

# TONBRIDGE & MALLING BOROUGH COUNCIL

## CABINET

28 July 2016

### Report of the Management Team

#### Part 1- Public

#### Matters for Recommendation to Council

#### **1 CONSULTATIONS - FAIRER CHARGING IN TONBRIDGE & MALLING; AND CESSATION OF COUNCIL TAX REDUCTION SCHEME GRANT TO PARISH COUNCILS**

##### **Summary**

The Council launched two consultations on 9 May for a six week period. One of the consultations was with parish councils regarding the potential cessation of the Council Tax Reduction Scheme Grant arrangements from 2017/18. The other was a wider public consultation regarding the potential introduction of a Special Expenses Scheme in place of a (s136) Financial Arrangements with Parish Councils Scheme; again with effect from 2017/18. This report provides details of the responses to both consultations and the suggested way forward.

##### **1.1 Introduction**

- 1.1.1 At the meeting on 20 April 2016, Cabinet agreed to launch two consultations for a six week period.
- 1.1.2 The first consultation was with parish councils only regarding the potential cessation of the council tax reduction scheme (CTRS) grant arrangements from 2017/18.
- 1.1.3 The second consultation was a wider public consultation regarding the potential introduction of a Special Expenses Scheme in place of a Financial Arrangements with Parish Councils (FAPC) Scheme, also with effect from 2017/18.
- 1.1.4 Both consultations commenced on 9 May and closed at noon on 20 June 2016.

##### **1.2 Council Tax Reduction Scheme Grant**

- 1.2.1 As Members may recall from the report to the April meeting, the Council passes over funds to parish councils, from its general government grant as originally specified by Government in 2013.
- 1.2.2 Since 2013, no specific direction as to the amounts to be passed over has been made by Government. As Cabinet were advised at the last meeting, the Council is

under no statutory obligation to pass these funds onto parish councils. Many billing authorities have already ceased, or are planning to cease or significantly reduce, the payments in response to the significant cuts in government grant funding to local government.

- 1.2.3 Following Cabinet's decision in April to launch a consultation with parish councils as to the potential cessation of the arrangement with effect from 2017/18, the Director of Finance & Transformation wrote to all clerks and chairmen of parish councils on 6 May, with "reminders" being issued on 9 and 17 June. A presentation was also given at the special meeting of the Parish Partnership Panel (PPP) on 18 May 2016.
- 1.2.4 Of the 27 parish councils in the borough, we have received specific responses from only 5. Details are set out in **[Annex 1]**.
- 1.2.5 Members will note that, whilst there is some disappointment expressed in the potential cessation of the grant allocation, the majority of the parish councils that have responded understood the Council's position and have not objected to the proposal. It should be noted, however, that some responses from parish councils have linked the two consultations (i.e. this, plus 'fairer charging'), and have suggested that there is a 'plan B' in the event of council tax 'capping' for parish councils. This issue is explored later.
- 1.2.6 It is perhaps also worth noting that the three councils that would be most affected (in terms of how much the cessation of the grant would impact on the parish council tax charge) are:
- Snodland
  - Ditton
  - Borough Green
- 1.2.7 Snodland Town Council responded to the consultation stating that "*because Snodland receive one of the highest grant payments the loss of this grant will mean an increase in the precept which will be higher than anticipated*". Borough Green Parish Council simply "*noted the T&MBC CTR proposal as outlined in the consultation document*". We did not receive a specific response to this particular consultation from Ditton Parish Council.
- 1.2.8 The parish councils which would be 'next in line' in terms of highest impacts are Wrotham, West Malling and East Peckham. None of these parish councils specifically responded to the consultation.

### 1.3 'Fairer Charging' - Background

- 1.3.1 As Cabinet is aware, the 'Fairer Charging' public consultation revolved around the potential introduction of a "Special Expenses Scheme" to replace the arrangements we have in place with parish councils (i.e. the FAPC s136 scheme). Full details were set out in the Cabinet report of 20 April, and the detailed research paper which accompanied that report.
- 1.3.2 Members are reminded that the Council resolved to adopt the FAPC scheme, under s136 of the Local Government Act 1972, some many years ago in recognition of the fact that some areas within the borough are parished (and therefore parish councils operate 'concurrent' services) and the town of Tonbridge is unparished (and so the Borough Council must provide the 'concurrent' services).
- 1.3.3 In simple terms, residents in parished areas receive services such as play areas, sportsgrounds and allotments from their parish council and pay an additional level of council tax to the parish council. Residents in Tonbridge, however, receive those same services directly from the Borough Council because there is no town council to provide them.
- 1.3.4 There is no additional charge on Tonbridge residents and the cost of these '*local Tonbridge*' services is currently shared by all residents across the borough; so, in order to provide some equity, the Borough Council has traditionally given grants to parish councils to contribute towards the cost of the services in parished areas. During the course of the review and consultation, it became clear that the grants do not cover the full costs in parished areas and, therefore, there remains some inequity in any event.
- 1.3.5 That said, it is important to remember that there is no obligation to give grants to parish councils under the s136 power, and the Borough Council has absolute discretion as to the amount, if any, it may decide to pay under these arrangements.
- 1.3.6 Whilst there would be an impact to households across the entire borough in making such a change of policy, clearly the greatest financial impact would be seen in Tonbridge. Members are reminded that Tonbridge residents presently pay the lowest amounts of council tax within the borough as there is no 'additional' levy.
- 1.3.7 As indicated in the last report to the meeting on 20 April, we are now standing at a 'crossroads' with a dilemma. Whilst the Council has admirably addressed the inequity issue in the past by giving s136 grants to parish councils, it is now clear from research undertaken and conversations that have since taken place, that irrespective of this there is still some inequity. This is because the grants do not actually meet the full costs of the local 'parish' services and therefore, logically, residents in parished areas are still paying a higher cost than those residents in Tonbridge. This is despite the fact that, in some parished areas, some services have also been delivered with the assistance of local volunteers (an issue that was highlighted by one parish council in its response).

