

TONBRIDGE & MALLING BOROUGH COUNCIL



EXECUTIVE SERVICES

Chief Executive

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NB - This agenda contains proposals, recommendations and options. These do not represent Council policy or decisions until they have received proper consideration through the full decision making process.

Contact: Democratic Services
committee.services@tmbc.gov.uk

15 November 2021

To: MEMBERS OF THE STREET SCENE AND ENVIRONMENT SERVICES
ADVISORY BOARD

(Copies to all Members of the Council)

Dear Sir/Madam

Your attendance is requested at a meeting of the Street Scene and Environment Services Advisory Board to be held in the Council Chamber, Gibson Drive, Kings Hill on Tuesday, 23rd November, 2021 commencing at 7.30 pm.

Members of the Committee are required to attend in person. Other Members are encouraged to participate online via MS Teams.

Information on how to observe the meeting will be published on the Council's website.

Yours faithfully

JULIE BEILBY

Chief Executive

A G E N D A

PART 1 - PUBLIC

1. Apologies for absence

5 - 6

2. Declarations of interest 7 - 8

Members in any doubt about such declarations are advised to contact Legal or Democratic Services in advance of the meeting

3. Minutes 9 - 14

To confirm as a correct record the Notes of the meeting of the Street Scene and Environment Services Advisory Board held on 31 August 2021

Matters for recommendation to the Cabinet

4. Review of Fees and Charges 15 - 24

This report sets out the proposed fees and charges for the provision of services in respect of garden waste subscriptions, household bulky refuse & fridge/freezer collections, "missed" refuse collections, stray dog redemption fees, pest control, food certificates, contaminated land monitoring and private water supplies from 1 April 2022.

5. Review of Car Parking Fees and Charges 25 - 40

This report brings forward recommendations for existing car parking fees and charges for implementation from 1st April 2022

6. River Lawn, Tonbridge 41 - 66

This report considers the possibility of the Council applying for Village Green status for River Lawn, Tonbridge and suggests the future rewilding of the site.

Matters submitted for Information

7. Waste Services Update 67 - 72

This report updates on a number of issues and initiatives managed by the Waste & Street Scene Services team, including service performance, fly tipping & enforcement, and the recycling bin pilot to flats in Tonbridge

8. Urgent Items 73 - 74

Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

Matters for consideration in Private

9. Exclusion of Press and Public 75 - 76

The Chairman to move that the press and public be excluded from the remainder of the meeting during consideration of any items the publication of which would disclose exempt information.

PART 2 - PRIVATE

10. Urgent Items

77 - 78

Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

MEMBERSHIP

Cllr J R S Lark (Chairman)
Cllr S A Hudson (Vice-Chairman)

Cllr Mrs J A Anderson
Cllr Mrs S Bell
Cllr G C Bridge
Cllr C Brown
Cllr R I B Cannon
Cllr D J Cooper
Cllr D A S Davis

Cllr M O Davis
Cllr M A J Hood
Cllr F A Hoskins
Cllr A Kennedy
Cllr B J Luker
Cllr T B Shaw
Cllr Miss G E Thomas

Apologies for absence

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Declarations of interest

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TONBRIDGE AND MALLING BOROUGH COUNCIL

STREET SCENE AND ENVIRONMENT SERVICES ADVISORY BOARD

Tuesday, 31st August, 2021

Present: Cllr J R S Lark (Chairman), Cllr S A Hudson (Vice-Chairman), Cllr Mrs S Bell, Cllr G C Bridge, Cllr C Brown, Cllr D J Cooper, Cllr D A S Davis, Cllr M A J Hood, Cllr B J Luker, Cllr R V Roud and Cllr Miss G E Thomas.

Councillors Mrs P A Bates, R P Betts, J L Botten, P M Hickmott, M D Boughton, V M C Branson, D Keers, Mrs F A Kemp, D Lettington, P J Montague, W E Palmer, M R Rhodes, H S Rogers and Mrs M Tatton participated via MS Teams and joined the discussion when invited to do so by the Chairman in accordance with Council Procedure Rule No 15.21.

(Note: As Councillor J Anderson was unable to attend in person and participated via MS Teams, she was unable to vote on any matter).

Apologies for absence were received from Councillors M O Davis and F A Hoskins.

PART 1 - PUBLIC

SSE 21/17 DECLARATIONS OF INTEREST

There were no declarations of interest made in accordance with the Code of Conduct.

SSE 21/18 MINUTES

RESOLVED: That the notes of the meeting of the Street Scene and Environment Services Advisory Board held on 8 June 2021 be approved as a correct record and signed by the Chairman.

MATTERS FOR RECOMMENDATION TO THE CABINET

SSE 21/19 TONBRIDGE TOWN CENTRE - RESIDENTS PARKING SEASON TICKET

Decision Notice D210078MEM

The report of the Director of Street Scene, Leisure and Technical Services brought forward the outcome of a formal consultation on a one-year trial proposal to reduce the cost of Season tickets in Tonbridge town centre for residents.

During discussion, Members recognised that the reduction in the cost of Season tickets would be welcomed by residents, and it was therefore proposed that consideration be given to the further sale of Season tickets once 100 tickets had been purchased.

RECOMMENDED: That

- (1) the objections be noted but set aside, in light of the Council's responses to those objections;
- (2) the proposal for a one year trial of a Tonbridge Residents Season ticket be introduced from 1 October 2021 as advertised; and
- (3) the Street Scene and Environment Services Advisory Board receive a review report following the one year trial or give consideration to the further sale of Season tickets once 100 tickets have been purchased, whichever is sooner.

SSE 21/20 FOOD AND SAFETY SERVICE PLAN 2021-24

Decision Notice D210079MEM

The Council is required to produce a Food and Safety Service Plan by the Food Standards Agency. Consideration was given to the draft Plan which had had been produced for a three-year period and reflected the timetable for the Food Standards Agency Covid-19 Recovery Plan.

Members noted that Local Authorities were expected to move at a faster pace in realigning interventions in line with the Food Law Code of Practice and the report proposed that £15,000 from the Contain Outbreak Management Fund be used to instigate a catch-up plan.

RECOMMENDED: That

- (1) the Food and Safety Service Plan (2021-2024) be noted; and
- (2) the expenditure on a catch up inspection programme to restore the Food and Safety service to pre-pandemic levels in terms of the inspection programme, be agreed.

SSE 21/21 UPDATED AIR QUALITY ACTION PLAN

Decision Notice D210080MEM

The report of the Director of Planning, Housing and Environmental Health provided an update on the Council's Air Quality Action Plan. With six declared Air Quality Management Areas (AQMA), the Council had a statutory duty to keep updated an Air Quality Action Plan to outline the actions it would take to reduce concentrations of the pollutant of concern

in the AQMA's so that they could all eventually be revoked. Identified actions were proposed up to 2026 to tackle Nitrogen Dioxide, primarily within the remaining AQMA's, but also across the Borough as a whole.

Members were advised that the proposed actions would also support the Borough's Climate Change Strategy and Kent Council Council's Energy and Low Emission Strategy. A draft appraisal on the Plan had been received from the Department of Environment, Food and Rural Affairs (DEFRA), and although there were minor comments, overall the appraisal was positive.

Members discussed the option of full pedestrianisation of the high street in Tonbridge and the introduction of a one-way system and noted that neither were contained within the action plan, as the plan focused primarily on residential properties.

RECOMMENDED: That subject to any further amendments from DEFRA, the Air Quality Action Plan as set out in full at Annex 1, be endorsed.

SSE 21/22 TONBRIDGE AND MALLING BOROUGH COUNCIL - TREE CHARTER

Decision Notice D210081MEM

The report of the Chief Executive sought endorsement of the Tonbridge and Malling Tree Charter attached at Annex 1. The Tree Charter was aligned to the Climate Change Strategy and supported the Council's ambition to be carbon neutral by 2030. It also supported the commitment to biodiversity protection and enhancement.

The benefits of trees in relation to health and wellbeing, air quality, flood management and carbon capture were contained within the Charter, as well as opportunities to increase tree coverage on the borough's estates, and working with landowners, community groups and developers. Members noted that in order to implement any schemes, funding opportunities would be explored and opportunities to promote tree planning on new developments through the review and refresh of the Local Plan and planning decisions would be considered.

RECOMMENDED: That

- (1) the Tonbridge and Malling Borough Council Tree Charter, as set out at Annex 1, be adopted; and
- (2) a proposed review of Council owned land to assess the potential for tree planting schemes, be endorsed.

SSE 21/23 NATURAL FLOOD MANAGEMENT PROGRAMME

Decision Notice D210082MEM

The report of the Chief Executive provided information on two projects in the borough that it was proposed could be supported through an agreed £20,000 allocation in the Business Rates Retention Pilot reserve earmarked for Natural Flood Management.

Members were advised that whilst the Business Rates Retention Pilot reserve was to support the local economy, the economic success of the area was dependent on the borough's resilience to climate change and flood management.

RECOMMENDED: That

- (1) the report be noted;
- (2) the proposed £8,000 contribution towards the creation of new wetland habitat at Leybourne Lakes Country Park, be agreed; and
- (3) the proposed £12,000 contribution towards flood mitigation works at Ightham Mote, be agreed.

MATTERS SUBMITTED FOR INFORMATION

SSE 21/24 WASTE SERVICES UPDATE

The report of the Director Street Scene, Leisure and Technical Services updated on a number of issues and initiatives managed by the Waste and Street Scene Services team, including service performance, fly tipping and enforcement, and the recycling bin pilot to flats in Tonbridge.

In terms of default notices, Members were advised that these would be applied in accordance with the specifications as contained within the contract and allowing for current restrictions in terms of national HGV driver shortages and Covid. Key Performance Indicators would continue to be presented to the Board.

SSE 21/25 SATURDAY FREIGHTER SERVICE

The report of the Director of Street Scene, Leisure and Technical Services outlined a range of issues relating to the Saturday Freighter Service and highlighted that due to current national issues impacting on the delivery of the waste services contract the reintroduction of the service should not be progressed at the present time. The report highlighted that the decision to reintroduce the Service would be taken

by the Cabinet Member once these issues had been satisfactorily resolved by the contractor.

SSE 21/26 MINUTES OF CLIMATE CHANGE FORUM

The report of the Chief Executive provided an update on the first Climate Change Forum meeting which was held on the 14 June 2021. The minutes of the meeting were attached at Annex 1 for information.

SSE 21/27 EXCLUSION OF PRESS AND PUBLIC

There were no items considered in private.

The meeting ended at 8.58 pm

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TONBRIDGE & MALLING BOROUGH COUNCIL

STREET SCENE and ENVIRONMENT SERVICES ADVISORY BOARD

23 November 2021

Report of the Director of Street Scene, Leisure & Technical Services and Director of Planning, Housing & Environmental Health

Part 1- Public

Matters for Recommendation to Cabinet - Key Decision

1 REVIEW OF FEES AND CHARGES

This report sets out the proposed fees and charges for the provision of services in respect of garden waste subscriptions, household bulky refuse & fridge/freezer collections, “missed” refuse collections, stray dog redemption fees, pest control, food certificates, contaminated land monitoring and private water supplies from 1 April 2022.

1.1 Introduction

1.1.1 In bringing forward the charging proposals for 2022/23 consideration has been given to a range of factors, including the Council’s overall financial position, market position, trading patterns, the current rate of inflation and customer feedback.

1.1.2 The proposed charges for 2022/23 have also taken into account the set of guiding principles for the setting of fees and charges approved by Members of the Finance, Innovation and Property Advisory Board and reproduced below for the benefit of this Board:

1. Fees and charges should reflect the Council's key priorities and other corporate aims and priorities recognising there may be trade-offs as these are not mutually exclusive;
2. Fees and charges should have due regard to the Council's Medium Term Financial Strategy;
3. If there is to be a subsidy from the Council tax payer to the service user this should be a conscious choice;
4. The Council should look to maximise income subject to market conditions, opportunities and comparable charges elsewhere, in the context of its key priorities and other corporate aims and priorities;

5. Fees and charges should normally be reviewed at least annually (unless fixed by statute or some other body);
6. Fees and charges should not be used to provide a subsidy from the Council tax payer to commercial operators;
7. There should be consistency between charges for similar services;
8. Concessions for services should follow a logical pattern so as not to preclude, where appropriate, access to Council services on the grounds of ability to pay.

1.1.3 It is essential in light of the Council's overall financial position that opportunities are taken to maximise income, as it is becoming increasingly difficult to achieve further expenditure savings to meet the targets in the Savings Strategy. Attention has been given to the fees and charges applied by neighbouring Council's, and averages across the County, and these comparisons are included in relevant sections of the report for Member consideration.

1.2 Garden Waste Subscriptions

1.2.1 The current charge for an annual garden waste subscription is £42 with a second or third bin discounted to £27. 27,400 residents have now signed up for the service representing a take up of 50%. This level of take up represents the highest level in the County.

1.2.2 Unfortunately, the service has had to be suspended from 26 July 2021 due to a national shortage of HGV drivers and has yet to be resumed. Subscribers are not being charged during any period of suspension, rather the renewal date is adjusted accordingly.

1.2.3 Charges for garden waste subscription across local authorities in Kent are as follows:

Ashford BC - £40.00, Canterbury CC - £45, Dartford BC - £44.00, Dover DC - n/a as provide a sack service, Folkestone and Hythe DC - £48.40, Gravesham BC - £48.50, Maidstone BC - £45, Sevenoaks DC - £47, Swale BC - £40, Thanet DC - £53, Tonbridge and Malling BC - £42, Tunbridge Wells BC - £52.

It can be seen that charges range from £40 to £53 with an average County charge of £49.50.

1.2.4 Income to the Council from the garden waste subscription scheme is significant [second only to income from parking] and uptake across the borough since its introduction has been extremely good. Within the Council's Medium Term Financial Strategy an increase of £2 has been included annually which would take the annual charge to £44, with a second or third bin discounted to £29.

