

Cheltenham Borough Council
Cabinet – 22nd December 2020
Kiosk opportunities in the Parks

Accountable member	Cllr Steve Jordan – Cabinet Member Finance and Assets															
Accountable officer	Dominic Stead – Head of Property and Asset Management															
Ward(s) affected	<p>Various:</p> <p>Hartley Lane (Leckhampton Hill) – outside of district, closest CBC wards Leckhampton and Charlton Kings.</p> <p>Hatherley Park – Park Ward.</p> <p>Beeches Playing Field – Charlton Kings Ward.</p> <p>Burrows Playing Field – Leckhampton Ward.</p>															
Key/Significant Decision	No															
Executive summary	<p>Due to COVID 19 and since the first lockdown our parks and open spaces have hugely increased in usage, putting an unprecedented strain on our Parks services. This has caused an unbudgeted burden on the Council. Providing mobile kiosks has not only allowed us to make back some of the money we need to keep the Parks to a certain standard, but it has also provided employment and opportunity to people who have had to reassess their ways of making a living due to COVID.</p> <p>There are currently two trial opportunities running from our parks:</p> <ul style="list-style-type: none"> • Hatherley Park – since July 2020 • Burrows Playing Field – since Oct 2020 <p>These have received overwhelming support from the local communities and generally the kiosks have been very well received.</p> <p>The Council felt that the Hatherley Park opportunity had the potential to be offered on a lease for 3 years to extend the opportunity there. Advertising this lease proposal has highlighted some objections and concerns. These have been captured later in the report.</p> <p>We are currently looking to extend the trials and offer the following:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">No.</th> <th style="text-align: center;">Name</th> <th style="text-align: center;">Status</th> <th style="text-align: center;">Length of term</th> <th style="text-align: center;">Agreement type</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1</td> <td>Leckhampton Hill (Hartley Lane)</td> <td style="text-align: center;">Trial</td> <td style="text-align: center;">9 months</td> <td style="text-align: center;">Licence</td> </tr> <tr> <td style="text-align: center;">2</td> <td>Beeches</td> <td style="text-align: center;">Trial</td> <td style="text-align: center;">9 months</td> <td style="text-align: center;">Tenancy at Will</td> </tr> </tbody> </table>	No.	Name	Status	Length of term	Agreement type	1	Leckhampton Hill (Hartley Lane)	Trial	9 months	Licence	2	Beeches	Trial	9 months	Tenancy at Will
No.	Name	Status	Length of term	Agreement type												
1	Leckhampton Hill (Hartley Lane)	Trial	9 months	Licence												
2	Beeches	Trial	9 months	Tenancy at Will												

3	Burrows	Trial	9 months	Tenancy at Will
4	Hatherley Park	Tenancy	3 years (annual break clause)	Lease
5	Brizen Fields	TBC	Exploring possibilities	Very early stages
6	Swindon Village Playing field	TBC	Exploring the opportunity	Very early stages

Recommendations

1. That Cabinet consider the objections to the S123 Notices.
2. Cabinet is recommended to approve, subject to consideration of the objections, that authority be delegated to the Executive Director Finance and Assets (Section 151 Officer) to:
 - a) secure vendors for the opportunities 2 - 4 via public advertisement and with a view to the commencement of the new agreements on 1st March 2021.
 - b) offer trial periods (not longer than 9 months) for sites 5 and 6 on appropriate temporary legal agreements, at these locations subject to the consultation and due diligence work being completed.
3. That for those opportunities listed that there is not a requirement to come back to a Cabinet meeting to conclude the lettings, and that the Executive Director Finance and Assets or appropriately delegated officer allows completion via an Officer Decision Notice in consultation with Cabinet Members Finance & Assets and Clean & Green Environment.

Financial implications	Exempt comments and information included in appendix 4
Legal implications	<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"> • 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 • 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. • A licensee occupies land or property with the permission of the owner; it is a lesser right than that under a lease or tenancy. • 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 • 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. <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>Contact officer: One Legal, legal.services@tewkesbury.gov.uk, 01684 272691</p>

HR implications (including learning and organisational development)	N/A
Key risks	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.
Corporate and community plan Implications	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.
Environmental and climate change implications	<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>
Property/Asset Implications	<p>As outlined in the report.</p> <p>Contact officer: Dominic.Stead@cheltenham.gov.uk</p>