- 1.3.8 Due to its financial challenges, the Council needs to examine every aspect of its own expenditure; and the amount it awards in grants to others is clearly one of those areas that must be examined. If we cannot look to make savings from money we ‘pay over’ to other organisations, the stark reality is that we are going to have to make cuts to some of our core services. There is some irony in this – services provided by other bodies would be offered some ‘protection’ through the continuation of borough council grant support whereas the Council’s core services would not. In addition to this of course, parish councils are not presently required to limit their precepts or council tax increases under ‘capping’ regulations.
- 1.3.9 Alternatively, if the Council decides to keep the ‘status quo’, it must recognise that there is presently some inequity between parished and unparished areas, and therefore in order to re-create ‘fairness’ may need to examine very carefully the costs of the local services in Tonbridge with a view to scaling them back.
- 1.3.10 Hence, there is a real dilemma here.

#### **1.4 Fairer Charging – the Consultation**

1.4.1 The public consultation was launched on-line on 9 May with a relatively simple questionnaire; a copy of which is attached at **[Annex 2]**. Members will note that in the documentation we used the term ‘*Local Charge*’ in place of the more technical term ‘*Special Expenses*’; although the two terms are interchangeable. The crucial ‘overarching’ issues were :

- 1) Whether a scheme of ‘local charges’ would be fairer
- 2) What functions (if any) should be included in the local charge

Respondents were also given the opportunity to make free-form comments.

- 1.4.2 A short video was recorded and placed on the website explaining both the background and the proposals. The detailed research paper and other information (such as Q and A) was made available via the website to aid transparency and understanding.
- 1.4.3 Leaflets and posters were produced and distributed to a variety of public venues across the borough, including community centres, coffee shops, post offices, village halls, libraries, leisure centres, Poult Wood Golf Centre, Tonbridge Castle Gateway and of course our own office reception at Kings Hill. A few hundred leaflets were also sent out ‘randomly’ accompanying routine correspondence to residents.
- 1.4.4 Half page advertisements were placed in the Kent Messenger and Courier newspapers on 13 May, and digital impressions also appeared on their websites. Our Media team have “tweeted” regularly to remind the public of the consultation.
- 1.4.5 News releases were also produced which resulted in extensive editorial coverage in the KM, Times of Tonbridge and Courier, along with emails being sent to ‘My

Account' holders. The Cabinet Member for Finance, Innovation & Property attended the BBC Radio Kent Studios to record an interview on the consultation at their invitation, but regrettably due to other high profile news, the interview was not broadcast (to our knowledge).

- 1.4.6 The Director of Finance & Transformation wrote to all clerks and chairmen of parish councils on 6 May advising them of the consultation, with "reminders" being issued on 9 and 17 June.
- 1.4.7 Detailed 'visual' presentations were given at special meetings of Tonbridge Forum and PPP on 12 May and 18 May 2016 respectively. Extracts of the minutes of those special meetings are attached at **[Annex 3]** for information.
- 1.4.8 After the PPP meeting, officers assisted individual parish councils with various questions and issues that arose.
- 1.4.9 In total, at the close of the consultation we received:
- 272 responses from the general public to the on-line questionnaire.
  - 1 written comment on a specific issue.
  - 13 responses from parish councils; and 1 further response was received after the close of the consultation.
- 1.4.10 Whilst we did not receive a written response from KALC to the questionnaire, at the meeting of the PPP on 18 May, the KALC representative *'thanked the Borough Council for the honest approach taken with the consultation and the thoughtful timetabling. It was noted that Tonbridge and Malling had continued to support parish councils for as long as possible and that was greatly appreciated.'*

## **1.5 Issues raised by Parish Councils - 'Fairer Charging'**

- 1.5.1 A summary of the responses received from the **parish councils** is attached at **[Annex 4]** for Members' information. 14 of the 27 parish councils responded (including the 1 late response), and of those, it is pleasing to note that the majority appear to be **generally supportive** of the introduction of a scheme of Special Expenses (Local Charge), albeit with some **caveats**. Some parish councils also thanked the Council for the opportunity to express views on these matters and commented on the quality of the exercise.
- 1.5.2 As mentioned in paragraph 1.2.5, some responses from parish councils have linked the two consultations (i.e. this, plus 'council tax reduction scheme grant'), and have suggested that the borough council should consider a 'plan B' in the event of council tax **'capping'** for parish councils in 2017/18.
- 1.5.3 As mentioned at paragraph 1.3.8, parish councils are currently not subject to restrictions in the levying of council tax through the referendum principles (capping). There is however no 'blanket' policy on this, and each year DCLG announces the

'capping' position for all tiers of authority. Whilst it seems very unlikely that DCLG would opt to include parish councils in 'capping' principles (other than perhaps very large ones), it remains the case that the government has the option of making parish councils subject to the referendum principles in future. In terms of the potential impact from a special expenses scheme on parish precepts, the 'risk' is only relevant to 2017/18.