1.3 Household Bulky Refuse & Fridge/Freezer Collection Service

- 1.3.1 In April 2016, a two-tier fee was introduced with a price for up to six items of bulky refuse and a lower price for up to two fridge/freezer only collections. The new fee structure also included a concessionary charge for those receiving Council Tax Support.
- 1.3.2 While Councils are not able to make a profit from the collection of a “prescribed” household waste (such as a bulky collection service), the legislation does allow Council’s to recover the associated collection costs together with reasonable administration costs.
- 1.3.3 The current fee structure of our neighbouring authorities is outlined below, with each authority having different arrangements in place. Only Tunbridge Wells BC offer any form of concession:-

Maidstone B.C.	Sevenoaks D.C.	Tun. Wells B.C.
1-4 Items £26 5 - 8 items, £36 Fridge Freezer, £21	1 item - £18 2 items - £30 3 to 4 items - £40 5 to 10 items £52 White goods - £18 each Large American style fridge freezers - £42 each	£45.60 for 4 household items with a maximum of 1 fridge or freezer.
No Concessions	No Concessions	1 free collection per quarter for residents receiving Benefits.

- 1.3.4 It is proposed to increase this authorities existing full and concessionary prices as set out below. Demand for this service has increased over the last year and is expected to continue to be high in 2022/23 which is reflected in the estimated income.

Service	Current Full Charge	Proposed Full Charge 2022/23	Current Concession Charge	Proposed Concession Charge 2022/23	Est. Income 2022/23
Household Bulky Refuse Collection (up to six items)	£56.00	£58.00	£16.00	£17.00	£135,000

Household Fridge/ Freezer Collection (up to two items)	£34.00	£35.50	£16.00	£17.00
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1.4 Refuse collection charge

- 1.4.1 On occasion the Waste Services Team receive requests from customers to empty wheeled bins where the customer has not placed their bin out and has missed the collection. On these occasions the Team are occasionally asked by the customer if they can pay for a “one off” return collection.
- 1.4.2 A collection charge to cover these circumstances was introduced in April 2015. It covers the contract cost of returning and includes a small administration fee. To date there have been no concerns raised by customers. Although the number of requests is low, it does allow our Waste Services staff to offer an alternative solution.
- 1.4.3 It is proposed to maintain this charge at £20.00 for 2022/23.

Service	Current Charge	Proposed Charge 2022/23	Income Full Year 2022/23
Refuse Collection Charge	£20.00	£20.00	£200

1.5 Stray Dog Redemption fee

- 1.5.1 The Environmental Protection Act 1990 prescribes that a person claiming to be the owner of a dog seized as a stray by the Council shall not be entitled to the return of the dog unless all the expenses incurred by reason of its detention, and such further amount as is for the time being prescribed, are met. The Environmental Protection (Stray Dogs) Regulations 1992 set down a prescribed redemption fee of £25 and provides for local authorities to recover its other reasonable expenses, in addition to any other expenses incurred, such as kennelling costs.
- 1.5.2 Where a dog is taken to kennels the Council charges the owner for the other reasonable expenses, associated with the costs of providing the Dog Warden contract and admin costs. This is presently set at £73. The total fee charged by the Council is therefore £98. It is proposed that the contract & administration fee

be increased to £75 with no formal waiver or discount, but the Council will continue to exercise discretion to allow payment by instalments. Daily kennelling costs are paid direct to the kennels by the owner when collecting their dog.

- 1.5.3 Stray dogs have been declining in recent years and this is reflected in the estimated income for 2022/23.

Service	Current Charge	Proposed Charge 2022/23	Income Full Year 2022/23 (assuming consistent number of claimed /returned)
Stray Dog Redemption Fee - Return Direct to owner	£25 (Statutory fee)	£25 (Statutory fee)	£100
Stray Dog Redemption Fee - Kennelling required	£98 (including statutory fee, but not including daily kennelling costs).	£100 (including statutory fee, but not including daily kennelling costs).	£4,050

- 1.5.4 The proposed total charge of £100 is comparable to charges applied by neighbouring Councils. At present, where the Dog Warden returns a stray dog to the owner without the need for kennelling, a charge is made at the prescribed fee of £25. No change is proposed to this charge.

1.6 Pest Control

- 1.6.1 The Council has a statutory duty to inspect the borough for the incidence of rats and mice and to take action where an infestation is found. This function is supported by statutory powers to serve notice on owners of land to take action to destroy rats and mice and/or prevent conditions likely to provide harbourage for pests.
- 1.6.2 The pest control service is delivered as a joint contract with Tunbridge Wells Borough Council. The service provides a free treatment of rats, mice, cockroaches and bedbugs to those on Council Tax support only.
- 1.6.3 The contract was recently retendered and awarded to Monitor Environmental services starting in November 2020.
- 1.6.4 In all other pest related cases, customers may be referred to Monitor Environmental Services to carry out a charged treatment. Alternatively, customers may arrange treatment direct with an alternative pest control company.

1.6.5 Numbers of service requests from those on Council Tax support are very small, with an estimated overall cost to the Council of £3,500 per annum. This is offset by a referral fee of £2,500 paid by Monitor. In the interests of public health and with very small numbers of service requests, it is not considered appropriate to change the current arrangement.

1.7 Condemned Food Certificates

1.7.1 This is a service available to food businesses in the borough which properly controls the safe surrender and disposal of food deemed by Environmental Health staff as unfit for human consumption. The service continues to reflect legislative requirements for stricter controls and is based on total cost recovery. The proposed charges, as set out below, continue to reflect this approach.

1.7.2 Recent years have seen a significant decline in the number of certificates requested. The lower income rate is reflected in estimated full year income.

Service	Current Charge	Proposed Charge 2022/23	Income Full Year 2022/23
For each Condemned Food Certificate Issued	£165 for first hour plus £165 for each additional hour plus VAT	£170 for first hour plus £170 for each additional hour plus VAT	£170

1.8 Exported Food Certificates

1.8.1 This is a service provided by the Council for food exporters who export food not of animal origin. In this instance, Authorised Officers from the Borough Council certify that the food products being exported have been manufactured and held under hygienic conditions in accordance with the requirements of Regulation (EC) 852/2004 and The Food Safety & Hygiene (England) Regulations 2013. The premises are subject to regular inspection by Food and Safety Officers.

1.8.2 The level of demand for Exported Food Certificates has remained low and steady over the last few years with an average of 19 per year.

1.8.3 There is some variance across the County in fees charged for this service: Dover charge £65 and Dartford £80 while Tunbridge Wells and Maidstone charge £120.

1.8.4 We propose to apply a small increase to the current charge to reflect costs in responding to these certificate requests.

Service	Current Charge	Proposed Charge 2022/23	Income Full Year 2022/23
For each Exported Food Certificate issued	£68 plus VAT per certificate	£70 plus VAT per certificate.	£1,400

1.9 Food Hygiene Requests for Re-visits

1.9.1 Food business operators that have made improvement to hygiene standards following their inspection can request a re-visit with a view to giving them a new and higher food hygiene rating. There is currently a charge of £170 for this service. Neighbouring authorities are charging as follows: Mid Kent Environmental Health Partnership £164, Sevenoaks & Dartford £200 Gravesham £172 and Dover £170. The proposal is to increase this fee to £175 for 2022/23. This would give an estimate of £350 for 2022/23.

1.10 Contaminated Land

- 1.10.1 The Environmental Protection Act 1990 Part 2A requires local authorities to implement a system for the identification and remediation of land where contamination is causing a risk to human health or the wider environment because of historic or current uses.
- 1.10.2 The Environmental Protection Team provides a contaminated land information service or assessment of risk for which it currently makes a charge of £70 per hour in responding to these requests for information.
- 1.10.3 Guidance from the Information Commissioner advises that local authorities can make a reasonable charge. We have assumed that a reasonable charge includes the hourly rate of the Officer responsible for providing information, on-costs and an administration charge.
- 1.10.4 The fee has been derived based upon comparison with other Kent local authorities. For example while Ashford charge £25 per hour, Gravesham charge £95. Some Authorities such as Folkestone & Hythe, and Medway charge flat rates of £153 and £150 respectively. There is no maximum fee under the legislation.
- 1.10.5 We propose to apply a small increase to the current charge to reflect costs in responding to these requests for information. Recent years have seen a decline in requests for information which is reflected in the estimate for next year.

Service	Current Charge	Proposed Charge 2022/23	Income Full Year 2022/23
Responding to requests for information relating to contaminated land	£70.00 per hour (1 hour minimum charge)	£72.00 per hour (1 hour minimum charge)	£1,000

1.11 Private Water Supplies

1.11.1 The Private Water Supplies Regulations 2009 introduced a statutory and more onerous regime for the risk assessment and sampling of private water supplies.

1.11.2 In a report to this Board on 28 February 2011 it was agreed to introduce a charge to recover the cost of Officer's time. In addition, owners of private water supplies and private distribution networks will be charged for the cost of sample analysis.

1.11.3 We have reviewed the cost of providing this service and propose to apply a small increase to £65 per hour, plus the cost of sample analysis.

1.11.4 The fee has been derived based upon comparison with other Kent local authorities. Medway charge £51 per hour. Dover charge a flat fee of £100 for sampling and £500 for a risk assessment, with sample analysis costs on top. These charges are no longer subject to a maximum limit by virtue of the Private Water Supplies (England) (Amendment) Regulations 2018. However, there is an expectation that charges should only cover costs incurred.

1.11.5 As each private water supply is very different, the Officer time for each visit/ risk assessment is difficult to quantify. We have seen a decline in this service over recent years which is reflected in the estimated full year income.

Service	Current Charge	Proposed Charge 2022/23	Income Full Year 2022/23
Carrying out sampling and risk assessment of private water supplies	£65.00 per hour (1 hour minimum charge) plus VAT	£67.00 per hour (1 hour minimum charge) plus VAT	£750

1.12 Legal Implications

1.12.1 Section 93 of the 2003 Local Government Act allows authorities to charge for services that they have a power [but not a duty] to provide.

1.13 Financial and Value for Money Considerations

1.13.1 The fees and charges proposed have been considered in accordance with a set of guiding principles and the opportunity to maximise income has been taken where possible.

1.14 Risk Assessment

1.14.1 A decision is required now on the proposed fee structure for these activities to ensure that the Council has timely and up-to-date arrangements in place to administer service requests when received.

1.15 Equality Impact Assessment

1.15.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

1.16 Recommendations

1.16.1 It is **RECOMMENDED** to Cabinet that:-

1. The proposed scale of charges for garden waste subscriptions, household bulky refuse & fridge/freezer collections, "missed" refuse collections, stray dog redemption fees, pest control, food certificates, contaminated land monitoring and private water supplies as detailed in the report be approved; and
2. The proposed scale of charges be implemented from 1st April 2022.

The Directors confirm that the proposals contained in the recommendation(s), if approved, will fall within the Council's Budget and Policy Framework.

Background papers:

Nil

contact: Darren Lanes,
Linda Hibbs

Robert Styles

Director of Street Scene, Leisure and Technical Services

Eleanor Hoyle

Director of Planning, Housing & Environmental Health

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TONBRIDGE & MALLING BOROUGH COUNCIL

STREET SCENE and ENVIRONMENT SERVICES ADVISORY BOARD

23 November 2021

Report of the Director of Street Scene, Leisure & Technical Services and the Director of Finance & Transformation

Part 1- Public

Matters for Recommendation to Cabinet - Key Decision

1 REVIEW OF CAR PARKING FEES AND CHARGES

Summary

This report brings forward recommendations for existing car parking fees and charges for implementation from 1st April 2022

1.1 Introduction

1.1.1 Fees and charges for parking in the Borough are regularly reviewed in the context of current and planned service improvements and the operational management of the parking service.

1.1.2 In bringing forward the proposals in this report, consideration has been given to the set of guiding principles for the setting of fees and charges established by the Council. The guiding principles can be summarised as follows:-

- Fees and charges should have due regard to the Council's Medium Term Financial Strategy and should reflect the Council's key priorities.
- If there is to be a subsidy from the Council tax payer to the service user this should be a conscious choice.
- The Council should look to maximise income subject to market conditions, opportunities and comparable charges elsewhere, in the context of its key priorities and other corporate aims and priorities.
- Fees and charges should be reviewed at least annually (unless fixed by statute or some other body).
- Fees and charges should not be used to provide a subsidy from the Council tax payer to commercial operators.
- There should be consistency between charges for similar services.

In addition to the above, consideration also needs to be given to a number of specific principles relating to the provision of a successful car parking service.

In summary the Council should:-

- Seek to optimise the availability of parking.

- Manage assets in a fair commercial and efficient manner.
- Implement an appropriate charging regime taking into account the cost of the parking service
- Balance the management of the car parks to meet the needs of all users
- Have in place suitable inspection and maintenance regimes to ensure it provides safe and well-maintained opportunities for the public to park their vehicles.

Furthermore, the report takes into account the impact of Covid and the subsequent recovery of the usage of the car parks as people return to a more normal way of life.

1.1.3 The report considers current and future fees and charges for parking, and following careful consideration of the aforementioned principles, brings forward a number of proposals. In summary the proposals are as follows:

- Short stay parking charges in Tonbridge for parking longer than 1 hour to increase in a linear fashion in line with an hourly charge of £1.40, with a penalty tariff to be introduced for parking longer than 4 hours. Long stay parking charges in Tonbridge to increase by 10p per tariff band, with no change to the 30 minute and 1 hour rate.
- Residential preferential parking permits to increase from £45 to £52 (a pound a week) across the whole borough, with a rising scale of charges based on the number of cars per household increasing by proportionate amounts. New applicants to continue to receive 10 visitor permits free of charge.
- Visitor permits be retained at £12 for 10 permits.
- Country parks – an increase from £1.40 to £1.80 for the first 4 hours. Season tickets for regular users to increase from £50 to £60.
- West Malling High Street car park – an increase in short stay parking charges in the High Street car park as shown in Table 5. West Malling Ryarsh Lane car park - the introduction of a new 1 month Season ticket to the Ryarsh Lane car park at £26 per month, and the introduction of Saturday phone payment charges (at the same rate as the High Street car park).
- Borough Green – charges in the Western Road car park to increase by 10p per hour with no increase to the 30 minute tariff, or the 23 hour rate.
- Upper Castle Fields car park and the Castle Grounds to become short stay car parks.
- Sunday and Bank Holiday charging (with the exception of the Country Parks) to continue to be free of charge.

