

## **Individual Cabinet Member Delegated Decision**

**Subject:** Disposal of open space to Westbury Town Council as an Asset Transfer

**Cabinet Member:** Cllr Tamara Reay - Cabinet Member for Highways and Assets

**Key Decision:** No

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### **Purpose of Report**

1. To consider the objections received following advertisement of the potential disposals of open space under s123(2A) Local Government Act 1972
2. To determine whether the proposed asset transfer to Westbury Town Council should continue.

### **Relevance to the Council's Business Plan**

3. The Service Devolution and Asset Transfer programme meets a number of Business Plan missions:
  - the people of Wiltshire are empowered to live full, healthy and enriched lives
  - our communities continue to be beautiful and exciting places to live
4. One of the Business Plan themes is to have vibrant, well-connected communities, with asset transfers being one of the identified ways to achieve this.

### **Background**

5. In September 2022 the Service Devolution and Asset Transfer policy was approved; it sets out clear guidelines for the packages of services and assets subject to transfer and provides a streamlined process, including the use of standardised service delegation agreements, lease agreements and freehold asset transfer documents.
6. The policy states a defined minimum of the services to be devolved and a defined minimum of assets to be transferred in any one local area, with recognition that some deals may differ depending on the services provided and the assets held within.
7. The Westbury Town Council service delegation and asset transfer proposal meets the policy criteria, and the services and assets to be included are set out in Appendix One and Appendix Two to the decision of Cllr. Richard Clewer of the 27 June 2024.

### **Main Considerations for the Council**

8. The proposed asset transfer to Westbury Town Council includes land that is considered to be an open space. Under Section 123(2A) of the Local Government Act 1972 any potential disposal of any land consisting or forming part of an open space must follow the procedure as set out in that section. The Council, therefore, published notice of the potential disposal in the Wiltshire Times on 13th September 2024 and 20th September 2024 (the Notice) seeking objections no later than 4th October 2024.

Plans of the open space were made available to the public in Westbury Town Council's offices.

9. Appendix One provides a list of open space assets to be transferred for the purpose of the Notice, with a copy of the Notice in Appendix Two. The notice included two anomalies:
  - All Saints Churchyard – included for completeness despite the Council not owning the freehold, as it is proposed to delegate the responsibility to maintain the churchyard to Westbury Town Council.
  - Westbury Leigh Car Park – this was included in error, as the land is not “an open space” for the purposes of section 123(2A) of the Local Government Act 1972.
10. The legislation does not specifically state the way in which objections can be made, resulting in objections on process, loss of open space, loss of community facility, value for money, etc having been made to the Council.
11. The council received 3 representations as a result of the advertisement of the Council's intentions, the grouped and summarised table of representations is attached in Appendix Three. In addition to objections clarifications questions were asked and these are being responded to as part of the consultation process.
12. Whilst Appendix Three details all objections, one to highlight is that based on the view that existing covenants are removed from sites as a result of the Notice. This is not the case; any existing covenants will remain with the land after transfer. Where any land is held by the Council under either section 164 of the Public Health Act 1875 or section 10 of the Open Spaces Act 1906, the land will be freed from the statutory trust under which it is currently held, but will be transferred subject to the Community Use Covenants.

### **Overview and Scrutiny Engagement**

13. The Council's Overview and Scrutiny function have been consulted through the drafting of this report and it has been confirmed that the report does not need to be considered by Overview and Scrutiny Management Committee.

### **Safeguarding Implications**

14. There are no safeguarding implications of this decision.

### **Public Health Implications**

15. There are no Public Health implications of this decision, as the existing use as open space remains.

### **Procurement Implications**

16. There are no procurement implications of this decision.

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

17. The outcome of the Notice raises no issues in respect of equalities impact.

## **Environmental and Climate Change Considerations**

18. The outcome of the Notice raises no issues in respect of environmental or climate impact, although the town council will be able to enhance the areas to contribute to the challenges.

### **Workforce Implications**

19. The outcome of the Notice raises no issues in respect of workforce implications.

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

20. If the proposal in this report is not agreed, the assets transfers to Westbury Town Council will not occur leaving both assets and services being the responsibility and cost of the Council.

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

21. It is not anticipated there are any direct risks associated with this decision. The requirement to advertise the intended disposal of open space has been discharged, together with the requirement to consider any objections received; please see Appendix Three of this report.
22. An objection has been received with reference to the Gunning Principles, which could pose a risk of Judicial Review if not appropriately followed. By following the procedure prescribed by section 123(2A), the production of this report with the consultation responses included, and provided that those responses are considered by the decision maker together with previous resolutions of both the Council and Westbury Town Council then the Council will have complied with the Gunning Principles. It is of note that the Council during the consultation also provided responses to objectors (including responding to clarification questions).

### **Financial Implications**

23. There are no financial implications from the Notice, with wider financial considerations for the asset transfer being included in the Decision made by Cllr Richard Clewer on 27 June 2024.