- 1.5.4 It was requested in one of the responses that the Council seek to find out the government's intentions in this regard. Whilst we would not wish to raise this formally with government, informal enquiries will continue to be made. It is appreciated that the prospect of 'capping' is a concern for parish councils, although it remains our view that this is unlikely. Nevertheless we will continue to monitor and assess the situation.
- 1.5.5 Concern was expressed by one parish council as to the potential confusion there may be on the **council tax bill** as the different council tax elements 'move around' in the event of the adoption of a Special Expenses Scheme. We agree, and in response information could be made available on the website, and potentially on the reverse of the bill, to address these concerns.
- 1.5.6 Two responses also raise the issue of **Christmas lighting** grants in the event that, in Tonbridge, these costs are included in Special Expenses. Christmas lighting is discussed later at paragraph 1.7.16, but at this stage we would suggest, on reflection, that any grants continue to be made under Section 137 of the Local Government Act 1972 and are not included in Special Expenses.
- 1.5.7 The issue of funding for **open churchyards** was also raised as a concern in the event that the FAPC scheme is withdrawn. Whilst there is no statutory obligation for the Borough Council to provide funding for open churchyards, it has historically elected to do so through the FAPC scheme in order to provide an incentive to keep churchyards open as long as possible. Some parish councils have understandably expressed concern that they would not be able to continue to provide funding if FAPC grants were withdrawn.
- 1.5.8 If Members feel that retaining 'open churchyards' across the borough remains a significant priority and this concept is not possible without borough council support, then potentially grants could be given directly to Parochial Church Councils (as burial authorities) under s214 of the Local Government Act 1972. Members should note that any grants given in this way could not be treated as a special expense (it is not technically a concurrent function), and discussions would need to take place with the PCCs as to whether the service is open to all residents of the borough, as the power for the Council to give grants under s214 does not apply unless the churchyard is open to all residents within the Borough boundary. Should grants be given in this way, the costs would form part of the Borough Council's general expenditure and therefore would need to be tested against other areas of spend in terms of priority need.

- 1.5.9 The '**disproportionate**' impact of the loss of FAPC (s136) grant to **smaller communities** has also been raised, and a suggestion of 'phasing out' the grants over a 3 to 5 year period was made by one parish council. It is correct that, if FAPC grants were withdrawn, there would be a slightly disproportionate effect on small parish councils because of the way the FAPC scheme works. As Members may be aware, the basic allocation of FAPC grant uses population; but there is a notional minimum population level set which currently benefits smaller parish councils. It is also recognised that some, particularly smaller, parish councils rely on volunteers to assist with the delivery of services (as is pointed out in one response).
- 1.5.10 As we have previously explained at the Cabinet meeting on 20 April, the PPP and the Tonbridge Forum, once a concurrent function is designated as part of an adopted Special Expenses Scheme, we could not make payments in respect of the same concurrent function under s136. In other words, we cannot treat functions as 'Special Expenses', and at the same time 'phase out' the s136 Grant Scheme. Therefore the suggestion made by one parish council in this respect is, unfortunately, not viable.
- 1.5.11 The potential '**transfer of assets**' to parish councils has also been raised as an opportunity during the consultation. The Borough Council owns and maintains small areas of land within parished areas which may, in some cases, be more appropriately managed by parish councils. Discussions would need to take place on a case by case basis, but this opportunity is certainly not ruled out.
- 1.5.12 One parish council felt that the Borough Council should continue to contribute towards the costs of the **upkeep of parks, playgrounds and open spaces** as the facilities are (potentially) used by other visitors and not just local residents. This view was not shared by the other parish councils who responded to the consultation.
- 1.5.13 The parish council raising this issue also disagreed that there should be a **local charge**, although they did agree that Christmas lights, events and allotments should be paid for by local communities. There is a real dichotomy here. Without a 'local charge' (special expenses), we would not be able to charge the cost of Christmas lights, events and allotments to residents of Tonbridge and they would continue to be shared by all taxpayers across the borough.

## **1.6 General Public responses to 'Fairer Charging'**

- 1.6.1 In terms of the 272 responses from the general public, a table summarising the responses to each question is set out below.

Question	Disagree	Agree
Christmas lighting and flower displays should be paid for by the local communities which have those facilities.	120	152
The cost of providing events such as Carnivals and Christmas Fairs should be paid for by the local communities which have those events.	135	137
The net cost of providing allotments should be paid for by the local communities which have those facilities.	128	144
The cost of maintaining playgrounds, playing fields and parks should be paid for by the local communities which have those facilities.	138	134
The cost of looking after cemeteries and churchyards should be paid for by the local communities which have those facilities.	150	122
From April 2017, Council tax bills should include a Local Charge where appropriate	145	127

- 1.6.2 168 (61.8%) of the respondents indicated that they were residents of Tonbridge; 103 respondents (37.9%) from parished areas; and 1 respondent from outside the borough.
- 1.6.3 In terms of the borough-wide 'spread' of households, 27.4% of the borough's taxbase is in Tonbridge with the remaining 72.6% in parished areas. Therefore, the results of the consultation are not entirely representative of the borough as a whole and are skewed towards Tonbridge. This is, of course, not surprising given that the impact is likely to be greater for residents in Tonbridge.
- 1.6.4 In total, more respondents agree than disagree that local communities which have those facilities should pay for:
- Christmas lighting and flower displays
  - Events such as Carnivals and Christmas Fairs
  - The net cost of allotments
- 1.6.5 Conversely, more respondents disagree than agree that local communities which have those facilities should pay for
- Maintenance of playgrounds, playing fields and parks
  - Maintenance of cemeteries and churchyards

- 1.6.6 Finally, more respondents disagree (145) than agree (127) that council tax bills should include a Local Charge (Special Expenses) where appropriate. In terms of the borough-wide split, the data is as follows:

	Disagree	Agree	Total
Tonbridge residents	124 (73.8%)	44 (26.2%)	168 (100%)
Parished areas	21 (20.4%)	82 (79.6%)	103 (100%)
Outside Borough	0 (0.0%)	1 (100%)	1 (100%)

- 1.6.7 As also expressed at paragraph 1.5.13, there is a potential dichotomy in the responses. For example, more agree than disagree that local communities should pay for things such as allotments, Christmas lighting, etc. but overall do not think there should be a 'local charge'. This may be partly due to a misunderstanding of the process, but in getting to the reasoning behind some of the responses, the qualitative 'free-form' comments made at the end of the questionnaire by many respondents are of assistance. A numerical summary of the key 'themes' arising from the comments is attached at **[Annex 5]**.