- The existing chargeable parking periods to be extended from 8am-6pm to 8am to 8pm with the exception of West Malling.
- Peak and Off-Peak Season tickets – increases to reflect market conditions/demand.
- Business permits/dispensations for on-street – increases applied with the exception of permits for carers.
- Carers permits to become free of charge

1.1.4 It is relevant for Members to note that the last annual review of car parking charges was in 2019 and the implementation of the new charges was delayed until April 2021 due to the impact of Covid. It is also worthy of note that a number of the proposals within the report do not involve any increase in the existing charge. This includes no increase in the 30 minute or 1 hour tariff in all short stay car parks, no increase in visitor permits for parking in residential roads, no charges for carers parking on-street, and most significantly charges on Sundays and Bank Holidays remaining free of charge.

1.1.5 Following agreement by Cabinet the report does not consider the introduction of car parking charges for the Council's car parks in Aylesford, Larkfield and Snodland.

1.2 Investment in the Parking Service

1.2.1 The review seeks to achieve a balance between proactively managing parking on behalf of residents and businesses and an appropriate charging regime taking into account the cost of the parking service. Many items contribute to this cost, such as maintenance of the car parks, enforcement, business rates, lighting, security measures, renewal of signs and lines and a considerable investment in the Parking Action Plan to improve the management and convenience of parking throughout the Borough. Members will also note that off-street car parking charges paid by users are subject to VAT. It is also true to say that many of the Council's car parks are potentially valuable land assets were they not to be given over for parking purposes, representing an 'opportunity cost' to the Council.

1.2.2 Over the period since the previous review report to this Board in November 2019, the Council has implemented a significant number of parking management initiatives. In the context of this review of fees and charges, it is worth setting these out so that Members as well as local residents and businesses can understand the totality of the parking service beyond the purely financial considerations, and obtain a better perspective on the positive impacts that the parking service has on local parking conditions:-

- Improvement works to the value of £135k have been carried out in a number of car parks including Sovereign Way Mid drainage improvements, Lamberts Yard full resurfacing and lining adjustments,

Angel West table top speed bump reconstruction, Baily Bridge West motorcycle parking provided and we have tested all our lighting columns both structurally and electrically.

- In addition to these works approximately £180k has been spent in Angel East car parks improving the car park layout with a new footway build out, reconstruction and resurfacing of large areas of the car park with replacement drainage channels added. As part of the contract agreement with Sainsburys, the value of these works are re-charged back to Sainsburys.
- The improvement work is underpinned by a continuing and consistent programme of maintenance work to keep the car parks safe, clean, well presented and convenient for our customers. This programme also includes work on-street to keep all the signs and lines in the Borough clear and legible to support the enforcement work of the Civil Enforcement Officers (CEO). Annual provision for this programme of maintenance work is £265,000, and it is notable that there is a nationwide increase in materials costs for civil engineering works, that affects the Council's maintenance work.
- Business Rates are around £269,000 each year and to round off this section on maintenance and safety, CCTV provision amounts to £179,000 each year to keep the car parks safe and secure.
- The enforcement service, includes 10 full time CEO's. Staff patrol at locations across the whole Borough, and the team are critical to promoting a well-ordered parking environment in the Borough that is responsive to local needs and pressures. It is also relevant to note that the expectations from the public in terms of levels of enforcement continue grow. In addition, an external contractor is employed to empty the ticket machines at an annual cost of £70,000.
- In addition, there is also a staff cost associated with implementing Local Parking Plans and the phased programme of more ad hoc parking interactions. Whilst this is integrated with other parking related work, the average annual cost is iro. £60,000

1.2.3 Taking all these elements together, they amount to a significant investment by the Borough Council in seeking to provide a comprehensive and integrated parking service on behalf of residents and businesses and provide an important context for the review of parking fees and charges that follows. Further investment may also be required in the future to meet initiatives brought forward in the context of the Council's Digital and Climate Change Strategies.

1.3 Comparative Charges

1.3.1 Comparison with the parking fees and charges of other Kent districts and private sector operators should not be the main driver of what might be appropriate in

this Borough, since local circumstances, such as the availability of short and long-stay parking, the convenience of the car park locations, and any “through the till” refunds offered by businesses in Tonbridge (Sainsburys, Waitrose, Iceland and TM Active) are critical in such considerations. Ticket refunds from the aforementioned businesses in Tonbridge amount to £438,000 per annum. Comparative charges do, however, act as a guide and can be viewed by the public as to what might be considered the ‘going rate’ for parking. In addition, it is important to note that this Council does not currently charge on Sundays or Bank Holidays, with the exception of the Country Park car parks. For these and other local reasons comparisons of charges outside the Borough and even within must be carefully qualified.

- 1.3.2 The scope of the review exercise covers consideration of all existing services and charges and includes an assessment of whether current circumstances justify them being maintained as they are or increased. In overview, a comparison of parking charges levied by neighbouring authorities would indicate the proposals are generally in line with others, and it is anticipated that most other Council’s will be bringing forward their own increases in advance of the next financial year.

1.4 Current Income Levels

- 1.4.1 Income from the Council’s car parks is monitored by the Council’s Management Team on a monthly basis. This enables any variances against profile to be identified and if necessary action to be taken. Current levels of income have been impacted by Covid and have been carefully considered in bringing forward the proposals in this report.

- 1.4.2 After the first 6 months of the current financial year, income is around £250,000 below profile. This is due to the imposition of third national lockdown since the budget was produced a year ago, and the subsequent delay in the lifting of restrictions. Car park usage has gradually increased since the lifting of restrictions in the summer and the Council’s financial plans assume that this gradual increase in usage as motorists return to the Council’s car parks will continue for another two years. However, usage isn’t expected to return to pre-Covid levels due to permanent changes in behaviour by car park users e.g. working from home and home delivery of groceries. The net loss of income due to this change in behaviour has been estimated to be £350,000 and has been built into the Council’s budgets.

- 1.4.3 Parking income for the two country parks is monitored separately. Income after the first 6 months is above profile, with a year-end forecast of £128,000 against an original estimate of £117,000 (even with the recent transfer of Leybourne Lakes to the new operator).

1.5 Off-Street Parking in Tonbridge – Daily Short and Long Stay Charges

- 1.5.1 Detailed in Table 1 below are the current and proposed charges for daily short and long stay car parking charges in Tonbridge. It is not proposed to increase the

current 30 minute or 1 hour prices, but to bring the 2, 3 and 4 hour prices in line to the same hourly rate.

- 1.5.2 In line with neighbouring authorities it is proposed to extend the Tonbridge car park charging period from 8am-6pm to 8am-8pm, Monday to Saturday. It is, however, not proposed to introduce charges on Sundays or Bank Holidays at the present time.
- 1.5.3 It is also proposed to introduce the facility to park in the short-stay car parks for longer than the currently permitted 4 hour maximum stay, but the rate for parking for each additional hour to be set at double the hourly parking rate, at £2.80. This is intended to act as a deterrent to long-stay parking in the short-stay car parks but may provide an option for those determined to park for longer and are prepared to pay a premium.

TABLE 1

Short Stay		
Period – Hours	Current Charge	Proposed Charge
30 minutes	£0.70	£0.70
1 hour	£1.40	£1.40
2 hours	£2.50	£2.80
3 hours	£3.40	£4.20
4 hours	£4.20	£5.60
Additional hours		£2.80 per hour
Long Stay		
1 hour	£1.40	£1.40
2 hours	£2.50	£2.60
3 hours	£3.40	£3.50
6 hours	£5.30	£5.40
All day (23 hours)	£6.70	£6.80

- 1.5.4 The proposed all-day tariff (£6.80) does not exceed the current all-day rate of £7.60 in the privately operated Tonbridge railway station car park. It operates for 23 hours to prevent the long-term storage of vehicles.
- 1.5.5 The usage pattern of the Upper Castle Field and Castle Grounds car parks have been reviewed, and it is proposed to change the designation of these car parks from long-stay to short-stay to help support businesses in the northern part of the High Street, as short-stay shopper parking is at a premium in this area.

1.6 Season Tickets, Tonbridge

- 1.6.1 The Council currently offers Season Tickets focussed primarily on commuters and workers in the town to park all-day in the Sovereign complex (Sovereign Way East, Sovereign Way North and Vale Road) and Lower Castle Fields car parks. Season tickets are available on a monthly and yearly basis. In addition, the Council has recently introduced a Town Centre Residents Season Ticket covering a designated area within the town centre.
- 1.6.2 The annual take-up of Season Tickets is currently 33 with 33 of the new Residents Season tickets sold to date. Uptake of the season tickets has dropped significantly due to the impact of Covid.
- 1.6.3 The proposed Season Ticket charges at Table 2 takes into consideration the charges applied at the Railway Station car park which has the advantage for commuters of being located immediately next to the Station. The current price of a Tonbridge Station season ticket is £1388.70.

TABLE 2

Season Tickets, Tonbridge		
	Current Charge	Proposed Charge
Monthly	£120	£120
Annual	£1020	£1050

- 1.6.4 The existing charge for the new Town Centre Residents season ticket is £350 and taking into account this has only recently been introduced no change in the charge is proposed at the present time.

1.7 Off-Peak Season Ticket, Tonbridge

- 1.7.1 The Council offers an “Off-Peak Season Ticket” in Tonbridge that allows anyone to park between 4pm and 9am the next day (and all-day Saturdays) for £290 per year in any of the Council’s car parks. central Tonbridge. There are currently 19 off peak annual season tickets. Members will note from Table 3 below that it is the intention to increase the charge by £30 to £320 per year. Excluding Sundays and Bank Holidays this equates to just £1.05 per day.

TABLE 3

Off Peak Season Ticket, Tonbridge		
	Current Annual Charge	Proposed Annual Charge
Off-peak season ticket (4pm-9am & Saturdays)	£290	£320

1.8 Off Street Parking in West Malling – Season Tickets and Short Stay Charges

- 1.8.1 The current Season Ticket for the Ryarsh Lane car park is set at £255 per year, which Members will note from Table 4 equates to approximately £1 a working day (based on 251 working days per year). The car park is primarily used by businesses and retailers in the week for their staff. The car park is also free of charge after 3pm on weekdays to enable parents to collect their children from the local primary school and is free of charge on Saturdays.
- 1.8.2 Privately managed, alternate long-stay parking is available at West Malling railway station. Although it is recognised that this is less convenient for the town, the comparative cost of the parking is shown below in Table 4.

TABLE 4

West Malling Long Stay Parking				
Parking provider	Daily Charge	Off peak Charge	Saturday Charge	Annual Charge
South-eastern (West Malling Station)	£5.30	£4.80	£2.80	£957.50 (£3.81 per day)
Kenden (West Malling Station)	£5.00	£5.00	£1.50	£375 (6 month) (£2.99 per day)
Ryarsh Lane car park	Not available	Not available	Free	£255 (£1.02p per day)

- 1.8.3 Despite an increase from £175 to £255 when the charge was last reviewed in 2019, demand for season tickets in Ryarsh Lane continues to significantly exceed supply and there still remains a tendency for season ticket holders to retain their tickets even when not always required. The car park has 114 spaces and the allocation of tickets is currently limited to 114. However, in practice there are frequently spaces available as not all the Season Ticket holders are present at the same time.

- 1.8.4 It is proposed to increase the number of Season Tickets issued in the car park, initially by 25%.
- 1.8.5 It has also been suggested that the Council should offer Season Tickets for shorter periods, and to this end we are proposing the introduction of a monthly Season Ticket at £26 per month.
- 1.8.6 It is also notable that the car park is well used for parking on Saturdays and it is proposed that charges (at a similar level to the West Malling High Street car park) are introduced. This would be managed by phone payment and season tickets for the car park would be extended to also cover Saturdays.
- 1.8.7 Detailed in Table 5 below are the current and proposed charges for daily short stay car parking charges in West Malling High Street car park.

TABLE 5

West Malling Short Stay		
Period	Current Charge	Proposed Charge
30 minutes	£0.40	£0.50
1 hour	£0.80	£1.10
2 hours	£1.60	£1.80
3 hours	£2.40	£2.60
4 hours	£3.20	£3.40

- 1.8.8 It is not possible to extend the charging period to 8pm at West Malling High Street car park due to legal restrictions.

1.9 Blue Bell Hill Car Park

- 1.9.1 Blue Bell Hill is a commuter car park in the north of the Borough that is easily accessible and has good onward coach links towards London via the M2. The car park is 'Park Mark' accredited and as such it offers high-quality parking opportunities with a good surface, lighting and CCTV.
- 1.9.2 Parking charges apply Monday to Saturday. The existing charges are relatively low and act as an incentive for commuters to use the car park rather than to park in nearby residential areas. However, since the establishment of the car park there has still been some on-street commuter parking in nearby residential areas, and to assist in addressing this the Council has introduced on-street parking controls to deter this.

1.9.3 There are no proposed changes to parking charges in the Blue Bell Hill Car Park at this time. The daily charge is £2.70, the monthly charge is £40 and the annual charge is £420.

1.10 Borough Green Western Road Car Park

1.10.1 The proposed charges for the Western Road car park are detailed below in Table 7 and represent a 10p increase on each tariff with the exception of the 30 minute charge. Charges in this car park are applied to discourage rail commuter parking in support of the local businesses and residents.

1.10.2 Season tickets are also available for the car park but these are restricted to local residents. There are currently just 9 annual season tickets issued.