### **Legal Implications**

24. Under s123(2A) of the LGA 1972 the Council is obliged to advertise the intended disposal of any open space (as defined in the LGA 1972) and consider any objections to its disposal. The proposed transfer does contain parcels of open space and the Council has discharged that duty by placing a Notice for two consecutive weeks in a local newspaper circulating in the area.
25. Whilst S123(2A) requires the Council to consider any objections, they do not act as a veto but are merely factors that should be considered to ensure that the decision maker is fully informed to make the decision. As set out in this report the council all objections to the proposed disposal have been identified and commented on and therefore provided this is considered within the decision making the Council will have discharged its legal obligations.

## **Options Considered**

26. Not to proceed with the transfer of land – this will result in Wiltshire Council retaining ownership of the land and responsibility for all services proposed in the Service Devolution and Asset Transfer package.

## **Conclusions/Proposal**

27. In light of the information provided it is believed that the statutory duty of the Council has been discharged allow it to:

- consider the objections received following advertisement of the potential disposals of open space under s123(2A) Local Government Act 1972, and
- determine whether the proposed asset transfer to Westbury Town Council should continue.

## **James Barrah - Director of Assets**

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## **Appendices**

Appendix One - List of open space to be transferred.

Appendix Two - Copy of the Public Open Space advert.

Appendix Three - Objections received and responses given.

## **Background Papers**

Cabinet Member decision made 27 June 2024 – L-03-24 - Service Delegation and Asset Transfer Package – Westbury Town Council

## Appendix One – List of open space to be transferred

UPRN	ASSET NAME	Postcode	Title Number(s)
20263S1	Westbury Victoria Gardens	BA13 3BZ	Not Registered
50641S1	Westbury Hunters Chase, Morgan Walk, Mane Way, Fell Road Open Space Land	BA13 3GQ	WT412315
	Westbury Land at Area R15 Westbury Leigh Way,	BA13 2GG	WT318097
50241S1	Westbury Open Space land adjacent to 51 Oldfield Road	BA13 3LB	WT186024
50245S1	Westbury Kingfisher Drive Play Area	BA13 3XW	WT190846
50568S1	Westbury Primmers Place Open Space Land	BA13 4QZ	WT294546 (Formerly WT209186) WT466844, WT318097, WT314464, WT314463, WT314465 & WT314462
20001S1	Westbury Redland Lane Allotments	BA13 3NW	WT236611
50216S1	Westbury Ash Grove Allotments	BA13 3NH	WT236611
50216S1	Westbury Cedar Grove Allotments	BA13 3NJ	WT236611
50216S1	Westbury Hazel Grove Allotments	BA13 3NN	WT236611
50216S1	Westbury Lilac Grove Allotments	BA13 3NN	WT236611
20441S1	Westbury Bridge Court Play Area	BA13 3FB	WT255897
20284S1	Westbury Wyvern Walk Recreation Ground and various plots nearby	BA13 3NQ	WT264606
20270S1	Westbury Grassacres Recreation Ground	BA13 3NZ	WT269339
20168S1	Westbury Beckett Place Play Area	BA13 3GR	WT269834
50552S1	Westbury Boulton Close Open Space Land	BA13 3GS	WT296804
50561S1	Westbury Campion Close, The Mead Open Space Land	BA13 3UX	WT298760
50650S1	Westbury Mane Way South Open Space and Associated Landholdings	BA13 3UR	WT308100 & WT413621 & WT318096
50228S1	Westbury Land East of Bitham Park	BA13 3DJ	WT108134
50269S1	Westbury Land Adjoining Rosefield Way	BA13 3TJ	WT118457
50233S1	Westbury Land surrounding Devon Drive	BA13 3XQ	WT127395
50273S1	Westbury Land East and West of Wiltshire Way	BA13 3XD	WT130263
50276S1	Westbury Land between 29 and 30 Indigo Gardens	BA13 3LU	WT134516
50298S1	Westbury Land Adjacent Nightingale Drive	BA13 3XY	WT156989
20301S1	Westbury Kendrick Close Playground	BA13 3QT	WT158789
03128S1	Westbury Leigh Land at Penknapp Road and The Spur	BA13 3AZ	WT314466
50630S1	Westbury Leigh Exmoor Road 'Open Space' land	BA13 3HS	WT314462
50215S1	Westbury land at Leighton Green	BA13 3PN	WT271466
20460S1	Westbury Timor Road Play Area	BA13 2GA	WT298572
50483S1	Westbury Fell Road Chestnut	BA13 2GG	WT306152
50632S1	Westbury Leigh Bashkir Road Open Space land	BA13 3UL	WT314463
50633S1	Westbury Leigh Bashkir Road Open Space land2	BA13 3UL	WT314465
	Westbury Land on west side of Warminster road (plans)		WT293861, WT294131

