets that will be transferred to Bradford on Avon Town Council. The inclusion of any open space land is subject to consideration of any objections received following the advertising of the disposal in accordance with statutory obligations.
 - b) Delegate authority to the Growth and Investment Director following consultation with the Head of Estate and Development to remove assets from the final list if site constraints/legal issues are revealed as part of the detailed due diligence process
 - c) Note the net revenue impact to the Council and acknowledge that the

Service Devolution programme benefits of cost savings and avoidance will be realised on a cumulative basis as the programme progresses and as more Towns/Parishes complete the process.

- d) Delegate the implementation of the transfer of assets and the service delegation to the Growth & Investment Director in consultation with the Cabinet Member for Housing, Corporate Services, Arts, Heritage and Tourism,

5. After negotiation of the final devolution agreement it has been identified that the transfer of services to BoA TC should not be conducted through a “novation” of the current Streetscene contract, instead BoA TC will be asked to make a contribution to the contract which will be retained by Wiltshire Council.
6. In addition, Proposal 2 and 4 make reference to the Growth and Investment Director, a post that no longer exists within Wiltshire Council. The paper sets out a replacement Proposal in these respects.

Main Considerations for the Council

7. Since the decision to transfer the assets and services to BoA TC negotiations have been held to finalise the terms of the transfer. These negotiations have confirmed that the list of assets remains as per the original decision, with the exception of “Avon Close land to the east” which is now the grant of access rights only, yet the proposal to “novate” a part of the current Streetscene contract is not possible.
8. Rather than “novate” the idverde contract to BoA, the requirement will be for BoA TC to make a contribution to the contract costs. This proposal has been discussed with the Town Council and accepted in principle, subject to some clarification. A novation is a contract which is between the original parties to the contract (idverde and Wiltshire Council) and the third party (here, BoA). The novation agreement would transfer all one party’s rights and obligations under the contract to another (Wiltshire Council to BoA) and this process is known as novation. Novation extinguishes the original contract and forms a new contract between the remaining party and the third party on the same terms as the original agreement.
9. By proposing to novate the original agreement to BoA, it was anticipated that the parties would only novate that part of the original agreement that related to the services within the Bradford upon Avon town boundary. Unfortunately, a partial novation would, as a matter of law, still extinguish the original agreement. If the novation was carried out, the agreement between Wiltshire Council and idverde would no longer exist. This would have some unintended consequences.
10. A better alternative is for the TC to make a contribution towards the contract costs during its term, and after the agreement terminates, the TC can make its own arrangements to secure a contractor for the services, taking into account TUPE. There is also a possibility under the current contract to make a contribution for a few months and agree with idverde to have those services within the town boundary “drop out” of the contract, at which time the TC can make its own arrangements. The agreement with idverde terminates in November of 2022 and will not be extended beyond that date.

Overview and Scrutiny Engagement

11. In November 2017 Overview and Scrutiny Management Select Committee (OSMC) undertook a scrutiny review of the revised Asset and Service Devolution and Community Asset Transfer Policy, prior to its adoption by Cabinet.

Safeguarding Implications

12. None

Public Health Implications

13. This proposal will have a number of positive public health implications as it allows the Town Council to manage and enhance the local community services at a local level. A good example would be the redevelopment of the currently closed play areas in the Town

Procurement Implications

14. This proposal affects current contracts and will result in a reduced requirement in future contracts. The procurement team will be involved further where appropriate.

Equalities Impact of the Proposal

15. The transfer of assets and devolution of service raises no issues in respect of equalities impact.

Environmental and Climate Change Considerations

16. None

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

17. The risk of retaining the services and assets will result in increased costs for the Council in maintaining and managing the land and buildings affected by this decision and it will not empower the Town Council to take an active role in the management and improvement of the town for the benefit of its residents.

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

18. The decision could have resulted in economies of scale being lost in any re-tender of the Streetscene contract, should the approach to transfer of those services be by way of "novation". This is mitigated by the change in approach to seeking a contribution from BoA TC, as it enables those economies to be realised without a direct financial implication on the Council.

Financial Implications

19. The amendments to the recommendations set out in this report do not have any financial implications, the change from novation to contribution will deliver the same level of savings as presented in the original cabinet report. This change mitigates the risk set out in paragraph 9 above with contract novation. A service delegation agreement will be put in place to protect the Council going forward and transfer responsibility to Bradford on Avon Town Council.

Legal Implications

20. The Legal implications of this decision remain the same as the Cabinet report on 24 March 2019. Since that date the advertisement of public open space notices have occurred and no valid objections were received.
21. As set out above, partial novation may result in extinguishment of the original contract and the proposed solution ensures the risk is removed whilst retaining the ability of the Council to control the current contract with idVerde.

Workforce Implications

22. The workforce implications remain the same as when the decision was originally taken on 24 March 2019.

Options Considered

23. Not complete the transfer of assets and services – this results in the risk of increase costs for the Council and reduces the prospect of investment by BoA TC to improve facilities and services in the town.

Proposal

24. To remove the Proposals 2 and 4 as set out in the Cabinet decision of 24th March 2019 and replace with:
 - a) Delegate authority to the Director for Housing and Commercial following consultation with the Corporate Director Resources & Head of Estate and Development to remove assets from the final list if site constraints/legal issues are revealed as part of the detailed due diligence process
 - b) Delegate the implementation of the transfer of assets and the service delegation to the Director for Housing and Commercial in consultation with the Corporate Director Resources & Cabinet Member for Housing, Strategic Assets, Asset Transfer
25. To confirm that “novation” of the Streetscene contract will not occur and be replaced with a contribution to be collected from BoA TC.

Reason for Proposal

26. To complete the transfer of the package of assets and services to Bradford on Avon Town Council.
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Appendices

Cabinet paper dated 24 March 2020

Cabinet approval item 41 dated 24 March 2020