TABLE 7

Borough Green Western Road Car Park		
	Current Charge	Proposed charge
Up to 30 minutes	£0.20	£0.20
30 minutes to 1 hour	£0.40	£0.50
1 to 2 hours	£0.60	£0.80
2 to 4 hours	£1.10	£1.50
4 to 6 hours	£1.60	£2.20
6 to 9 hours	£2.20	£3.10
All day	£5.30	£5.30 (no change)
Residents Season Ticket	£320	£350

1.11 Preferential Permit Parking Scheme

1.11.1 Residents permits across the Borough are shown below and are based on a rising scale of charges with those who park more cars on the road, paying more for their permits. The rising scale is designed to help manage road space demand where parking is at a premium. In essence, it seeks to discourage people from parking more cars in the road, unless absolutely necessary.

TABLE 8	Current Annual Charge	Proposed Annual Charge
1 st car	£45	£52
2 nd car	£45	£52

3 rd car	£90	£104
4 th car	£135	£156

1.11.2 Foreign registered vehicles are required to be exported or re-registered in the UK via DVLA after 6 months. With this in mind, we offer 6 month permits to non-UK registered vehicles belonging to residents, at the pro-rata rate for comparable resident parking permits. The change to resident permits will require a change from £22.50 to £26 for 6 months,

1.11.3 The Council offers Business and Carers Permits and Dispensations shown below in Table 9.

TABLE 9

Business/Carers Permits		
Permit type	Current charge per annum	Proposed charge per annum
Business permit (for businesses located within a permit scheme)	£175	£200
Carers permit	£25	£0
Dispensations		
Property Maintenance	£175	£200
Tonbridge High Street (Banking)	£175	£200
On-street dispensation (for building works etc.)	£10 per day £40 per week	£15 per day £60 per week

1.11.4 Members will note that it is the intention to increase the cost of the permits/dispensations with the exception of the Carers Permit. The Carers Permit was reduced in the last review to recognise the service Carers provide to vulnerable members of the community, and it is further proposed to remove the cost altogether.

1.12 Visitor Permits

1.12.1 The Council has a system of issuing Visitor Permits to holders of Residents Permits to enable their visitors to park within the restricted area. The Visitor Permits effectively operate as a one-day parking permit.

1.12.2 Visitor Permits currently cost £12 per sheet of 10 permits, and every permit holder is given a free sheet of 10 permits when they first take out their permit.

1.12.3 It is proposed that the charge for Visitor Permits remains unchanged.

1.13 Leybourne Lakes and Haysden Country Park

1.13.1 Members will be aware that charging is in place for car parking at both of the Council's Country Parks. The last increase was applied in April 2021 with charges rising to £1.40 for up to four hours and no change to the charge for over four hours (£4.00).

1.13.2 However, an unintended consequence of the Covid pandemic has been a significant increase in usage of the Council's outdoor leisure facilities, which have required more investment and maintenance to cope with the significantly increased demand.

1.13.3 To reflect this it is proposed that the current "up to 4 hour" rate of £1.40 be revised to £1.80. It is not proposed to alter the "over 4 hour" rate.

1.13.4 In addition to the increase in the "up to 4 hour" charge, an annual season ticket can also be purchased which provides parking at both Country Parks. The season ticket was introduced in 2008 at an annual charge of just £25 and currently £50. We are proposing that the charge be increased to £60 per annum to reflect the increased usage. There are currently 433 season tickets.

1.13.5 Members may be interested to note that the current charging structure in relation to Kent County Council's (KCC) Country Parks is:

- £1.40 to £2.30 (park dependent) flat rate Monday to Friday
- £2.30 to £3.30 (park dependent) flat rate weekend and Bank Holidays
- £55 season ticket (covers nine sites across Kent)

1.13.6 The existing charges, together with the proposed charges, are detailed below in Table 10. The proposals take into account the charges at the KCC Country Parks, the value of the season ticket for regular users (under £1 a week) and current demand.

TABLE 10

Haysden/Leybourne Lakes Country Parks		
Period	Current Tariff	Proposed Tariff
0-4 Hours	£1.40	£1.80
4+ Hours	£4.00	£4.00
Annual Season Ticket	£50.00	£60.00

1.13.7 The higher parking rates charges by KCC are for its largest sites, which are comparable in size to Haysden and Leybourne Lakes Country Parks. It can

therefore be seen that in comparison to the charges applied by KCC, this Council's proposed charges continue to offer excellent value for money.

1.13.8 With regard to Leybourne Lakes Country Park the management of the site has now transferred to the Tonbridge and Malling Leisure Trust. Whilst the review and setting of charges at this site is now the responsibility of the Trust, the Trust have been consulted on, and are in agreement with, the proposed charges above.

1.14 Tonbridge On-Street Pay and Display

1.14.1 The Council currently operates some limited on-street pay and display parking in Tonbridge, some operating for 2 hours, with some up to a maximum stay of 3 hours. The purpose of on-street pay and display is to provide short stay parking that is convenient to customers of local businesses, with a regular turn-over of spaces.

1.14.2 The proposed on-street pay and display parking charges are shown in Table 11 below, and are identical to the proposed short stay parking charges in Tonbridge reported earlier in these papers at sub-section 1.5.1.

TABLE 11

On-Street Pay & Display		
	Current Charge	Proposed charge
Up to 30 minutes	£0.70	£0.70
Up to 1 hour	£1.40	£1.40
Up to 2 hours	£2.50	£2.80
Up to 3 hours (where allowed)	£3.40	£4.20

1.14.3 As it is proposed to extend the Tonbridge car park charging period from 8am-6pm to 8am-8pm, Monday to Saturday it is also proposed to mirror this arrangement for the on-street pay and display as this reflects the usage of the car parks into the evenings. It is not proposed to introduce charges on Sundays or Bank Holidays at the present time.

1.15 Timescale

1.15.1 Any changes to the On and Off-street charges will be progressed and reported as required to the appropriate Board. This will result in any Member endorsed proposals being introduced later next year.

1.16 Legal Implications

- 1.16.1 The powers allowing the Borough Council to carry out parking management activity are contained in the Road Traffic Regulation Act 1984, supplemented by formal agreement with Kent County Council as the Local Highway Authority, in respect of its powers under the Traffic Management Act 2004. In particular, section 122 of the Road Traffic Regulation 1984 Act imposes a general duty on local authorities exercising functions under the Act to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians) and the provision of safe and adequate parking facilities on and off the highway.
- 1.16.2 Changes to parking charges should be made via an Amendment Order to the Council's on and off-street parking Traffic Regulation Orders, using the procedures set out in the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996.
- 1.16.3 Part 2 of The Civil Enforcement of Parking Contraventions (England) General (Amendment) Regulations 2015 introduced a statutory requirement for a 10 minute "grace" period to time limited parking, whether on-street or off-street, including Pay and Display, regardless of the intended duration of stay, effectively adding the facility to park for an additional 10 minutes to all parking periods.

1.17 Financial and Value for Money Considerations

- 1.17.1 This review has examined parking fees and charges within the context of a set of guiding principles, the cost of parking service to the Council and ongoing investment in the parking management service. It is anticipated that the recommendations outlined in this report will generate estimated income of £218,000. This estimate is based on the assumption that current usage and refund levels remains constant, there is no significant change to Covid levels, that ticket sales remain uninfluenced by price increases and that there is a similar distribution of tickets in each pricing.

1.19 Asset Management

- 1.19.1 It is worthy of note that many of the Council's car parks represent a significant asset in terms of resale and for development. It is essential, given the context of the Medium Term Financial Strategy, that the Council seeks to ensure that the assets are managed in the most economically advantageous way and may in some cases include disposal of the asset.

1.20 Risk Assessment

- 1.20.1 The estimated additional income is modelled on predicted future parking patterns and demand matching what currently takes place. It does not reflect any potential adverse customer reaction or the possibility of increased take up

1.21 Equality Impact Assessment

1.21.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

1.21.2 Blue Badge holders can park free of charge in the Council's car parks for up to 23 hours. For Blue Badge holders living in a parking permit area, a Resident Parking Permit is not required as long as the valid Blue Badge and clock is correctly displayed. The Blue Badge scheme has recently been extended by Central Government to include people with "hidden disabilities". This includes people with learning disabilities, autism and mental health conditions.

1.22 Policy Considerations

1.22.1 Asset Management

1.22.2 Community

1.22.3 Customer Contact

1.22.4 Climate Change

1.23 Recommendations

1.23.1 It is **RECOMMENDED TO CABINET** that it **APPROVE** the proposed fees and charges outlined in the report for implementation from 1st April 2022.

Background papers:

Nil

contact: Andy Edwards
Andy Bracey
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Director of Street Scene, Leisure & Technical Services

Sharon Shelton
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TONBRIDGE & MALLING BOROUGH COUNCIL

STREET SCENE and ENVIRONMENT SERVICES ADVISORY BOARD

23 November 2021

Joint Report of the Director of Central Services & Deputy Chief Executive and Director of Street Scene, Leisure & Technical Services

Part 1- Public

Matters for Recommendation to Cabinet - Non-Key Decision (Decision may be taken by the Cabinet Member)

1 RIVER LAWN, TONBRIDGE

Summary

This report considers the possibility of the Council applying for Village Green status for River Lawn, Tonbridge and suggests the future rewilding of the site.

1.1 Introduction

1.1.1 At the meeting of the Finance, Innovation & Property Advisory Board on 15th September 2021 the future of the River Lawn site was considered, and it was recommended to Cabinet that the proposed sale of the site not be progressed. This recommendation was subsequently agreed by Cabinet on 12th October 2021. At the meeting of the Board it was also discussed whether the site should be nominated by the Council for Village Green status, and it was agreed that a report on this issue, together with the future use of the site, be reported to this Advisory Board. A plan of the site is attached at **Annex 1**.

1.2 Village Green Status

1.2.1 Members may be aware that in March 2018 an application was made by the Barden Road Residents Association to Kent County Council to register the land as a Village Green.

1.2.2 A town or village green is an area of open space which by immemorial custom has been used by the inhabitants of the town, village or parish, for the purposes of playing lawful games and recreation. There is no legal distinction between town greens and village greens; the names merely refer to the geographical location of the green.

1.2.3 The core requirement common for applications to register new town and village greens under section 15 of the Commons Act 2006 is that a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years.

1.2.4 The application by the Barden Road Residents Association was rejected by KCC in January 2020 on the grounds on the basis that a ‘trigger event’ had occurred under the Commons Act 2006 as a result of land being identified for potential development in TMBC Core Strategy Policy CP23 and the Tonbridge Central Area Action Plan 2008. No further challenge was made to the decision of KCC by the Residents Association.

Voluntary registration as a village green

1.2.5 Under section 15(8) of the Commons Act 2006, the Borough Council (as the owner of the land) can apply voluntarily for the land to be registered as a town or village green. In such cases, the Council would not need to show that the land has been used by local inhabitants for lawful sports and pastimes for at least 20 years.

1.2.6 Any application by the Borough Council to voluntarily register the open space at River Lawn Road would be unaffected by the provisions relating to trigger and terminating events, which was the basis for the rejection of the previous application to the County Council by Keep River Lawn Green.

1.2.7 The implications of any such application are set out below.

1.2.8 Once registered, the land would be protected by long-standing legislation that effectively means that the land cannot be developed. For example, Section 12 of the Inclosure Act 1857 makes it a criminal offence to do any of the following

- undertake any act which interrupts the use or enjoyment of a green as a place of exercise and recreation
- wilfully cause injury or damage to any fence on a green;
- wilfully take any cattle or other animals onto a green without lawful authority;
- wilfully lay any manure, soil, ashes, rubbish or other material on a green; or
- undertake any act which causes injury to the green

1.2.9 Section 29 of the Commons Act 1876 deems it to be a public nuisance, and therefore an offence, to

- encroach on or inclose a green;
- erect any structure on, disturb, interfere with or occupy the soil of, a green unless this is done “with a view to the better enjoyment of such town or village green”.

1.2.10 The voluntary registration of the land as a village green would therefore strip the land of its development potential (set out in paragraph 1.7 below). It would also place a fetter on the Council’s ability to manage its asset in response to any change in circumstances in the future.

- 1.2.11 In respect of the rewilding proposals set out at paragraph 1.5 of this report, the above statutory provisions may mean that the Council could not seek to voluntarily register the land as a village green and undertake rewilding, as rewilding on a village green may be contrary to the restrictions contained in section 12 of the Inclosure Act (i.e. the rewilding would interrupt the use or enjoyment of the green as a place of exercise and recreation) and section 29 of the Commons Act (i.e. the rewilding would disturb, interfere with or occupy the soil of a green).
- 1.2.12 Defra have published non-statutory guidance on a number of issues relating to management and protection of greens, attached as **Annex 2**.

Charging for use of a village green

- 1.2.13 Inhabitants of the locality within which a green is situated have the right to use that green for lawful sports and pastimes. By definition any right can be exercised free of charge. Therefore, although the owner of a green may ask a local inhabitant to pay a donation for their use of a green, that person would be under no obligation to pay. This principle would apply equally to a request for a contribution to maintain a green as it would to a request for a payment to enter an organised event such as a fête or sports match which was being held on the green. A local inhabitant cannot be required to pay a fee to exercise a right.
- 1.2.14 Commercial activities can be carried out provided that they do not unduly interfere with the public's rights, it is therefore possible to have "dual use" greens – this could include a situation where tables and chairs are temporarily placed on a small area of the green. That temporary use might not "unduly interfere" with the rights of the public to use the remainder of the green to exercise their rights. For example in the recent Supreme Court case of TW Logistics v Essex County Council [2021], the court there considered that temporary storage of materials by TW did not unduly interfere with the public's rights over an area of hardstanding. The commercial use was not incompatible with the registration as a green and TW's continuing commercial activities would not constitute an offence under the Commons Act 1876.