## 1.7 Fairer Charging – Themes

### ***Allotments***

- 1.7.1 Although the majority of respondents agreed that the net cost of Allotments should be paid for by the local community benefiting from the service, there were a number of 'free-form' comments (37) about allotments. In particular, the comments suggested that the full cost of the Allotment service should be met by the allotment holders, e.g. *"Allotments should be paid for by the individuals that use them"*.
- 1.7.2 For many years the Council's allotments in Tonbridge have been managed on the Council's behalf by the Tonbridge Allotment and Gardens Association (TAGA). The allotment holders pay an annual fee to TAGA in line with market value, and the Council pays TAGA an annual grant of £5,000 to assist with the overall financial costs. The market value is determined by a comparison with allotment charges levied by other local authorities. The approach adopted by the Council and TAGA is in accordance with Section 10 of the Allotments Act 1950.
- 1.7.3 The 1950 Act does restrict the Council's ability to recover the full costs of managing allotments, which has recently been tested by another local authority in the High Court. The decision stated that "when fixing allotment rents under the Allotment Act a local authority should carry out some sort of valuation exercise, ideally by looking at the rents charged by other local authorities or by considering agricultural rents". We believe that the Council should continue to have regard to the decision of the

High Court, and therefore it is likely that there will be a small net cost beyond those recovered through fees.

- 1.7.4 There is no reason, in our view, why allotments as a concurrent function should not be included in a Special Expenses Scheme.

### **Events**

- 1.7.5 Members will note from **[Annex 5]** that 25 comments were received regarding the inclusion of Events/Festivals in a Special Expenses scheme. In particular, it was felt that events attract visitors from a wider catchment area and should be financially supported by local traders, e.g. *“Christmas fairs and carnivals should be mostly self funding, inviting traders to be the biggest contributors”*.
- 1.7.6 More use of ‘voluntary’ groups to keep costs to the public down was also mentioned, e.g. *“The Lions do a marvellous job during these events voluntarily, and other community groups should be encouraged to contribute as well.”*
- 1.7.7 Whilst it is accepted that events do attract people from outside the town or village they are staged in, the core attendance is primarily felt to be of local nature. It is also true to say that any economic benefit generated by the event is felt by the host town/village. The events in question include examples such as Music in Malling, Tonbridge Arts Festival and Tonbridge Medieval Fair.
- 1.7.8 As Members know, the Borough Council over recent years has moved away from the direct provision of events and now supports local community groups which are responsible for the events. The Council’s Events Officer spends approximately 2 days a week throughout the year supporting events run by others (primarily, but not exclusively, in Tonbridge), and a further 1 day a week determining applications for events on Council-owned land.
- 1.7.9 Whilst it is recognised that there is no accurate data on where people live who attend events, it is felt on balance and bearing in mind the relatively small number of people raising the issue, that they should be considered as local in nature and, as a concurrent function, be included in any Special Expenses Scheme.

### **Sportsgrounds /Parks /Open Spaces**

- 1.7.10 15 comments were received from the public regarding the inclusion of Sportsgrounds in Tonbridge in Special Expenses. The comments were primarily in regard to whether the Sportsgrounds should be considered as local, when the facilities are used by residents outside of Tonbridge.
- 1.7.11 For the purposes of the modelling undertaken in the research paper reported to the meeting of Cabinet on 20 April, those sportsgrounds/ parks /open spaces included in ‘Special Expenses’ (being comparable to concurrent functions delivered by parish councils in parished areas) were:

- Tonbridge Racecourse Sportsground
- Tonbridge Farm Sportsground
- Swanmead Sportsground
- Frogbridge Sportsground

1.7.12 Members are reminded that the Castle Grounds were excluded on the basis that they had wider strategic significance. In addition, as reported in the research paper, both Haysden and Leybourne Lakes Country Parks were excluded also on the basis of strategic significance. The costs of all of these facilities would continue to be part of the Borough Council's 'General Expenses' and shared by all taxpayers across the borough.

1.7.13 The Borough Council regularly undertakes User Surveys at its principal open spaces once every 5 years. The most recent (2014) Tonbridge Farm Sportsground survey showed that 67% of users were from Tonbridge and the most recent (2012) Racecourse Sportsground survey showed 74% of users were from Tonbridge. Whilst Swanmead and Frogbridge Sportsgrounds have not had specific User Surveys, these are significantly smaller facilities, and it is suggested that they would have an even greater local focus.

1.7.14 Whilst it is clear that there are users from outside the immediate local area, there is a predominance of local users. This is of course not unique to Tonbridge sites, and was also highlighted by one parish council in its response (see paragraph 1.5.12).

1.7.15 On balance, we do not believe that there is any reason to exclude any of the sites listed in paragraph 1.7.11 from a potential Special Expenses Scheme.

### ***Christmas Lighting /Flower Displays***

1.7.16 Christmas lighting attracted a number of comments in the consultation. Some felt that lights were enjoyed by a wider 'audience' than the immediate local community, but there were also comments about why the full burden of cost was falling on taxpayers, e.g. "*Christmas lights should at least be part funded by traders in the town*".

1.7.17 In the majority of the parished areas where there are Christmas lighting displays, it is the local traders themselves (perhaps in liaison with the parish council) that make the arrangements. The Borough Council's contribution towards the costs, through a separate grant scheme (under Section 137 of the Local Government Act 1972), is capped at 50%. In Tonbridge, the Borough Council presently pays 100% of the costs of Christmas lighting, and takes responsibility for the erection and dismantling, and there is no financial contribution from traders. There is, therefore, an inequity as it stands.

1.7.18 We believe this is an area we should look at further, exploring opportunities perhaps with the Tonbridge Town Team to secure funding from traders and providing more comparability across the borough. **This could equally apply to flower displays on the High Street.** We suggest this might be best progressed through a review by the Overview and Scrutiny Committee, with the intention of having a new system in place for Christmas 2017. If Members were minded to adopt this approach, we suggest that Christmas lighting and flower displays on the High Street are excluded from a potential Special Expenses Scheme.

