

**Cheltenham Borough Council**  
**Council/Cabinet – 16<sup>th</sup> February 2021**  
**Kiosk opportunities in the Parks**

<b>Accountable member</b>	<b>Cllr Steve Jordan – Cabinet Member of Finance and Assets</b>															
<b>Accountable officer</b>	<b>Dominic Stead – Head of Property and Asset Management</b>															
<b>Ward(s) affected</b>	<b>Various:</b>  <b>Beeches Playing Field – Charlton Kings Ward.</b>  <b>Burrows Playing Field – Leckhampton Ward.</b>															
<b>Key/Significant Decision</b>	<b>No</b>															
<b>Executive summary</b>	<p>In line with the Cabinet report dated 22<sup>nd</sup> December 2020 ‘Kiosk opportunities in the Parks’ to proceed as proposed with the two ‘tenancy at wills’ (TAW’s) in Burrows and Beeches Playing field.</p> <p>The Council are required to advertise its intention to dispose of public open space under S123 of the Local Government Act 1972 and consider any objections received.</p> <p>A disposal in this case constitutes a tenancy at will. The tenancy at will is required for the purpose of locating a refreshment kiosk and a seating area at Burrows and Beeches Playing field and is to be for a period of up to nine months.</p> <p>The Council are currently looking to offer the following:</p> <table border="1"> <thead> <tr> <th>No.</th> <th>Name</th> <th>Status</th> <th>Length of term</th> <th>Agreement type</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>Beeches</td> <td>Trial</td> <td>Upto 9 months</td> <td>Tenancy at Will</td> </tr> <tr> <td>2.</td> <td>Burrows</td> <td>Trial</td> <td>Upto 9 months</td> <td>Tenancy at Will</td> </tr> </tbody> </table>	No.	Name	Status	Length of term	Agreement type	1.	Beeches	Trial	Upto 9 months	Tenancy at Will	2.	Burrows	Trial	Upto 9 months	Tenancy at Will
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1.	Beeches	Trial	Upto 9 months	Tenancy at Will												
2.	Burrows	Trial	Upto 9 months	Tenancy at Will												
<b>Recommendations</b>	<ol style="list-style-type: none"> <li>1. That Cabinet considers the objections received to the S123 Notices to date.</li> <li>2. Cabinet delegates authority to the Executive Director of Finance and Assets in consultation with the Cabinet Member Finance and Assets and the Borough Solicitor to consider any further objections received to the s.123 notices for the remainder of the consultation period from the Cabinet date of 16 February 2021 to and including the 18 February 2021, and (subject to consideration of such objections) to authorise the entering into of one or both of the proposed Tenancies at Will.</li> </ol>															

<b>Financial implications</b>	N/A
<b>Legal implications</b>	<p>Before disposing of land held as public open space, the Council has a statutory duty to advertise its disposal for two consecutive weeks in a newspaper circulating in the area, and to consider objections.</p> <p>The duty to consider objections is a duty to consider objections relevant to the use of the land as public open space; for example, objections to the grant of the facility to a service provider other than the objector's preferred service provider would not be a relevant objection in this context.</p> <p>The term "dispose" includes a lease of any length, and tenancies including tenancies at will, but does not include licences.</p> <p>The principal differences between a lease, tenancy and licence (all terms used within the report) is briefly as follows:</p> <ul style="list-style-type: none"> <li>• A lease is often intended at the outset to be for a longer term than a tenancy, and often commences with a fixed term of several years.</li> <li>• A tenancy is usually viewed as being of shorter duration than a lease, although in practice either can continue indefinitely. A tenancy at will, however, is not for a fixed duration (however short) and only continues for as long as the landlord "wills" it; it can be terminated without reason at any time, although it is usually courteous to give a few days' notice.</li> <li>• A licensee occupies land or property with the permission of the owner; it is a lesser right than that under a lease or tenancy.</li> <li>• An occupier under a lease or tenancy (including a tenancy at will) has the right to exclude all others from those premises, including the landlord (except for those instances where the landlord has retained the right to enter). A tenancy or lease is a legal right to occupy the land exclusively, and this right survives the sale by the landlord to another landlord: the occupiers' right against the original landlord transfers to the new landlord</li> <li>• The occupier under a licence is not entitled to exclude third parties, whether the owner or anyone else expressly or impliedly authorised by the owner to occupy the land. The right is a personal, contractual right between the owner and the occupier, not a legal right to the land. The licence terminates automatically if the owner disposes of the land.</li> </ul> <p>There are a number of other differences, but the above are the significant differences for the purposes of this report.</p> <p>There may be covenants or other restrictions on the title to the respective areas of land which might impact on their proposed use. The title in each case would have to be investigated before expressions of interest were invited.</p> <p><b>Contact officer: One Legal, <a href="mailto:legal.services@tewkesbury.gov.uk">legal.services@tewkesbury.gov.uk</a>, 01684 272691</b></p>