Release from registration

- 1.2.15 In considering whether to pursue voluntary registration of the land, Members will no doubt wish to understand the ability of the Council to remove that registration in the future.
- 1.2.16 Under section 16 of the Commons Act 2006 an owner of a green may apply to the Secretary of State for land to be released from registration. If successful, such an application would result in the land no longer being subject to protection as a green.
- 1.2.17 If the application relates to the release of land with an area of more than 200 square metres, the application must include a proposal to register an alternative site as common land or a town or village green (*section 16(2), CA 2006*). The

alternative site would be registered in exchange for the release of the original land. If the release land is smaller than 200 square metres, a proposal for replacement land may be included, but there is no absolute requirement. However, it is the policy of the Secretary of State to avoid the net loss of town and village greens. Therefore the Secretary of State generally expects that land will be offered in exchange even where the release land is less than 200 square metres.

- 1.2.18 A proposed exchange under section 16 will be considered by the Secretary of State and will not be approved automatically. The Secretary of State will wish to take into account the impact of the exchange having regard (amongst other things) to the public interest.
- 1.2.19 When deciding whether to grant the release, the Secretary of State is required to consider:
- The interests of those who have rights over the land (particularly rights of common) and anyone who occupies the land.
 - The interests of the neighbourhood.
 - The public interest, including:
 - nature conservation;
 - conservation of the landscape;
 - the protection of public rights of access to any area of land; and
 - the protection of archaeological remains and features of historic interest
 - Any other relevant matters
 - If an application to release land with an area of up to 200 square metres does not include an exchange proposal, the extent to which the absence of a proposal is detrimental to the interests of the public, the neighbourhood and those with rights over the original land.
- 1.2.20 Members will therefore note that the release of village green status is difficult to achieve, and at the very least would require the release of an equivalent area of land for designation as a village green.

Local Green Space designation

- 1.2.21 An alternative to the Village Green process is to consider designating the area as a Local Green Space (LGS) through the preparation of the Local Plan.
- 1.2.22 The National Planning Policy Framework (NPPF) describes LGS as a designation for use in Local Plans or Neighbourhood Plans. These plans can identify on a map ('designate') green areas for special protection. LGS may be designated where those spaces are demonstrably special to the local community.
- 1.2.23 Designating any LGS will need to be consistent with local planning for sustainable development in the area. In particular, plans must identify sufficient land in

suitable locations to meet identified development needs and the LGS designation should not be used in a way that undermines this aim of plan making.

- 1.2.24 Designation would give the land protection consistent with that in respect of Green Belt, but otherwise there are no new restrictions or obligations on landowners.
- 1.2.25 Management of land designated as LGS will remain the responsibility of its owner. If the features that make a green area special and locally significant are to be conserved, how it will be managed in the future is likely to be an important consideration. Local communities can consider how, with the landowner's agreement, they might be able to get involved, perhaps in partnership with interested organisations that can provide advice or resources.
- 1.2.26 The proposed rewilding set out in paragraph 1.5 has the potential to enhance the status of the land for the purposes of designation as a local green space. In assessing whether a space is 'demonstrably special to a local community' under the National Planning Policy Framework, the Council (as Local Planning Authority) may take into account the richness of its wildlife.
- 1.2.27 Designation as LGS is at the discretion of the Local Planning Authority through the Local Plan process, whereas a Village Green Application is determined by the County Council. Changing Village Green status can be difficult to achieve as noted at para 1.2.20. LGS enjoys a similar status and protection against inappropriate development as Green Belt and similarly both designations can be revisited and amended when the Local Plan is reviewed. Therefore, while both Village Green status and LGS protect the open spaces to which they apply, the latter is a more flexible tool for the Council to consider.

1.3 Public Rights of Way

- 1.3.1 In the previous report to the Finance, Innovation and Property Advisory Board, Members were advised of the current situation in relation to the application to register paths crossing the land as public rights of way. For the assistance of Members the updated position is set out below.
- 1.3.2 On 24 November 2017 an application was made to Kent County Council ('KCC') to register certain paths which cross River Lawn as public rights of way ('PROW'). Currently the paths are tarmacked and are used both as footpath and as a cycle path which link with the River Walk along the side of the River Medway and onwards. A plan detailing the paths in question is attached as **Annex 3**.
- 1.3.3 The Borough Council wrote to KCC in August 2018 to register its objection to the proposed PROW. 2 legal points were raised at that time by way of objection:-
1. That River Lawn and all paths over it have been used by the public for many years with TMBC's consent and permission and under TMBC's control at all times and as such they have not been used as of right as required to support the application. The ways have not been enjoyed as of right and without

interruption for 20 years so the presumption that the paths are dedicated as a highway has not arisen.

2. In addition, the land and the footpaths have been closed on various occasions during the necessary twenty-year period. So even if any presumption had been raised, this would then have been broken and the necessary period of 20 years of continuous use is not demonstrated.
- 1.3.4 Notwithstanding the objections of the Borough Council at the time, KCC proceeded to modify the definitive map in November 2020 by the addition of 3 new Public Rights of Way:-
- a) from River Lawn Road to Buley's Weir Bridge
 - b) from Weir View Scout Hut to Lambert's Yard
 - c) from Lambert's Yard to the Buley's Weir Bridge
- 1.3.5 In December 2020 the Borough Council submitted a formal objection to the Order modifying the definitive map (attached as **Annex 4**). The submission of a formal objection means that KCC is not able to confirm the Order (unless the objection were to be withdrawn). The matter must instead be submitted to the Secretary of State for the Environment, Food and Rural Affairs for determination. It is expected that this would be heard by the Planning Inspectorate by way of local inquiry, as the representation has been made by another local authority. If this is the route the Inspectorate follow, then the Inspectorate advises that it will normally take up to 45 weeks from the start date for the decision to be issued. The start date may itself be up to 10 weeks after the date KCC submit all the necessary paperwork to the Inspectorate, so realistically we might potentially be looking at 55 weeks or more from submission of the paperwork to the Inspectorate before we get a decision.
- 1.3.6 On 26 August 2021 Kent County Council wrote to the Borough Council to confirm that the necessary paperwork had been submitted to the Inspectorate. They further indicated that the Inspectorate had a large backlog of cases and had advised the County Council that they may not hear anything else about this case until 2022. In all likelihood this will mean that a decision on the application may not be issued until 2023, possibly even later.
- 1.3.7 Members are asked to note that the inclusion of the proposed PROWs on the definitive map would not preclude a future application to extinguish or divert the public rights of way under the Highways Act 1980 or the Town & Country Planning Act 1990. All of these applications are subject to a number of statutory tests e.g. in the case of an application to extinguish a PROW under the Highways Act 1980, the determining authority would need to be satisfied that it was expedient to extinguish the PROW on the ground that it is not needed for public use. Consequently, there can be no guarantee that any such application(s) would be successful, nor how long they would take.

- 1.3.8 Members are asked to note that any decision as to whether to maintain the objection to the PROW Order is separate to the assessment of whether the Borough Council should seek to voluntarily register the land as a village green. These decisions are not co-dependent.

1.4 Asset of Community Value

- 1.4.1 The land is currently included on the Borough Council's register of Assets of Community Value (ACV), following an application in August 2017. The land will remain on the register until August 2022, although a further application could then be made to secure its inclusion for a further 5 year period.
- 1.4.2 When an owner of land or a building listed as an ACV wishes to dispose of it, the community is given the opportunity to develop a bid and raise capital to buy the land. This means that an owner of land listed as an ACV is restricted from disposing of their land until a certain period of time has passed (a "moratorium period"), during which only bids from community groups can be accepted (however there is ultimately no obligation to sell to any community group).

1.5 Future Use

- 1.5.1 At the aforementioned meeting of the Finance, Innovation & Property Advisory Board the option of rewilding the River Lawn area was highlighted within the report. The Council has recently undertaken a trial on the introduction of a reduced cutting frequency on an area of public open space in Darenth Avenue, Tonbridge. The trial saw the frequency of cuts at the site reduced from 15 (as is currently the frequency at River Lawn) down to two cuts, one in March and one in September, with the second being a cut and collect. The trial was undertaken in liaison with the Medway Valley Countryside Partnership (MVCP) who undertook wildlife monitoring of the site through the summer period and brought forward recommended actions for the trial area. The monitoring concluded that the change in cutting regime had a positive impact on species diversity and adopting and maintaining this cutting frequency and collection method would improve this position further in the future. The outcome of the trial was reported to the recent meeting of the Communities and Housing Advisory Board where Members recommended to Cabinet that the approach taken in the Darenth Avenue trial be applied to the future management of other sites that may be brought forward, including River Lawn. MVCP has undertaken a site visit to River Lawn and it has been confirmed the approach taken in the Darenth Avenue trial could be applied to River Lawn, commencing in March 2022. Whilst this will see a reduced cutting frequency at River Lawn to increase biodiversity, a 1m cut edge will be maintained along the path edges. In addition, there is the opportunity to plant a further tree in the quarter closest to the weir and this will replace a tree felled some years ago. It is proposed that the tree be a "Heavy Standard" to improve its immediate environmental credentials and resist any future vandalism.
- 1.5.2 The River Lawn site is included in the 'Tonbridge Riverside Route' that is currently being assessed by consultants to ensure a cohesive overall design approach is

taken to delivery of phases of the route, supported by s106 contributions, which for this area include a contribution from the development of the medical centre facility adjacent to River Lawn. The design work has commenced, with initial design concepts and high-level costs due before the end of 2021 for discussion with Members. Consultants are aware of the rewilding proposals and are currently considering how the aim of increasing biodiversity at this location can best be integrated with the aim of improving the riverside path including lighting.

1.6 Legal Implications

1.6.1 As set out above.

1.7 Climate change impacts

1.7.1 The proposed rewilding would have the potential to increase biodiversity in the area by significantly reducing the existing cutting frequency. This would contribute to the delivery of the targets set out in the Council's adopted Climate Change Strategy.

1.8 Financial and Value for Money Considerations

1.8.1 Voluntary registration of the land as a village green would be likely to prevent future development and would therefore deprive the land of much of its value. It may also set a precedent in respect of other areas of open space within the Borough.

1.8.2 In accounting terms, the land at River Lawn is held in our accounts at a nil value. This is in accordance with RICS guidance, as the land is not subject to any planning permission.

1.8.3 A marketing appraisal of the site was undertaken by Hartnell Taylor Cook in July 2020, although this wasn't a red book (RICS) valuation. The appraisal was as follows:-

- the appraisal for Retirement Living and a café showed a positive Residual Land Price of approximately £1,825,000 exclusive of VAT.
- the appraisal for private residential, some Social & Affordable housing and a café showed a positive Residual Land Price of approximately £620,000 exclusive of VAT.

1.8.4 Members are asked to note that the appraisal is likely to have changed since July 2020, so the above figures are for guidance purposes only.

1.8.5 Voluntary registration would also mean that the Council would continue to be responsible for maintenance of the area, effectively in perpetuity.

1.8.6 In respect of the objection to the PROW Order, the Borough Council would incur further costs should it seek to defend the objection at a local inquiry.

1.9 Risk Assessment

1.9.1 The risks of pursuing voluntary registration of the land as a village green, and those relating to the application to register public rights of way are set out within the body of this report.

1.10 Equality Impact Assessment

1.10.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

1.11 Policy Considerations

1.11.1 Asset Management

1.11.2 Climate change

1.12 Recommendations

1.12.1 It is **RECOMMENDED** to Cabinet that-

- The area of land at River Lawn Road Tonbridge (shown at **Annex 1**) be considered for designation in the Local Plan as a Local Green Space;
- The proposal to rewild the land in partnership with the Medway Valley Countryside Partnership as outlined in the report be progressed.

1.12.2 Members are asked to consider whether the Borough Council maintains its objections to the PROW Order.

The Director of Street Scene, Leisure & Technical Services confirms that the proposals contained in the recommendation(s), if approved, will fall within the Council's Budget and Policy Framework.

Background papers:

Nil

contact: Darren Lanes
Kevin Toogood

Robert Styles

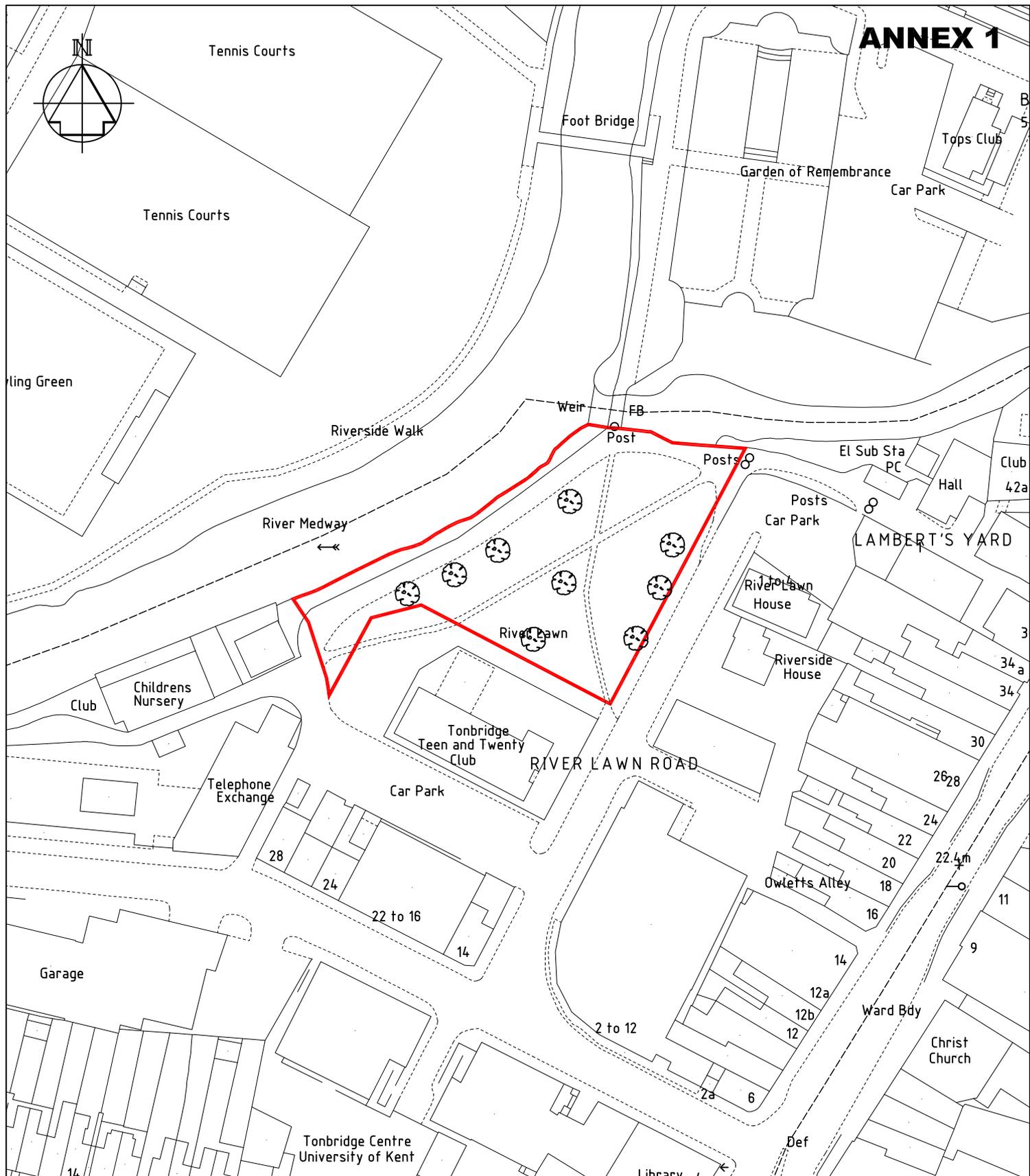
Director of Street Scene, Leisure & Technical Services