### **Cemeteries**

- 1.7.19 A detailed written comment on the subject of the cemetery, in particular, was received in response to the consultation. The letter is reproduced almost in its entirety (albeit anonymised) at **[Annex 6]**, given the professional and expert background of the author. Members will note that the resident argues for the Tonbridge Cemetery to be retained as a strategic service, and not a local one which would then be included in a Special Expenses Scheme. Members are advised that it is a **discretionary** power to provide cemeteries under s214 of the Local Government Act, 1972.
- 1.7.20 In terms of the cemetery, some of the comments made through the on-line questionnaire also support the request that the cemetery is specified as a strategic service, serving the entire population of Tonbridge and Malling, e.g. *“Facilities such as the cemetery are used by people all over the borough.”* and *“Cemeteries aren't just used by people in certain areas so it would not be fair to just charge additional council tax to people living local to one”*.
- 1.7.21 The ‘reality’ of historic usage is, however, a little different. Based on information regarding the number of burials and internment of ashes, the cemetery officer indicates that in the last 2 years, over 75% of the usage was in respect of Tonbridge residents. Nevertheless, access to the service and the fee structure **applies equally** to residents across the borough of Tonbridge and Malling; and as the supply of burial plots decline, there could be a greater demand for plots from outside the immediate Tonbridge area.
- 1.7.22 The letter at **[Annex 6]** suggests that Tonbridge cemetery *‘is the only cemetery facility within the Council boundaries’*, but Members will be aware that this is not the case. There are 5 other cemetery facilities within the borough boundaries within the parishes of Aylesford, Hadlow, Snodland, Wrotham and Wrotham. All of these facilities are maintained by the relevant parish councils with some funding provided through the current s136 FAPC grant scheme. The parish councils do, however, operate a ‘differential’ policy in respect of either the fees charged to residents from outside the parish, or indeed restricted (or no) access to the service. We believe there are only three cemetery facilities (including Tonbridge) that are open to all borough residents (some with differential fee structure).

1.7.23 **Clearly, however, there are 22 parished areas where there is no cemetery facility at all** (although there may instead be, currently, an open churchyard). Once an open churchyard is 'full' and an order for closure is obtained by the church, there may be greater demand, borough-wide, for the plots at Tonbridge Cemetery. This potential issue was highlighted by one parish council during the consultation - see Annex 4.

1.7.24 Therefore, should the cemetery be retained as a strategic borough-wide service and the costs shared by all taxpayers in the borough? On balance, taking into account the comments made during the consultation and the further reflection on the matter set out above, we now suggest that Tonbridge Cemetery should not be designated as a local service and should not be included as a Special Expense as it can be seen to be of strategic importance for a place for burials for all borough residents.

### **Churchyards**

1.7.25 Some of the free-form comments suggested that 'churches' should pay for the upkeep of churchyards, e.g. "*A church yard should be funded by the church not the council*". Unfortunately, although sounding logical, it is not that simple.

1.7.26 Firstly, distinction needs to be drawn between open and closed churchyards.

1.7.27 **Open** churchyards, are quite appropriately, the responsibility of the Church. As mentioned at paragraph 1.5.7, the Council has historically made funds available **on a discretionary basis** to parish councils to assist PCCs in keeping churchyards open as long as possible (currently £35.5k of the total FAPC grant allocation). There are presently 24 open churchyards in the parished areas which benefit from some borough council funding through this grant scheme. There is, however, no statutory obligation to provide funding for open churchyards and these costs cannot be included in Special Expenses. There are no open churchyards (to our knowledge) in Tonbridge.

1.7.28 Responsibility for **closed** churchyards is however, a different matter.

1.7.29 As Members may be aware, when a Church of England churchyard is **closed** to further burials in accordance with the Burial Act 1853, responsibility for maintenance may, at the request of the Church, be transferred to the relevant local authority (this may be a parish council, district council, or unitary council). If the request is made, the transfer is compulsory. If the request to transfer responsibility for a closed churchyard is made initially to a parish council, it can seek to pass that responsibility on to the next 'tier' (i.e. the district or unitary council).

1.7.30 In Tonbridge & Malling, there are 4 closed churchyards in parished areas. In these cases, the parish councils historically accepted responsibility for maintenance and did not choose to pass on the responsibility to the Borough Council. As mentioned, the Council does provide grants to those parish councils (totalling £5k) through the s136 FAPC scheme.

- 1.7.31 In Tonbridge, the two closed churchyards are maintained by, and are the responsibility of, the Borough Council.
- 1.7.32 Closed churchyards are, therefore, a concurrent function (i.e. in parished areas they are maintained by the parish council and in Tonbridge they are maintained by the Borough Council) and we firmly suggest that the costs are deemed to be Special Expenses and included as a local charge. It is also reassuring to note that the (expert) resident (see Annex 6) believes that closed churchyards should be treated as a local charge.

### ***Local Representation in Tonbridge***

- 1.7.33 A number of comments (17) refer to the fact that there is no town council in Tonbridge compared to the local level of representation in parished areas, e.g.

*“what Tonbridge needs above all else is a Town Council that will act for the residents....”*

*“If we have a local charge we should also have the equivalent to a parish council so we get a say in where it is spent”*

*“if Tonbridge residents are to be loaded to the tune of £42 + per year then there should be a town council to take responsibility for these functions as per the rest of the Borough via parish councils”.*

- 1.7.34 The 15 borough councillors elected for the Tonbridge wards effectively perform dual roles – i.e. the ‘local’ one in lieu of a separate town council, and the borough-wide role.
- 1.7.35 The Council also established the **Tonbridge Forum**, the terms of engagement for which were recently reviewed by Overview and Scrutiny Committee. During the review, Members confirmed continued support for the Tonbridge Forum and emphasised the aspiration of making it relevant with an active and participating local membership. All borough councillors from Tonbridge wards regularly attend Tonbridge Forum to engage with local organisations and residents.
- 1.7.36 If Tonbridge residents feel strongly about the need for a town council, the option is there to seek a community governance review through appropriate petition.