<b>HR implications (including learning and organisational development)</b>	N/A
<b>Key risks</b>	The Council need to ensure that we are being fair and market the opportunities. Vendors cannot be territorial and have to accept that everyone has the same opportunity set out in the scope (see background document). The Council have to go with the best fit for the park and the community and there are risks associated with this stance.
<b>Corporate and community plan Implications</b>	Our preference will be that our vendors are local and that they will source local produce, and work with other local businesses to offer optimum services and we will be looking for reference to this in their bid submission.
<b>Environmental and climate change implications</b>	<p>In line with the Waste Framework Directive 2008/98/EC and the council's commitment to a net zero carbon council and borough by 2030 we would expect a clear waste and recycling policy with clear processes in place from all vendors.</p> <p>Where possible we will be seeking for vendors to demonstrate that they have delivered on recycling and carbon neutrality in an established practice. Or that there is a clear vision and drive to recycle (and other green incentives) in order to secure the opportunity. We will seek to cement their own vision into the legal agreement to ensure that their vision is delivered.</p> <p>The Council will work with Friends of Groups, Parish Councils and our partners such as Ubico to maximize what we can do in-terms of green incentives. We are looking at the provision of recycling bins throughout our parks and we look at ways to limit the use of generators, and the provision of bark chippings and other natural products to help tackle mud.</p>
<b>Property/Asset Implications</b>	<b>Contact officer: <a href="mailto:Dominic.Stead@cheltenham.gov.uk">Dominic.Stead@cheltenham.gov.uk</a></b>

## **1. Background**

- 1.1** Members of the public wrote to the parks team suggesting that the Council could place mobile kiosk units in our parks. The parks team have been instrumental in responding to public demand and driving this initiative forward. We currently have two trials occurring at Hatherley Park and at Burrows Playing Field. The popularity of these trials and overwhelming support and positive feedback from the community made us consider extending what we currently have in place.
- 1.2** It is proposed that all new arrangements be able to commence from 1<sup>st</sup> March 2021, after advertising the opportunities and contacting those people that have already been in touch. There are a number of considerations that each vendor will have to work through, which we have complied in-line with Councils objectives, being sympathetic to the parks and locations on offer and other statutory requirements such as planning and street licensing. A vendor will have to be very motivated to be selected to go forward.
- 1.3** In relation to Burrows and Beeches Playing Fields specifically, it is proposed that tenancies would commence from the 1<sup>st</sup> March 2021 and initially we are proposing to offer a Tenancy at Will for up to 9 months. However, due to the statutes that govern our open spaces the Council are not able to consider a tenancy of this nature without first advertising the Council's intention to dispose via a S123 Notice, as a tenancy at will is considered a disposal. Appendix 2 – S123 Notice.
- 1.4** To comply with its statutory obligations, the Council advertised the proposed disposal in a newspaper circulating in the area for two consecutive weeks, and opened consultation for comments and objections up to 18<sup>th</sup> February.
- 1.5** A kiosk in the Burrows may be disrupted due to the improvement scheme recently secured for the playing field. For this reason, a further short tenancy is being considered.
- 1.6** Unlike Burrows we are in early days in relation to the other opportunities and these should be trialled before seeking something more permanent, especially in new locations. A lease is not appropriate for Beeches, at this time. We want to ensure that the opportunities work hand in hand with the communities and we need to be aware of any potential adverse impacts and look to mitigate these before looking at something more permanent if appropriate and supported.

## **2. Reasons for recommendations**

- 2.1** The Covid Lockdowns and restrictions have created an unprecedented surge in the use of our parks and outdoor spaces. This has put an additional strain on our park services and Friends of Groups (where they exist).
- 2.2** The kiosks allow us to alleviate some issues, such as the increased littering and antisocial behaviour that result from increased park usage. The kiosks help to maintain their area and manage, collect and recycle litter, while their presence helps to deter antisocial behaviour.
- 2.3** The commercial benefits are also clear, and the kiosks have been generally very well received, as seen in the comments that we have received that were captured by the December Cabinet report. The general public love the freedom of a park, especially when their normal recreational options are closed and when they can also grab a coffee.
- 2.4** Also, many businesses have had to reinvent themselves and seek ways to innovatively save themselves from collapse. The trials have provided invaluable opportunities to businesses that have had to completely reassess what they do. They are local and they have employed local people or sourced local produce to ensure that their offering has truly been about the community.
- 2.5** We recognise that change is not always welcome, and that there may be concerns and objections raised. We will continue to address these, while acknowledging that the overwhelming majority of

feedback so far has been positive.