Adrian Stanfield

Director of Central Services/Deputy Chief Executive

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ANNEX 1



ANNEX 1

Land at
River Lawn Road
Tonbridge
Page 51



PROPERTY SERVICES

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REVISIONS		
Rev	Date	Description
Date SEP2017		
Scale NTS		
Drawing No.		Rev
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Management and protection of registered town and village greens

Frequently asked questions

January 2010

Management and protection of registered town and village greens Frequently asked questions

This guidance note explains Defra's view on a number of issues relating to the management and protection of town and village greens which have been recorded in a register of town or village greens. These registers are held by commons registration authorities (i.e. county councils, unitary authorities, metropolitan borough councils and London borough councils) and are available for public inspection. Guidance on how to apply to register 'new' town or village greens can be found on Defra's website¹.

Please note that this guidance is non-statutory and has no legal effect. It should not be regarded as a definitive statement of the law. Furthermore it does not provide a comprehensive explanation of every issue. Defra cannot provide advice on individual circumstances and anyone needing this should consider taking independent expert advice. Please also note that references in this guidance to 'a green' refer to a registered town or village green.

1. How are greens protected?

Greens receive considerable statutory protection under the following two Victorian statutes².

Section 12 of the Inclosure Act 1857 makes it a criminal offence to:

- wilfully cause injury or damage to any fence on a green;
- wilfully take any cattle or other animals onto a green without lawful authority³;
- wilfully lay any manure, soil, ashes, rubbish or other material on a green;
- undertake any act which causes injury to the green (e.g. digging turf); or
- undertake any act which interrupts the use or enjoyment of a green as a place of exercise and recreation (e.g. fencing a green so as to prevent access).⁴

Section 29 of the Commons Act 1876 makes it a public nuisance to:

- encroach on a green (e.g. extending the boundary of an abutting property so as to exclude people from that area);
- inclose a green (i.e. by fencing it in, whether or not the effect is to exclude public access);

¹ www.defra.gov.uk/rural/protected/commonland/tvg.htm.

² In *Trap Grounds* (Oxfordshire County Council v. Oxford City Council & another - www.bailii.org/uk/cases/UKHL/2006/25.html) the House of Lords ruled that all land registered as town or village green is subject to the protection afforded by these two statutes.

³ In Defra's view a local inhabitant who takes an animal onto a green in exercise of their right to enjoy lawful sports and pastimes does not commit a criminal offence under section 12. In this context a lawful pastime would include dog walking and might include horse-riding. Lawful authority would also include grazing cattle or other animals in exercise of a registered right of common exercisable over the green.

⁴ It is not clear whether '*mens rea*' (a guilty mind) is required for all of the offences in section 12, although in the Chancery division judgment of *Trap Grounds* (<http://www.bailii.org/ew/cases/EWHC/Ch/2004/12.html>) Lightman J appears to suggest (albeit *obiter dicta*) that there is no exposure to prosecution under the Victorian statutes unless the existence of the green is established and known. As far as we are aware, this issue has not been considered in subsequent case law.

- erect any structure other than for the purpose of the better enjoyment of the green; or
- disturb, occupy or interfere with the soil of the green (e.g. camping) other than for the purpose of the better enjoyment of that green.

If the above provisions were to be interpreted strictly, an act which causes any injury to a green would appear to be an offence under section 12 of the 1857 Act and any disturbance or interference with the soil of the green (other than for the purpose of better enjoyment of the green) would technically be deemed a public nuisance under section 29 of the 1876 Act. However, in Defra's view, in considering whether or not any given development or action contravenes either or both of these statutes a court is likely to be concerned with whether material harm has been caused to a green and whether there has been interference with the public's recreational enjoyment. Other issues that might be relevant include the proportion of a green affected by the development or activity and the duration of the interference.

2. What happens if an offence has been committed?

Where an offence has occurred under section 12 of the 1857 Act criminal proceedings can be instigated by the owner of the green, any inhabitant of the parish, the parish council or, where there is no parish council, the district council⁵. An offence under this section of the Act can be prosecuted in the Magistrates' Court.

An offence under Section 29 of the 1876 Act is deemed to be a public nuisance at common law and as such can be the subject of criminal proceedings as well as, in limited cases, civil actions.

It may be possible for an individual to commence private criminal proceedings for an offence under section 29 of the 1876 Act. A public nuisance can be prosecuted in either the Magistrates' Court or the Crown Court⁶.

Alternatively, civil proceedings for a public nuisance may be brought by an individual or a local authority in their own name provided they have suffered special damage. A local authority may also bring civil proceedings for public nuisance where they consider it expedient for the promotion or protection of the interests of the inhabitants of their area⁷. All other civil proceedings in respect of a public nuisance should be brought with the sanction of and in the name of the Attorney-General.

In addition to the powers to prosecute described above, local authorities⁸ also have powers under section 45 of the Commons Act 2006 to protect land which is registered as

⁵ The 1857 Act provides that only the churchwarden or overseer of the parish or the owner of a green may prosecute an offence under section 12. However, under Section 189(3) of the Local Government Act 1972 reference to a churchwarden or overseer of the parish made in section 12 of the 1857 Act is to be construed as reference to: (a) with respect to a green in a parish, the parish council or, where there is no parish council, the parish meeting; and (b) with respect to any other green, the district council. Section 29 of the Commons Act 1876 added 'any inhabitant of the parish' to the list of those who could prosecute an offence under Section 12.

⁶ Section 17 and Schedule 1 (Offences Triable on Indictment or Summarily) of the Magistrates Court Act 1980.

⁷ Section 222 of the Local Government Act 1972.

⁸ In the context of section 45 'local authority' means a county, district, parish or London borough council, and a National Park authority (see paragraph 1(2) (d) of Schedule 9 to the Environment Act 1995).

a town or village green where that land has no owner recorded in the register of title at the Land Registry and the authority cannot otherwise identify the owner. In such cases, the local authority is able to take any steps to protect the land against unlawful interference that could have been taken by the owner of the land.

Court action can be costly and generally the burden of proof lies with the claimant (in civil proceedings) and the prosecution (in criminal proceedings). Therefore, before taking action through the courts it may be helpful to seek the removal of the works, or the termination of the activity which you consider to be unlawful, through correspondence or negotiation. If you decide to take action through the courts you would be well advised to seek independent legal advice. If you consider court action to be necessary but too burdensome, you may wish to contact your local authority which may be willing to take action in the interests of the community.

3. Can vehicles drive over or park on greens?

Section 34 of the Road Traffic Act 1988 makes it a criminal offence to drive over, or park on land (including a green⁹) not forming part of a road without lawful authority to do so. In this context 'lawful authority' includes either the lawful permission of the owner of the land or a private vehicular right¹⁰. Those who have lawful permission, a private right or some other form of lawful authority may drive over, or park on, a green without committing an offence under the 1988 Act. Furthermore it is not an offence under the 1988 Act to drive on a green within 15 yards of a public road solely for the purposes of parking on the green¹¹.

However, irrespective of whether an offence has been committed under the 1988 Act, driving over or parking on a green may still be an offence under section 12 of the 1857 Act or section 29 of the 1876 Act (see question 1). For example, if a court adopted a strict interpretation of section 12 of the 1857 Act, any interruption of the use or enjoyment of a green would be an offence under that provision. However, in Defra's view, occasional driving of private vehicles over a green in exercise of a private right of way, for the purposes of parking on private land beyond the boundary of the green, is unlikely to be viewed by a court as giving rise to an offence under the 1857 and 1876 Acts, if the interference with recreational enjoyment is very brief. In our view, a court is more likely to find that vehicular use contravenes section 12 or section 29:

- if the use is very frequent;
- if the use is by very large or slow moving vehicles;
- if the vehicle is parked on the green; or
- if damage is caused to the green by the vehicular use.

⁹ In *Massey and Drew v Boulden* [2003] (<http://www.bailii.org/ew/cases/EWCA/Civ/2002/1634.html>), the Court of Appeal held that the phrase 'land of any other description' in section 34(1)(a) of the 1988 Act applied to greens.

¹⁰ The House of Lords in *Bakewell Management Ltd v Brandwood and Others* (<http://www.bailii.org/uk/cases/UKHL/2004/14.html>) established circumstances in which it is possible to claim a prescriptive right (right of long-user) of vehicular access over common land notwithstanding the prohibition in section 34, although the issue of establishing prescriptive rights for vehicular access over greens was not specifically addressed in this case. For further information on this issue please refer to Defra's non-statutory guidance note entitled 'Vehicular access across Common Land and Town or Village Greens' (www.defra.gov.uk/rural/countryside/crow/vehaccess.htm.)

¹¹ This provision does not confer a right on any person to drive on a green for this purpose, or to park there: it merely provides that an offence is not committed under the 1988 Act.

A court would need to consider each case on its merits in order to decide whether the vehicular use was an offence, but in one case decided in the Court of Appeal, it was observed that there was 'no sufficient reason to regard the existence and use of [an access track] as injuring the green or interrupting its use or enjoyment by others'¹².

Further information regarding vehicular access over greens can be found in Defra's non-statutory guidance note entitled 'Vehicular access across Common Land and Town or Village Greens'¹³.

4. Who owns our green?

Like other types of land, greens can be owned by private individuals and organisations as well as by public bodies. There are two sources of information which you may find particularly helpful in ascertaining who owns a green.

The first of these sources is the register of title, which is maintained by the Land Registry. Much, but not all, land in England is registered in the register of title. You can find out more information about this register on the Land Registry's website¹⁴. The title to (*i.e.* ownership of) this registered land is guaranteed by the state. Broadly, the guarantee means that if a mistake occurs in the register and the owner suffers loss, the Land Registry may have to pay indemnity (*i.e.* compensation).

The second source of information regarding ownership is the register of town or village greens. These registers not only describe the extent of each green but they also give details of claims to ownership of those greens which were recorded during the first wave of registrations in the late 1960s. Unlike the register of title, the ownership information in the registers of town and village greens is not guaranteed, nor is it conclusive. The reliance which can be placed on the accuracy of this part of the register is dependent upon how that information came to be recorded:

- Where the claim to ownership was unopposed, the registration was confirmed without any further scrutiny. In such cases the information in the registers is only a statement of the claim made to ownership at that time.
- Where the claim to ownership was either opposed or no claim was registered, the matter was referred to the Commons Commissioners. If, following a hearing, the Commissioner was able to determine the owner of the green, that information was recorded in the register. However the Commissioner's decision only gave rise to a presumption of the ownership at the time of that decision: it was not conclusive.
- If no claim to ownership was registered, but on referral to the Commissioner, a local authority successfully demonstrated ownership of the land, it became vested in that local authority (reinforcing the authority's ownership of the land). Again, in such cases the registers are good evidence of the ownership of a green at the time of the Commissioner's decision.
- If the Commissioner had insufficient evidence before him to determine the ownership of the land, it became vested in the parish council, or where there was

¹² Paragraph 31 of *Massey and Drew v. Boulden* - www.bailii.org/ew/cases/EWCA/Civ/2002/1634.html.

¹³ www.defra.gov.uk/rural/countryside/crow/vehaccess.htm.

¹⁴ www.landreg.gov.uk

no parish council, in the district or borough council¹⁵. In such cases the registers are good evidence of the ownership of a green at the time of the Commissioner's decision.

It should be noted that, however ownership details came to be recorded on the commons registers, they can only be used as evidence of ownership at the time of the registration. Since the initial wave of registrations in the late 1960s, registration authorities have been able to update the ownership section of the registers only where they have been informed by the Land Registry that the ownership of the green has been recorded in the register of title. On receipt of this information a registration authority is required to delete any details of ownership in the register of town or village greens¹⁶. Where the ownership information has been deleted in this way, you should inspect the register of title, but it is a good idea to check the register of title even if there is a subsisting entry as to ownership in the register of town or village greens.

5. Who has the right to enjoy lawful sports and pastimes on a green?

The right to enjoy lawful sports and pastimes on a green does not extend to the public at large, but is only exercisable by inhabitants of the locality in which the green is situated¹⁷. The courts have held that the term 'locality' includes a legally recognised unit of land, such as a parish¹⁸. Unfortunately, identifying the relevant locality can, in practice, be difficult.