### ***Use of Facilities***

- 1.7.37 A large number of comments (53) were made about the fact that residents from across the borough (and outside the borough) can use facilities, for example:

*“...the whole community benefits from facilities provided”*

*“people from the entire district come into town to use these facilities, thus costs should remain as is”*

1.7.38 This point was also made by one parish council.

1.7.39 Whilst this is of course true, it does not resolve the fact that residents in parished areas must pay directly for the costs of facilities (net of any grant made by the Borough Council) in their area. If FAPC grants are withdrawn from parish councils due to financial pressures on the Borough Council, the inequity is exacerbated.

1.7.40 This particular problem cannot be resolved totally whatever system is in place.

### ***Other Issues***

1.7.41 A number of other issues were recorded in the free-form comments section that were not directly related to the consultation. We include them here to give Members a flavour of the issues, although some of these points are not in the Council's 'gift' to address:

- Unnecessary numbers of layers of government
- Problems with Tonbridge High Street Regeneration
- Comments about services provided by other tiers of government
- Improvements needed to recycling and general waste collection etc.
- Should be looking to make savings in other ways / should have been more frugal in the past / just increase council tax
- Council Tax Support ('benefit') already cut and this would cause more pressure

1.7.42 In addition, some felt that the consultation had not been publicised enough or was not sufficiently clear. A few comments were made about the difference between living in a town and in a rural location, and the fact that some residents feel a premium should be paid by the latter group.

## **1.8 A Local Charge?**

1.8.1 As Members will see from the statistics provided earlier in the report, there is, unsurprisingly, a mixed response to the potential introduction of a local charge. From those who responded to the consultation, 26.2% of residents from Tonbridge agreed, compared to 79.6% of residents, from parished areas.

1.8.2 Some residents of Tonbridge saw the services being available for anyone who wants to use them and, therefore, costs should be spread evenly across the borough. For example:

*"The town is the central point of the borough and it is much more likely that people from parishes would come into town as opposed to the other way round. There are*

*some collective facilities that should be regarded as a borough resource as they are there for everyone”*

- 1.8.3 Some of the comments opposing the introduction of a local charge were more about expressing concern about the additional financial bill it would bring rather than the concept itself. This is totally understandable and a valid consideration for members in looking at special expenses. Some of the comments include:

*“Council tax is high enough already. Very few people are getting a wage increase - so this is extra money that has to be found.....”*

*“Our council tax bill has just gone up. Another rise would be unmanageable financially for many Tonbridge residents. I feel that residents of Tonbridge would like to see where their existing taxes go....”*

*“I think it is unacceptable for the residents of Tonbridge town to have a much larger increase in council tax than the residents of the parishes..... I do understand that the council needs to increase tax to keep the excellent services - but these should be evenly spread”.*

*“We already pay for these services so why pay more?”*

- 1.8.4 On the other hand, two other Tonbridge residents said:

*“I would not wish to see the level of services deteriorate further and am prepared to pay a little more”*

*“As a resident of Tonbridge, the area affected most with regards to cost under these plans, I am happy to pay an extra amount to maintain the excellent parks and events we have here”.*

A third resident, after commenting that the costs of Christmas lights, events, etc. should be met first of all through other sources said:

*“If every effort has been made to raise funds from those that benefit financially from the local amenities then a local charge can be levied”.*

These are equally valid considerations to those set out in paragraph 1.8.3 above for Members determining whether to introduce special expenses.

- 1.8.5 As can be seen from the statistics at paragraph 1.8.1, conversely (and not unsurprisingly) residents of parished areas predominantly thought that it was only fair that Tonbridge residents should pay for the cost of local services. For example:

*“I would say it is about time Tonbridge residents contributed more fairly. All major leisure facilities are located in Tonbridge and residents in the out-lying parishes have little access to them. If parishes want such facilities they must fund them or find the funds themselves.”*

*“A fair and sensible proposal”*

*“In an increasingly difficult economic outlook, this proposal does seem to be the fairest way of maintaining these services moving forward”.*

*“Great idea, why has it taken so long?”*

- 1.8.6 A resident of Kings Hill (where there are ‘service charges’ akin to a special expense payable to Liberty as well as a precept to Kings Hill Parish Council) said:

*“Already pay a yearly fee to Liberty for local facilities therefore wouldn't expect to be double charged, however I do expect to be charged my fair share of what my community uses. Not more, not less. I think it is fair that local communities pay for what they use. I agree that local charges seem to be the best way to do it.”*

- 1.8.7 On balance we cannot see any reason that should deter the Council moving forward with the concept of a Local Charge, through adopting a Special Expenses Scheme, if that is its wish. Of course what is included within that Local Charge is of utmost importance; and as set out in earlier paragraphs, having reflected on the comments from the consultation as well as undertaking further research work, there are two areas that we would recommend are not included. These are Tonbridge Cemetery and Christmas lighting/flower displays, the latter of which we recommend is considered by Overview & Scrutiny Committee.