50631S1 & 50634S1	Westbury Leigh Suffolk Road 'Open Space' land and Westbury Leigh The Spur Open Space land2	BA13 3UL & BA13 3AZ	(Formerly WT82966) WT314466 & WT413621
	Land at Windsor Drive	BA13 3UG	WT128701

68 Friday, September 13, 2024

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## OTHER

**LOCAL GOVERNMENT ACT 1972 SECTIONS 123(1) AND (2A) OPEN SPACES AT WESTBURY**  
NOTICE is hereby given that Wiltshire Council intends to dispose by way of freehold transfer the following parts of its land holdings within Westbury under the Community Asset Transfer Scheme to Westbury Town Council, which includes land which is used for open space, recreation and amenity purposes:  
Victoria Gardens, BA13 3BZ  
Hunters Chase, Morgan Walk, Mane Way, Fell Road Open Space BA13 3GG  
Land at Area R15, Westbury Leigh Way BA13 2GG  
Open Space Land Adjacent to 51 Diddlefield Road, BA13 3LB  
Kingfisher Drive Play Area, BA13 30W  
Primrose Place Open Space Land, BA13 4QZ  
Redland Lane Allotments, BA13 3NW  
Ash Grove Allotments, BA13 3MH  
Cedar Grove Allotments, BA13 3MJ  
Hazel Grove Allotments, BA13 3MN  
Lilac Grove Allotments, BA13 3NN  
Westbury Leigh Car Park, BA13 3SD  
Bridge Court Play Area, BA13 3GR  
Wymen Walk Recreation Ground and Plots BA13 3NG  
Grassacres Recreation Ground, BA13 3NZ  
Bockart Place Play Area, BA13 3GR  
Westbury Cemetery, BA13 3EB  
All Saints Churchyard, BA13 3BT  
Boulton Close Open Space Land, BA13 3SS  
Campion Close, The Mead Open Space Land, BA13 3JX  
Mane Way Open Space and Associated Land Holdings, BA13 3UR  
Land East of Bittam Park, BA13 3DJ  
Land Adjoining Rosefeld Way, BA13 3TJ  
Land Surrounding Devon Drive, BA13 3QD  
Land East and West of Wiltshire Way, BA13 3DD  
Land between 29 and 30 Indigo Gardens, BA13 3LU  
Land Adjacent Nightingale Drive, BA13 30Y  
Kendrick Close Playground, BA13 3DT  
Westbury Leigh Land at Pinknap Road and The Spout, BA13 3AZ  
Westbury Leigh Exmoor Road Open Space Land, BA13 3HS  
Land at Leighton Green, BA13 3PN  
Timmer Road Play Area, BA13 2GA  
Fell Road Chestnut, BA13 2GG  
Bashkir Road Open Space Land 1, BA13 3UL  
Bashkir Road Open Space Land 2, BA13 3UL  
Land on west side of Wainminster Road  
Suffolk Road Open Space Land, BA13 3UL  
Land at Windsor Drive, BA13 3UG  
Plans showing the open spaces being transferred are available for inspection on request during normal working hours at Westbury Town Council's offices at The Lawerton, Britton Road, Westbury, Wiltshire BA13 3EM.  
Objections to the intended disposal must be made in writing and addressed to the Solicitor to the Council, Wiltshire Council, County Hall, Bythesea Road, Trowbridge, Wiltshire BA14 8JN using reference LWU1526171 no later than 12 noon on 4 October 2024.  
For further information please contact: Mike Dawson, Head of Estates & Development, email: [mike.dawson@wiltshire.gov.uk](mailto:mike.dawson@wiltshire.gov.uk), telephone number: 01225 713250.  
Perry Holmes, Solicitor to the Council  
Wiltshire Council, County Hall, Bythesea Road, Trowbridge Wiltshire BA14 8JN

**Wiltshire Council**

## PLANNING

**TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE) (ENGLAND) (ORDER 2015)**  
**TOWN AND COUNTRY PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS (AMENDMENT) (ENGLAND) REGULATIONS 2010**

The following planning applications are those affecting the setting of a Listed Building, a Conservation Area, a Public Right of Way, or major applications and are available to view on our website. Views relating to the planning applications listed below should be made by **04 October 2024** quoting the reference number. All views expressed regarding a planning application will be considered and placed on a file, which is open to the public. **CODFORD** PL/2024/07848 & PL/2024/08001 – The Lodge, 6 Salisbury Road, Replacement extensions; **MILPERTON/TROWBRIDGE** PL/2024/07926 – Land at Elizabeth Way, Variation of Condition 2 (Approved plans) of 20/09/01/FUL; **LONGBRIDGE DEVERILL** PL/2024/07026 & PL/2024/07114 – The Bath Arms, Clay Street, Crookerton, Installation of equipment to flat roof pitches extension & festoon lighting in the garden; **WESTBURY** PL/2024/07658 – All Saints Church, Church Lane, Information board to railings.  
Email: [development@wiltshire.gov.uk](mailto:development@wiltshire.gov.uk)

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