Where a green has been added to the registers since 1970, the commons registration authority should hold records of the application for registration and these may indicate what the locality was claimed to have been for the purposes of registration. When determining whether or not to register a parcel of land the registration authority will have considered the extent of the locality, and in some cases details of their conclusions may also have been included in a report or decision¹⁹. Furthermore, since 6th April 2007 all applications to register new greens must have been supported by a description or plan of the relevant locality or neighbourhood²⁰. These descriptions and plans should also be held by the registration authority.

Similar records are unlikely to exist for the majority of greens which were registered in the first wave of registrations in the late 1960s. Where such a registration was disputed, it would have been inquired into by a Commons Commissioner. The decision of the

¹⁵ The vesting of land in the local authority was provided for by Section 8(4) of the Commons Registration Act 1965. This section was repealed by the Commons Act 2006, but the effect of any vesting is preserved by paragraph 9(1) of Schedule 3 to the 2006 Act.

¹⁶ Section 12 of the Commons Registration Act 1965 or paragraph 8(2) of Schedule 3 to the Commons Act 2006 and Regulation 48 of the Commons Registration (England) Regulations 2008.

¹⁷ It was ruled in *Earl of Coventry v Willes* [1863] 9 LT 384 that 'A customary right can only be applicable to certain inhabitants of the district where the custom is alleged to exist and cannot be claimed in respect of the public at large'.

¹⁸ *Edward v Jenkins* [1896] 1 Ch 308.

¹⁹ In determining the application for registration, the registration authority may have adopted a definition of the locality which is different to that proposed by the applicant.

²⁰ Regulation 3(2) of The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 and paragraph 9 of Schedule 4 to The Commons Registration (England) Regulations 2008. This requirement does not apply to land which has been voluntarily dedicated as a town or village green under section 15(8) of the Commons Act 2006.

Commissioner may in some cases make reference to the locality²¹. In practice, the majority of greens registered during the first wave were either not inquired into (and became final without objection), or the Commissioner did not make clear the precise locality which he adopted for the purposes of determining the registration. If the green is located in a village, then it may reasonably be assumed that the right to enjoy lawful sports and pastimes on the green is exercisable by the inhabitants of that village. But if the green is located in a suburb or on the edge of a town, the locality may be much less certain.

The position is further complicated by amendments made to the criteria for registration of a green by the Countryside and Rights of Way Act 2000²², and now contained in section 15 of the Commons Act 2006, which enable a green to be registered on the basis of long-term use (at least 20 years) by “the inhabitants of any locality, or of any neighbourhood within a locality”. In effect, it seems that, where a green was registered on the basis of long-term use by the inhabitants of a neighbourhood within a locality, the right to enjoy lawful sports and pastimes on that green will be confined to the inhabitants of that neighbourhood, and not to the inhabitants of the locality as a whole. In such cases, the extent of the neighbourhood should be apparent from the application for registration of the green, or any subsequent report or decision on the application.

Ultimately, where an issue cannot be resolved by other means, it will be for the courts to determine the extent of a locality or neighbourhood. Their decision will be based on the evidence available to them (this may include evidence of use, any relevant documentation and the physical characteristics of the surrounding area *etc.*).

6. Can the owner of a green charge people for using it?

Inhabitants of the locality within which a green is situated have the right to use that green for lawful sports and pastimes²³. By definition any right can be exercised free of charge. Therefore, although the owner of a green may ask a local inhabitant to pay a donation for their use of a green, that person would be under no obligation to pay. This principle would apply equally to a request for a contribution to maintain a green as it would to a request for a payment to enter an organised event such as a fête or sports match which was being held on the green. A local inhabitant cannot be required to pay a fee to exercise a right.

The right to take part in lawful sports and pastimes on a green extends only to local inhabitants, not the public at large. Those who are not inhabitants of the locality can be restricted from, or charged for, using a green unless they have some other right to be there (*e.g.* if they are crossing a green using a public right of way). However a landowner is likely to face considerable practical difficulties in preventing the general public from using a green owing to the difficulty of distinguishing local inhabitants from the general public.

7. What are lawful sports and pastimes?

Local inhabitants have a right to take part in any lawful sport or pastime on a green. Lawful sports and pastimes are not restricted to those activities which were

²¹ Most decisions of the Commons Commissioners are available at: <http://www.acraew.org.uk/index.php?page=commissioners-decisions>.

²² Section 98 (now repealed).

²³ Earl of Coventry v. Willes [1863] 9 LT 384.

enjoyed during the period of use which led to the green being registered²⁴. Ultimately it is for the courts to decide whether or not an activity is 'lawful'. However in Defra's view where an activity is so inappropriate for an area that it is deemed to be a public nuisance by virtue of section 29 of the Commons Act 1876, it is unlikely to be treated as lawful. So, for example, in Defra's view horse riding on a small, vulnerable green in wet conditions might be a public nuisance and therefore unlawful.

8. Do I need permission to carry out works on a green and to whom do I need to apply?

If the intended works do not contravene either section 12 of the Inclosure Act 1857 or section 29 of the Commons Act 1876 (e.g. if they were for the better enjoyment of the green) then no special permission is required. That is to say that no application is needed solely because the land is a town or village green. However, other consents may still be required. For example, if works were for the better enjoyment of a green then they may not be in contravention of either of the 19th century statutes but depending on their nature may still require planning permission.

However, it is a criminal offence to undertake any works on a green which contravene the 1857 Act and works in breach of the 1876 Act will be deemed to be a public nuisance. Neither Defra nor any other body is able to give consent for illegal works to be undertaken on a town or village green.

Some greens are regulated by a scheme of regulation made under either the Metropolitan Commons Acts 1866–1898 or the Commons Act 1899. Your commons registration authority or district or borough council should be able to let you know whether a green is regulated under a scheme. The scheme may confer powers on the local authority to carry out improvements to the green, although in some cases the local authority may be required to obtain the consent of the Secretary of State before undertaking the works. You will need to inspect the terms of the scheme to see what, if any, improvements are permitted.

On a green managed under a scheme of regulation, section 38 of the Commons Act 2006 enables the Secretary of State to consent to other works, not permitted by the scheme. It is unclear whether a local authority may carry out works on a green managed under a scheme, where the works are either permitted by the scheme or consented to under section 38, but would contravene either the 1857 or the 1876 Act. However, in Defra's view, works proposed by a local authority on a green will generally be for the better enjoyment of the green, and the conflict will seldom arise. Guidance on how to make an application under section 38 can be found on the website of the Planning Inspectorate²⁵.

If the planned works do contravene either the 1857 or the 1876 Act, then it may be possible to seek consent to deregister the land (please see below).

²⁴ Paragraph 50 of *Oxfordshire County Council v Oxford City Council & another* (www.bailii.org/uk/cases/UKHL/2006/25.html). It should however be noted that, in the same judgement Lord Scott suggests that the rights acquired should reflect the user (paragraphs 84 and 85).

²⁵ www.planning-inspectorate.gov.uk/pins/common_land/guidance/index.htm.

9. Can I deregister a green?

Under section 16 of the Commons Act 2006 an owner of a green may apply to the Secretary of State for land to be released from registration. If successful, such an application would result in the land no longer being subject to protection as a green.

If the 'release land' is more than 200 square metres in area, an application must be made to register 'replacement land' as a green in its place. If the release land is smaller than 200 square metres, a proposal for replacement land may be included, but there is no absolute requirement²⁶. However, it is the policy of the Secretary of State to avoid the net loss of town and village greens. Therefore the Secretary of State generally expects that land will be offered in exchange even where the release land is less than 200 square metres²⁷.

A proposed exchange under section 16 will be considered by the Secretary of State and will not be approved automatically. The Secretary of State will wish to take into account the impact of the exchange having regard (amongst other things) to the public interest. Further guidance on applications to deregister town and village greens is available on the website of the Planning Inspectorate²⁸. Please note that there is a fee of £4,900 for an application to deregister land under section 16.

It may also be possible to apply to deregister land under section 149 of the Inclosure Act 1845 where such land is unsuitable or inconvenient for the purpose for which it was allotted. Applications must be made to the Secretary of State and can only be made in relation to land which was allotted under an inclosure award. No fee is charged for an application under section 149 but it must include exchange land which would be registered in place of the release land. The exchange land must be more convenient or beneficial than the release land.

10. Who is responsible for maintaining greens?

Greens in local authority ownership are often managed by the authority under the Open Spaces Act 1906 or by a scheme of regulation under the Commons Act 1899. Some greens which are not owned by a local authority are also managed by a local authority under the 1899 Act. In such cases, the local authority is under a duty to maintain the green.

The law makes no provision regarding the maintenance of privately owned greens. Therefore, unless it is specifically provided for by some other form of regulatory instrument or legal agreement (such as a scheme of regulation or inclosure award), there is no obligation on a landowner, or any other party, to actively maintain a town or village green. However the landowner, or any person licensed by the landowner, does have the power to maintain a green as they see fit so long as they do nothing to interfere with the lawful recreational activities of the local inhabitants.

A district council, unitary authority or National Park authority may make a scheme of regulation for a green under the Commons Act 1899. The effect of the scheme, if confirmed, is to place management of the green in the hands of the council or authority.

²⁶ Section 16 of the Commons Act 2006.

²⁷ A full copy of the Secretary of State's policy guidance on statutory consents can be found on our website: www.defra.gov.uk/rural/protected/commonland/guidance.htm.

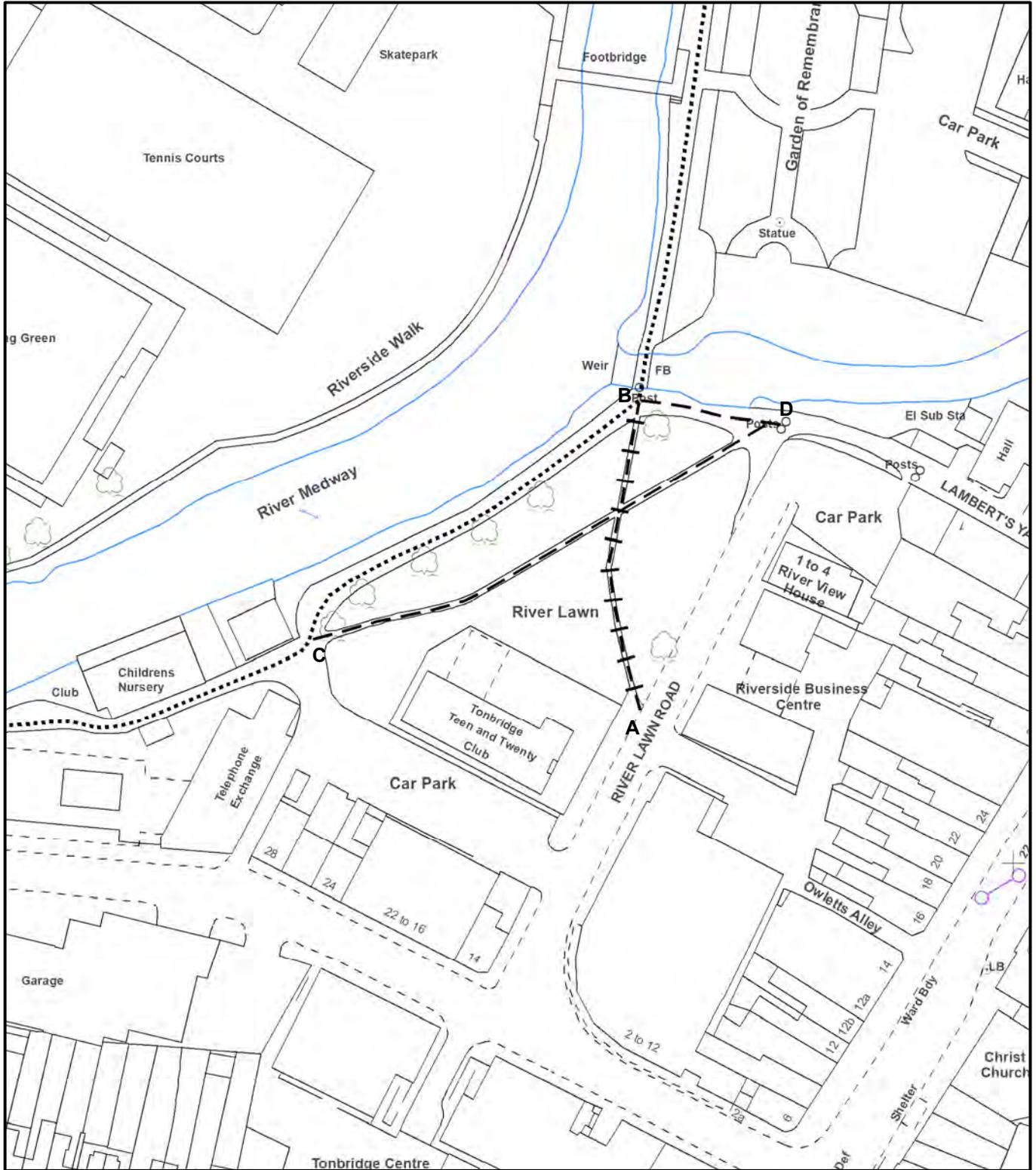
²⁸ www.planning-inspectorate.gov.uk/pins/common_land/guidance/index.htm.

The owner of the green may veto a scheme before it is confirmed. But if the owner is content to see the management of the green transferred to the local authority, or if there is no known owner, making a scheme may help resolve uncertainty over management.

11. Can a neighbouring landowner acquire part of a green by adverse possession?

Defra has produced a separate non-statutory guidance note on adverse possession in relation to common land and town and village greens. This guidance note is available on our website²⁹.

²⁹ www.defra.gov.uk/rural/protected/commonland/guidance.htm#5.