## **1.9 Summary**

- 1.9.1 Whilst this report has focused primarily on ‘Fairer Charging’, there were actually two consultations launched in early May.
- 1.9.2 At paragraph 1.2, we reported on the results of the consultation with parish councils regarding the proposed cessation of the CTRS grants (totalling £175k).
- 1.9.3 The responses we received were limited in number, but those we did receive were accepting of the Borough Council’s financial position and the ‘discretionary’ nature of the grants that are presently awarded.
- 1.9.4 We, therefore, recommend that these grants are withdrawn with effect from April 2017, achieving a saving to the Borough Council of £175k.
- 1.9.5 In respect of the Fairer Charging/Local Charge consultation, the majority of parish councils supported the approach (albeit with caveats), accepting that the FAPC scheme would cease as a result.
- 1.9.6 The responses from the public were also limited in number and were, of course, mixed with Tonbridge residents generally not favouring the approach, but residents from parished areas generally supporting it.
- 1.9.7 There were two objectives of the review that launched the consultation – making financial savings and achieving fairness across the borough. As we expressed in

the research paper and report to Cabinet in April, the only way that both objectives can be achieved is to introduce a Special Expenses Scheme and thereby cease the FAPC grants scheme and this remains our view.

- 1.9.8 The consultation has highlighted an issue regarding the inclusion of the Tonbridge Cemetery as a local facility and therefore a “special expense”. Having taken the representations into account, on reflection we feel that Tonbridge Cemetery should NOT be included in a Special Expenses scheme.
- 1.9.9 On a smaller scale, there are also some complications in respect of Christmas lighting and we therefore feel this should be excluded from Special Expenses, along with flower displays in the High Street. However, this should be on the understanding that there is a review undertaken by the Overview & Scrutiny Committee in the short-term exploring opportunities (perhaps in partnership with the Tonbridge Town Team) to secure funding from traders and providing more comparability regarding funding arrangements across the borough.
- 1.9.10 An issue regarding open churchyards was also explored at paragraph 1.5.8. If Members wish to take this forward, it would be outside the Special Expenses scheme and would need to be funded from savings achieved in withdrawing the FAPC scheme. Members are aware that the FAPC scheme presently costs £226k per annum, and the open churchyards element is £35.5k.
- 1.9.11 In summary, if Members are minded to move forward with a Special Expenses Scheme, we recommend that the following services are specified as part of the Scheme:
- Closed Churchyards
  - Open spaces, parks and play areas maintained by TMBC in parished areas; excluding Leybourne Lakes Country Park (strategic sites)
  - Open spaces, play areas, parks, sportsgrounds in Tonbridge; excluding Castle Grounds and Haysden Country Park (strategic sites)
  - Support given to Local Events
  - Allotments
- 1.9.12 We further recommend that if a Special Expenses Scheme is to be introduced, it should come into effect from April 2017.
- 1.9.13 The detailed figures within the research paper and previous report were based on the Cemetery and Christmas lighting/flower displays being included in a potential scheme. By removing them, this would reduce the ‘Local Charge’ for Tonbridge residents from the estimated £42 to around £36. The indicative Borough Council charge applicable to all residents would be £175.65 instead of the £173.38 set out in the research paper.

1.9.14 If Members decide to move ahead with these proposals, further detailed modelling based on 2016/17 data will be presented in the Autumn.

1.9.15 Before deciding on the way forward, Members also need to have regard to the Equality Impact assessments carried out in relation to these consultations. Details are set out at paragraph 1.14.

## 1.10 Timetable and Process

1.10.1 If Members decide to move forward with the cessation of CTRS grants and the introduction of a Special Expenses Scheme, recommendations will ultimately need to be approved by Full Council.

1.10.2 Members endorsed the outline project timetable at its last meeting. The plan would be as follows:

28 July 2016	Special Cabinet considers responses, formulates preferred way forward and, if appropriate, commissions new policy to be drafted in respect of Special Expenses  Special Cabinet decides whether to cease CTRS grants
July/August 2016	Draw up draft policy for Special Expenses
8th September 2016 and 12th September 2016	PPP and Tonbridge Forum updated verbally re: <ul style="list-style-type: none"> <li>• CTRS grants</li> <li>• Special Expenses /FAPC</li> </ul>
13th September 2016	Overview and Scrutiny Committee (O&S) review draft policy for Special Expenses and make recommendations to Cabinet
12th October 2016	Cabinet considers policy, including any recommendations from O&S, and makes recommendation to Full Council
1st November 2016	Full Council: <ul style="list-style-type: none"> <li>• adopts Special Expenses policy for 2017/18 and cessation of FAPC scheme</li> <li>• confirms cessation of CTRS grants for parish councils</li> </ul>
Early December 2016	Write to parish councils with information for budget setting
January 2017	Finance, Innovation and Property Advisory Board considers implications of adopted policy on budget setting process.

1.10.3 Members will note from the above that prior to any consideration by Full Council, as part of the Budget & Policy Framework, the Overview and Scrutiny Committee will be required to review the draft policy.

## **1.11 Legal Implications**

- 1.11.1 Section 136 of the Local Government Act 1972 allows principal authorities to pay grants to local (parish) councils in respect of concurrent functions. The principal authority has discretion as to the amount, if any, it may decide to pay under these arrangements.
- 1.11.2 Provisions relating to special expenses are contained in the Local Government Finance Act 1992 at sections 34 and 35. These sections allow different amounts of council tax to be calculated for different parts of the district, depending on what, if any, special items relate to those parts.
- 1.11.3 The Council currently resolves to pay grants under s136 of the Local Government Act 1972, although the amount it pays is entirely at its discretion. Were the Council to resolve to adopt a Special Expenses Scheme under sections 34 and 35 of the Local Government Finance Act 1992, it would no longer pay grants for those items of special expense under s136 of the 1972 Act.
- 1.11.4 There is no statutory requirement for the Council to pass on funding to parish councils in respect of CTRS. It, therefore, has unfettered discretion to make the decision one way or the other.
- 1.11.5 If the Council wished to continue supporting 'open churchyards, in furtherance of previous policy, this could be achieved using s214 of the Local Government Act 1972.
- 1.11.6 The Council is subject to the Public Sector Equality duty in s149 of the Equality Act 2010. This requires it to have due regard to the need to (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people from different groups, and (iii) foster good relations between people from different groups.
- 1.11.7 This requires decision makers to consider the impacts of its policies and processes on the protected characteristics (which are race, sex, age, religion/belief, sexual orientation, pregnancy/maternity, marital or civil partnership status, gender reassignment) when carrying out its public functions. For these purposes tax revenue and collection is a public function and so the impact of the decision on the protected characteristics must be considered in making a change to policy through the proposals set out in this report.
- 1.11.8 Direct discrimination is where a person is treated less favourably than another person and the reason for the less favourable treatment is one of the protected characteristics. For example if female residents were required to pay a higher level of Council tax per se this would be direct discrimination.