### **3. Alternative options considered**

- 3.1 Do nothing. Doing nothing would limit the extent to which can reinvest income in services and increase the financial pressures that the council is already facing.
- 3.2 Continue with trials. We are continuing with trials where we feel it is appropriate and looking for permanence where there is an opportunity and the majority of public opinion is in support.
- 3.3 Lease more space out for kiosks. We don't want to rush into offering leases as these are more permanent, we want to be balanced and considered in our approach, this is a new opportunity, but a reactive one in light of the pandemic and the sheer volumes of people now utilising our outdoor spaces. We need to understand and mitigate any adverse impacts and we need to know that the majority of the community are in support.

### **4. How this initiative contributes to the corporate plan**

- 4.1 The priorities outlined in the council's Place Vision, including that the borough should be a place where everyone can thrive, are at the heart of what we are proposing. The kiosks further enhance valuable public spaces for people to enjoy, so all our communities can benefit.
- 4.2 We are being commercially focused and become financially self-sufficient, to ensure we continue to achieve value for money. We are making appropriate adjustments to ensure that a balance is maintained.
- 4.3 We will work to ensure that we encourage equal collaboration, and we are listening to what our communities are saying to use and what they are feeding back. We are doing what we feel is appropriate.

### **5. Consultation and feedback**

- 5.1 Cabinet Report dated 22<sup>nd</sup> December 2020.
- 5.2 Ward members (all wards where a kiosk will be placed from 1<sup>st</sup> March) where they have responded, are in support.
- 5.3 Parish Councils (again those applicable to those kiosks from the 1<sup>st</sup> March) where they have responded are in support. Especially the Charlton Kings (for the Beeches) and Leckhampton parishes.
- 5.4 Friends of Groups, where they exist have responded and are in support.
- 5.5 S123 Notice responses in writing have been summarised in Appendix 2
- 5.6 Asset Management Working group are in support, but would be keen that the kiosks focus on offering the opportunity to people who live in our Borough.
- 5.7 Parks and Green Spaces are championing the offer and currently work with the vendors who are trialling the offer to enhance and maximise the opportunity.
- 5.8 Cabinet Member leads are in support.

### **6. Performance management –monitoring and review**

- 6.1 The 'new' opportunities are being offered on a trial basis. Parks and Gardens will continue to work

closely with these vendors and will seek to mitigate any adverse impacts.

- 6.2 Based on the trials and lessons learned we will capture more specific requirements of the kiosk vendors within the agreements.
- 6.3 We will continue to monitor and review all of those opportunities, and between the parks team and the property team, will seek the optimum solutions to mitigate issues as they arise.
- 6.4 We will listen and respond (where appropriate) to concerns raised. We will do our best to manage everyone expectations, this is a new venture for the Council and we are learning as we go.

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<b>Appendices</b>	<ol style="list-style-type: none"><li>1. Risk Assessment</li><li>2. Copy of the S123 Notice</li><li>3. Tally of objections (if received)</li></ol>
<b>Background information</b>	<ol style="list-style-type: none"><li>1. Cabinet report, 22<sup>nd</sup> December 2020 – Kiosk Opportunities in the Parks</li></ol>

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-5	Likelihood 1-6	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
	There could be breakdowns in communication between the vendor and the Council.	DS	02/12	3	2	6	Accept	Make expectations clear from the outset. Forge a strong workable professional relationship.	1 <sup>st</sup> March 2021	AM / WS	
	There may be backlash if the same vendor is not successful in securing future opportunities and they may seek to discredit the Council.	DS	02/12	3	4	12	Accept	Set out the Councils objectives and criteria from the outset. We cannot favour one vendor over denying another the opportunity if they are able to adequately demonstrate they are the best option.	1 <sup>st</sup> March 2021	AM / WS	
	If vendors are investing serious time and money to try to win the opportunity and then fail to secure it, they could seek to discredit the council.	DS	02/12	1	3	3	Accept	We are in difficult times, but the council need to find the best fit for the opportunity. Being an established vendor will help both parties, as it will provide the most knowledgeable considered approach.	1 <sup>st</sup> March 2021	AM / WS	
	If the community feel aggrieved and believe that the kiosk is not working, then we need to reassess what we are doing.	DS	02/12	2	4	8	Manage and reduce	Work with our local representatives to capture and manage people's concerns and make any appropriate adjustments.	1 <sup>st</sup> March 2021	AM/ WS	

**Explanatory notes**

**Impact** – an assessment of the impact if the risk occurs on a scale of 1-5 (1 being least impact and 5 being major or critical)

**Likelihood** – how likely is it that the risk will occur on a scale of 1-6

(1 being almost impossible, 2 is very low, 3 is low, 4 significant, 5 high and 6 a very high probability)

**Control** - Either: Reduce / Accept / Transfer to 3rd party / Close