1. Background

- 1.1** Members of the public actually wrote to the parks team suggesting that the Council could place mobile kiosk units in our parks. The parks team have been instrumental in 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 have in place currently (some of these have been captured in appendix 3).
- 1.2** However, offering the Hatherley opportunity on a more permanent basis has split the community, with those living on the doorstep feeling adversely affected by the presence of the kiosk.
- 1.3** The Council feel that usage has dramatically increased in all of our Parks and outdoor spaces, whether there is a kiosk present or not. This has put an unprecedented and unbudgeted strain on our park services. The usage has increased as a direct result of Covid and in particular lockdowns.
- 1.4** The initial trials were to ensure that kiosks would work and be well received, but also to gain intelligence in relation to how it would impact on the park and allow us to identify any issues. We have received overwhelming support for the Kiosks and pressure to secure a more permanent provision at both locations (Burrows and Hatherley).
- 1.5** It is hoped that all new arrangements would be able to commence from 1st March 2021. It is proposed that we advertise the opportunities (draft advert appendix 4) and contact 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. Details attached: Appendix 4 - Draft Vendor opportunities.
- 1.6** In relation to Hatherley Park specifically we would hope that any more permanent letting would also commence from the 1st March 2021 and initially we are proposing to offer a lease on a 3 year basis. However, due to the statutes that govern our open spaces the Council are not able to consider a letting of this nature without first advertising our intention via a S123 Notice, as a letting is considered a disposal. Appendix 2 – S123 Notice.
- 1.7** The S123 Notice in relation to Hatherley Park has been very informative as to the concerns of direct neighbours of Hatherley Park but also to the presence of a misconception that many of the issues are attributable to the presence of a kiosk.
- 1.8** The Council complied with its statutory obligation by advertising the proposed disposal in a newspaper circulating in the area for 2 consecutive weeks. The Council received a total of 807 letters and emails of representation via the Councils solicitor.
- 1.9** Only 19 of these represented clear letters/emails of objection. (The headings of the objections are set out in the table below). Our legal representatives received 10 of these objections directly and they have been summarised in the Legal Background Paper attached, the other 9 were received directly by the Estates Department or via Green Spaces.

Of the remainder, 612 were broadly in favour of the proposal in principle. However, they were specifically in favour of the current provider. The remainder were too specific to be considered at this meeting.
- 1.10** The main objections in relation to the S123 Notice regarding leasing an area in Hatherley Park to a mobile kiosk have been:

Objection	Number	Pre Covid, COVID or Kiosk*	Ways to mitigate issues
Lack of WC's	8	Pre Covid concern. Heightened by Covid	Make it a requirement of the lease that the vendor must supply a WC provision. We are unable to monitor or manage the WC provision in-line with strict COVID requirements.
Lack of bins or litter generation	2	COVID. The Council has seen an increased issue across our parks (don't be a Tosser campaign)	Work with the kiosk to help manage the additional waste directly emanating from their presence. Work provisions into the Lease. Work with UBICO to provide more bins and bin collections. Look at recycling options.
Over crowding	4	COVID. The Council has seen a dramatic increase of all its parks and open spaces.	Unable to mitigate via the kiosk proposal.
Parking and traffic issues	12	COVID	We have seen an increase in use of all of our parks. Even those without kiosks.
Dog poo	1	Existing issue	Unable to mitigate via the kiosk opportunity.
Wrong focus	2	Kiosk	A kiosk is not our focus or priority. Managing the parks is and ensuring that we have the revenue to fund the increased demands on our services as a result of Covid is. We are passionate and committed to our communities, but sometimes we have to change to adapt to unexpected situations.
Mud/ damage to the ground	3	Kiosk and Covid	Footfall in all of our parks has increased dramatically over the past months since the outbreak of Covid. All well-trodden areas, not always around the kiosks have become muddier where there is no hard surface. For now we are alleviating muddy areas around kiosks in conjunction with the vendors either by asking them to lay matting, or help to source wood chip. The current vendors are required to reinstate an area once they have vacated, and more permanent solutions will be discussed and provided by the vendors in conjunction with the Council for the future opportunities.
Changing the park's character	3	Kiosk	Some are not keen on the parks having commercial elements. We need the income to improve service to meet user needs, and to maintain the additional strain on our services due to the massive increase in use of our parks and outdoor recreation spaces due to Covid.
Location in the park	1	Kiosk	We are looking for the optimum positioning in terms of connection to electricity, wear and tear on the park itself, away from tree canopies, high

			visibility locations, easy to manage areas and most aesthetically pleasing locations.
Size of the area to be let	3	Kiosk	There have been concerns as to the size of the area being let. However, the area needs to include seating opportunities, the ability to move the vehicle, space for bins etc. The whole area will not be taken up by the kiosk itself. There was also a misconception that the Council were going to build a permanent structure, which is not the case. The offering would be on the same lines as the trial, a mobile vendor.