1.11.9 Indirect discrimination is where a policy criteria or practise which is applicable to everyone is shown to put those with a relevant protected characteristic at a disadvantage. The relevant protected characteristics for this are age, disability, gender reassignment marriage and civil partnership, race, religion or belief sex and sexual orientation.

1.11.10 It is not believed that the decisions to be made hereunder will result in either direct or indirect discrimination, harassment or victimisation of any persons. The reasoning for this is set out at para 1.14 below for Members to consider.

## **1.12 Financial and Value for Money Considerations**

1.12.1 If the Council were to cease the payment of grants to parish councils in respect of CTRS, the saving would be circa £175,000 per annum.

1.12.2 If the Council were to resolve to adopt a Special Expenses Scheme and cease the FAPC grants Scheme as a result, the saving would be circa £226,000 per annum.

1.12.3 If Members decided that a grant scheme should be offered in respect of open churchyards, there would be a cost which would reduce the savings set out above (maximum £35,000), but it is important to note that the churchyards would have to be open to all residents, therefore (potentially) benefiting all borough residents.

1.12.4 If Members decide to move ahead with the cessation of CTRS grants and FAPC grants and instead implement a Special Expenses Scheme, updated modelling based on 2016/17 data will be carried out and will be presented to Cabinet in October.

## **1.13 Risk Assessment**

1.13.1 A full six week consultation has been carried out as described in the report, and significant effort has been made to publicise the public consultation, as well as reminding individual parish councils about both consultations.

1.13.2 A Special Expenses scheme would establish 'equity' across the borough in terms of council tax paid towards the cost of local services. Whilst there is a risk of challenge to the introduction of such a scheme, the principles have been robustly tested.

1.13.3 If decisions are not made within the timescales set out, the Council may not be able to implement savings (if any) in readiness for 2017/18.

## **1.14 Equality Impact Assessment**

1.14.1 Decision-makers are reminded of the requirement under the Public Sector Equality Duty (s149 of the Equality Act 2010) to have due regard to (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people from different groups, and (iii) foster good relations between people from different groups.

- 1.14.2 In respect of the cessation of CTRS grants to parish councils, the consultation has not highlighted any specific impacts that need to be taken into account by the Borough Council in taking its decision. It is for individual parish councils to determine whether to increase precepts or reduce services, or a combination of both. Parish councils will carry out their own assessments of the impacts, including those affecting people with protected characteristics, when making those decisions.
- 1.14.3 The Equality Impact Assessment (EQIA) has identified higher proportions of people with protected characteristics in some parish areas and in Tonbridge where council tax charges are likely to increase. However, as the estimated increases in council tax will apply equally to whole populations and the impact will be shared by all of those local residents, we do not believe that there is any disproportionate effect on those specific protected groups. All residents on low incomes are eligible to apply for support with their council tax through the Council Tax Reduction Scheme.
- 1.14.4 Further details of parish demographics and a more detailed summary of consultation responses by demographic, is provided in the EQIA attached at **[Annex 7]**.
- 1.14.5 The consequential increases in council tax as a result of the implementation of a Special Expenses Scheme will be the same for all Tonbridge residents (proportionate to the council tax band) regardless of any protected characteristics.
- 1.14.6 Taking all this into account, we do not believe that there are disproportionate effects that need to be addressed, however we will keep this under review should we become aware of any unforeseen indirect impacts that may arise in future.

## **1.15 Policy Considerations**

- Customer Contact;
- Community;
- Equalities/Diversity

## **1.16 Recommendations**

### **1.16.1 Cabinet is REQUESTED:**

- 1) to **CONSIDER** the responses received in respect of the consultation with parish councils regarding the cessation of CTRS grants and any potential equality impacts, and **RECOMMEND** to Full Council that the grants be withdrawn from 1 April 2017 and parish councils notified accordingly;
- 2) to **CONSIDER** the responses received in respect of the consultation regarding the potential introduction of Special Expenses and any potential equality impacts, and determine whether Full Council should be **RECOMMENDED** to introduce such a Scheme from 1 April 2017;

- 3) on the basis that a Special Expenses Scheme is to be introduced, **RECOMMEND** to Full Council that the following concurrent services should be incorporated within the Scheme:-
- Closed churchyards
  - Open spaces, parks and play areas maintained by TMBC in parished areas; excluding Leybourne Lakes Country Park (strategic site)
  - Open spaces, play areas, parks and sportsgrounds in Tonbridge; excluding Castle Grounds and Haysden Country Park (strategic sites)
  - Support given to Local Events
  - Allotments;
- and **REQUEST** that, in accordance with the agreed project timetable, the Overview & Scrutiny Committee review the Scheme, once it is drawn up, at its next meeting;
- 4) to **CONSIDER** whether grants (s214 of the Local Government Act 1972) should continue to be offered to support the maintenance of open churchyards within the borough in furtherance of previous policy in this regard;
- 5) to **RECOMMEND** a review by the Overview & Scrutiny Committee into the future funding of Christmas Lighting and High Street flower displays in readiness for 2017/18; and
- 6) on the basis that a Special Expenses Scheme is to be introduced, **RECOMMEND** to Full Council that the Scheme of Financial Arrangements cease with effect from 1 April 2017 and parish councils notified accordingly.

Background papers:

Nil

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