Key

- - - - - Routes to be Added
- | - | - | - Unaffected Routes

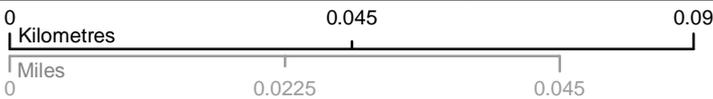
Wildlife & Countryside Act 1981

**Claimed bridleway from River Lawn Road to Buley's Weir Bridge;
 claimed footpath from Weir View Scout Hut to Lambert's Yard;
 claimed footpath from Lambert's Yard to Buley's Weir Bridge
 at Tonbridge**

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RE AN APPLICATION TO REGISTER PUBLIC RIGHTS OF WAY
ACROSS RIVER LAWN, TONBRIDGE

OBJECTION BY
TONBRIDGE & MALLING BOROUGH COUNCIL

The Kent County Council (Footpaths MU98, MU99 and MU100 at Tonbridge)
Definitive Footpath Map Modification Order 2020

Tonbridge & Malling Borough Council ('TMBC') OBJECTS to the above order.

It does so on the following grounds:

1. The land of which the footpaths the subject of the order form part was acquired by the Urban District Council of Tonbridge (predecessor to TMBC) for recreational purposes in 1922, and at all times thereafter has been held (subject to paragraph 3 below) by TMBC or a predecessor authority for such purposes under s164 of the Public Health Act 1875 and/or s19 of the Local Government (Miscellaneous Provisions) Act 1976.
2. Accordingly, the use of the footpaths by the public has at all times been 'of right', not 'as of right' as required in order for a public right of way to have arisen by reason of s31(1) of the Highways Act 1980 or at common law (and in particular the reasoning in paragraphs 20-21 of *R (Barkas) v North Yorkshire County Council & Anr* [2015] AC 195 is relied on).
3. Further or in the alternative, the footpaths identified as numbers MU98 and MU99 for part of their length (marked approximately A-B and C-D for identification purposes on the maps appended to the Order and produced hereto) form part of land appropriated by TMBC to the provision of an old

people's club on 26 July 1971, which appropriation was confirmed by the Secretary of State by letter dated 16 March 1972 with effect from 14 March 1972. A copy of the appropriation Order is attached.

4. Dedication of the land referred to in paragraph 3 above as public rights of way (by use over the period of time relied on to make the modification) would have been incompatible with the statutory powers under which that land was held by TMBC, and the purposes for which it was so held, and there was no capacity in TMBC to so dedicate it (and in particular the reasoning in paragraphs 55- 58 of *R (Lancashire CC) v Secretary of State* [2020] 2 WLR 1, and s31(8) of the Highways Act 1980, is relied on).
5. Further or in the alternative, the footpaths the subject of the order have not been used without interruption for a sufficient period preceding the application to Kent County Council to support an implication of dedication of the land as public rights of way or for the modification order to be made. The closures referred to in paragraph 44 of the report of the County Council's Public Rights of Way Officer dated 30 April 2020 are relied on (together with further evidence that TMBC reserves the right to produce should it be necessary to do so).

STEVEN GASZTOWICZ QC

TONBRIDGE & MALLING BOROUGH COUNCIL

STREET SCENE and ENVIRONMENT SERVICES ADVISORY BOARD

23 November 2021

Report of the Director of Street Scene, Leisure & Technical Services

Part 1- Public

Matters for Information

1 WASTE SERVICES UPDATE REPORT

Summary

This report updates on a number of issues and initiatives managed by the Waste & Street Scene Services team, including service performance, fly tipping & enforcement, and the recycling bin pilot to flats in Tonbridge.

1.1 Service Performance

- 1.1.1 At the last meeting of this Board in August 2021, Officers reported on the ongoing issues relating to the Urbaser contract. Since that report was written, the impact of the national shortage of HGV drivers continues to have significant impacts on service delivery and Urbaser's ability to recruit & retain staff. The impact of the shortage is being seen across Kent and nationwide.
- 1.1.2 In late July 2021 the Council took the difficult decision to suspend garden waste services. This has allowed Urbaser to focus on the core refuse, food waste & recycling collections. All garden waste subscription renewal dates will be extended by the duration of the suspension, so that residents who subscribe to the service are not paying for the service during this period of suspension.
- 1.1.3 In order to deal with the build-up of garden waste resulting from the suspension, a one-off collection has been arranged to empty all subscribers' garden waste bins. This does not form part of the normal subscription service so is being provided "free of charge" to subscribers. This collection is being carried out in order of the residents' normal collection day, and alternates with TWBC due to the partnership arrangement we have with them. The collection plan is based on the assumption of two collection crews being available, but progress has varied to date as on some days only one crew has been deployed and on some days three crews. Once we have confirmation of when each phase is due to start, those subscribers are emailed advising when to put their brown bins out.
- 1.1.4 At the time of writing, all of both councils' Monday & Tuesday collections will have been completed. A verbal update on progress will be given at this meeting of the

Board, and weekly updates continue to be provided to all Members and Parish & Town Councils each Friday.

1.1.5 As a result, refuse, food waste and recycling collections are – at time of writing – on schedule and weekly updates continue to be provided to all Members and Parish & Town Councils.

1.1.6 Reports on issues with the quality of service provision, bin placements, missed collections and delays in container deliveries have reduced significantly, despite Urbaser’s continued reliance on new and agency staff to provide the collection services. This has impacted on levels of performance which are monitored through a set of Key Performance Indicators:

Description	2020/21 Avg. per month	Aug 2021	Sep 2021	Oct 2021
Total No. of MISSED COLLECTION REPORTS	1,530	1,848	1,212	1,026
% of jobs not actioned within SLA - (24 hrs) - ACTUAL MISSED COLLECTIONS	98%	100%	100%	100%
Intents & formal complaints - REFUSE & RECYCLING	93	73	54	48
Intents & formal complaints - STREET CLEANSING	38	27	25	31
Total number of COMPLAINTS (inc Missed Collections)	1,672	1,909	1,263	1,058
% of jobs not actioned within SLA - (5w/days) - GREEN BOX DELIVERIES	44%	80%	17%	10%
% of jobs not actioned within SLA - (5 w/days) - BIN ORDERS (inc Repair/Replace)	77%	93%	62%	27%
Total No. of jobs – ADDITIONAL WORKS inc FLYTIPPING (Paid)	45	10	32	10
% of jobs not actioned within SLA - (5 w/days) - ADDITIONAL WORKS inc FLYTIPPING (Paid)	23%	90%	88%	50%
% of jobs not actioned within SLA - (5 w/days) - BULKY & FRIDGE COLLECTIONS	9%	6%	4%	2%

- 1.1.7 The monthly number of missed bin reports has reduced over the past three months and although this may be expected given the ongoing suspension of the garden waste services, there has been a reduction in reports for both refuse & recycling collections, which equated in October to around 0.2% of all scheduled collections. However, due to the priority of allocating available staff to frontline services rather than to returning for missed collections, none of these reports were actioned within the Service Level Agreement of 24 hours to rectify.
- 1.1.8 The number of formal complaints and Intents to Default have also reduced over the past three months. These complaints normally consist of reports of bins not being put back repeatedly; mixing of recycling; attitude of crews; etc. The number of street cleaning complaints has risen slightly last month, and this is consistent with the same time in previous years when leaf clearance and potential flooding from blocked gullies becomes a concern.

1.2 New Service Arrangements to Flats and Communal Properties

- 1.2.1 As reported to Members of this Advisory Board on 31 August, the introduction of new recycling services to those 500 properties included within the pilot phase commenced on Saturday 4 September 2021. New recycling bins were delivered, and the communal bin stores reconfigured to reduce some of the residual waste capacity in preparation for moving to alternate weekly collections. All of the bin stores had new containers delivered for the separate collection of card & paper, and of plastics, glass & cans.
- 1.2.2 In order for officers to be able to monitor use of the new service, including tonnages & contamination levels, these collections were moved from a Friday to Saturday collections, as the collections could then take place separately from other properties in that area. This has enabled us to receive separate tonnage data from the disposal sites whilst the pilot area is monitored.
- 1.2.3 The first recycling collections took place 18 September 2021, with fortnightly recycling collections alternating with fortnightly refuse collections from then onwards. Officers have been monitoring the use of the bins on a daily basis and identifying where bins were not being used correctly. They then communicated with those residents and the appropriate management agents in order to reduce the risk of recycling bins being contaminated and rejected by the reprocessors.
- 1.2.4 In the first four cycles of collections, 6.16 tonnes of recycling were collected, and 24.6 tons of refuse. This gives a dry recycling rate of approximately 20%. This compares with the dry recycling rate from the households already receiving the service of 28%. This would indicate that although there is still potential to improve the amount of recycling being separated by these properties, they have generally adapted well to the changes and are embracing the new service positively.
- 1.2.5 Officers will continue to monitor volumes, contamination levels, resident enquiries, etc., prior to the service being rolled out to flats in the rest of the Borough. It is

currently proposed that the pilot be monitored for a period of at least 3 months. Given the busy Christmas period, it is proposed that the full boroughwide roll out commences in early 2022. The pilot has required quite intensive monitoring and regular communication with residents and with management agents, and this approach will be applied to the wider roll out of the service for flats with communal bins. Given experience with the pilot properties, officers intend to roll out from late January through to the end of March, but this will be done on a phased approach and once fully developed the detailed plan will be shared with Members, including which areas/properties will be in which phases.

1.3 Fly Tipping

- 1.3.1 At the last meeting of this Board, officers reported that an additional staff member had been recruited to support the team with investigation and enforcement activities. They have subsequently undergone the relevant induction and training and they have now started to coordinate the fly tip reporting process, feedback to residents as to what action is being taken, including timescales, to clear fly tips, and to also carry out initial investigations into any evidence which may be available for investigation where possible.
- 1.3.2 The Cabinet Member for Community Services has met with an officer of KCC's Trading Standards unit to gain an understanding of what assistance they – and specifically their Intelligence Officer dedicated to Kent Resource Partnership enforcement work - are able to provide to TMBC officers in terms of investigation and prevention of fly tipping. The Intel Officer has arranged a briefing with the Waste Services team on 25 November to explain the systems that they have access to, in order to trace vehicles and individuals that may be suspected of being connected to fly tips and other waste offences, as well as sharing intelligence with other districts.
- 1.3.3 On 10 December, officers are also due to take part in a joint operation – Operation Assist - with the Police, targeting illegal waste carriers. The Police have the powers to stop vehicles which are then checked for tax and insurance and roadworthiness, while council officer's check for waste carrier registrations, waste transfer notes and potential for any licensing breaches for scrap metal collectors. These operations have achieved some success in other areas of Kent as fixed penalty notices can be issued on site, and they deter offenders from operating in the targeted areas. In preparation for this, the Senior Waste & Enforcement Officer has been meeting with enforcement teams from neighbouring districts and has "shadowed" Operation Assist events in Swale & Maidstone.
- 1.3.4 Officers are also liaising with the Licensing team and with the Community Safety Partnership in order to share any useful intelligence and to improve joint working to target offenders who may be known to various service areas. This may also assist with current resource levels, when the key focus of the Waste Services team is prioritised to the management of the Urbaser contract, as detailed above.

1.4 Kent Resource Partnership Update

- 1.4.1 Following the departure of Paldeep Bhatti, the Kent Resource Partnership (KRP) Manager, a replacement – Sally Ward - has recently been recruited. Sally has a wide background in waste operations and has an understanding of the needs and requirements of both the Kent districts as Waste Collection Authorities and KCC as the Waste Disposal Authority, as well as experience of working for and with contractors.
- 1.4.2 An initial meeting with Sally has been held, and priorities discussed. Sally is driving forward the resources that will be made available on a new KRP website, which will explain what happens to various materials when they are collected and the performance of each Kent council. Some progress has already been made with this, currently hosted on the KCC site, but Sally is keen for this to be more widely publicised and accessible for Kent residents to help improve transparency for the public as well as increase confidence in and support for collection services across Kent. These resources will then be linked from TMBC's own website.
- 1.4.3 Details of the current KCC-hosted resources were circulated to all Members in the weekly update of 17 September, but are replicated here for ease of reference:
- There's now some useful information on KCC's website with details of where our waste & recycling ends up:
 - <https://www.kent.gov.uk/environment-waste-and-planning/rubbish-and-recycling/managing-and-reducing-waste/where-our-waste-and-recycling-goes>
 - <https://www.kent.gov.uk/environment-waste-and-planning/rubbish-and-recycling/managing-and-reducing-waste/reduce-waste-and-recycle-more> (plastic, food waste and recover energy page link from this)
 - The first link particularly might be useful when signposting residents to this information. KCC are still fine-tuning these pages and once completed, there will be links available from the TMBC web pages. It's worth noting that this information is for the fully audited data for 2019/20. As our new recycling services were introduced part-way through that year, the 2020/21 data will show the first full year performance of the new service once KCC have uploaded it later this year.
 - KCC will still publish the annual End Destination Report (<https://www.kent.gov.uk/about-the-council/partnerships/kent-resource-partnership/governance-documents>) but the other two links are a bit more interactive/engaging.

1.5 Legal Implications

- 1.5.1 The Council has a statutory duty to provide refuse and recycling collection services. The proposed arrangements relating to communal recycling services will ensure that the Council complies with that duty.

1.6 Financial Implications

1.6.1 None

1.7 Risk Assessment

1.7.1 The Operational Risk Assessment for Street Scene Leisure and Technical Services has been updated and is being revised on an ongoing basis as government guidance on Covid-19 changes.

1.8 Policy considerations

1.8.1 Community, Customer Contact, Health and Safety

Background papers:

contact: David Campbell-Lenaghan

Nil

Robert Styles

Director of Street Scene, Leisure & Technical Services

Agenda Item 8

Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

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Agenda Item 9

The Chairman to move that the press and public be excluded from the remainder of the meeting during consideration of any items the publication of which would disclose exempt information.

**ANY REPORTS APPEARING AFTER THIS PAGE CONTAIN EXEMPT
INFORMATION**

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Agenda Item 10

Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

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