* Considered impact of Covid and increased numbers of users or directly related to the kiosk

- 1.11 The current vendor in the park sought to secure their opportunity when they discovered the S123 Notice and the ability to make representations. This resulted in a large influx of emails directly to the Councils solicitors email address. The numbers of emails are over 800. These representations have not been included in the numbers above but they have all been captured by the background document compiled by our legal representatives attached.
- 1.12 It is felt that many of the concerns raised in relation to Hatherley Park can be mitigated, and those lessons learned from the trials will robustly allow us to move forward. It is only in Hatherley Park are we considering a longer term opportunity at this time as we had large numbers of people contacting the Council lobbying for this, including the Friends of Hatherley Park.
- 1.13 Only Hatherley Park requires cabinet approval due to the more permanent status being proposed for the letting, which will hopefully result in a higher rental offer from bidders to secure it. We are proposing to offer the opportunity on a three year lease, and should it prove to continue to be successful and generally well supported we could look to extend the offer for a further term (but still less than 7 years in total).
- 1.14 The property department can look to insert break clause provisions, to help alleviate people's anxieties about Hatherley Park never turning back to 'normal' post pandemic and if the kiosk loses favour or creates more issues than it solves. Break clause provisions increase the risk for the tenant therefore less rent is likely to be offered by inserting them.
- 1.15 Unlike Hatherley we are 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, or Leckhampton Hill at this time and we are going to look at more temporary provisions. Leckhampton Hill is suitable for a kiosk, just not one that is left in on site overnight, therefore this will be a slightly different legal arrangement. 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.
- 1.16 The Burrows opportunity cannot be offered on a more permanent basis at this time as the Council is looking to support significant improvements on the playing fields and the pavilion. A more permanent kiosk could hamper this larger project as they need the pavilion for electricity, water and WC's facilities (vendor only). The Council need to retain flexibility at this location which is best achieved with a short term Tenancy at Will. A more permanent provision of a kiosk on the Burrows would also require Fields in Trust to consent as well as a S123 Notice.

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). Many of the objections highlighted as a result of the S123 Notice, are

issues we are seeing at all of our Parks and open spaces (even those without kiosks).

- 2.2 The kiosks not only allow us to share the burden of some of those issues being observed, but allow us to be more commercial about it. The kiosks have been generally very well received which is evident through multi-media sites and comments that we have received directly (captured in appendix 2 and the background document). The general public love the freedom of a park, where their normal recreational options are closed and the fact they can grab a coffee.
- 2.3 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.
- 2.4 We recognise that change is not always welcome, but in light of COVID we have had very little control and we have worked hard to readdress the balance with the community and the parks at the heart of everything we have done.

3. Alternative options considered

- 3.1 Do nothing. Doing nothing would mean that our services would have all this additional pressure and expected to be reactive, additional funding or solutions to help us cope and still provide our excellent services.
- 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 Place and community is at the heart of what we are proposing. We are achieving inclusive growth 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 Ward members (all wards where a kiosk will be placed from 1st March) where they have responded, are in support.
- 5.2 Parish Councils (again those applicable to those kiosks from the 1st March) where they have responded are in support. Especially the Charlton Kings (for the Beeches) and Leckhampton parishes.
- 5.3 Friends of Groups, where they exist have responded and are in support.

- 5.4 S123 Notice responses in writing have been summarised in appendix 3
- 5.5 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.
- 5.6 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.
- 5.7 Cabinet Member leads are in support. Cabinet Members Finance & Assets and Clean & Green Environment have been consulted.

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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Appendices	<ol style="list-style-type: none"> 1. Risk Assessment 2. Copy of the S123 Notice (Hatherley Park) 3. Tally of objections 4. Draft commercial advert <p>Exempt:</p> <ol style="list-style-type: none"> 5. Potential income generation and financial comments
Background information	<ol style="list-style-type: none"> 1. Legal background paper in relation to representations received from the S123 Notice.

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 st 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 st 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 st 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 st 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