

**TONBRIDGE & MALLING BOROUGH COUNCIL**

**STREET SCENE and ENVIRONMENT SERVICES ADVISORY BOARD**

**30 October 2019**

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

**Part 1- Public**

**Matters for Recommendation to Cabinet - Non-Key Decision**

**1 PROVISION OF PUBLIC CONVENIENCES**

**Summary**

**This report updates Members on the implementation of the approved way forward regarding the provision of the Council's existing public conveniences.**

**1.1 Background**

1.1.1 At Cabinet on 14<sup>th</sup> February 2019 the following recommendations were agreed:-

- subject to agreement with the existing contractor, the existing public convenience cleansing contract be extended for 12 months in accordance with current contract conditions;
- meetings in liaison with the Estates Services Manager be undertaken with individual Parish/Town Councils to agree the leasehold or freehold transfer of ownership of the Council's public conveniences currently located in their area;
- the existing provision of public conveniences at Leybourne Lakes Country Park, Haysden Country Park, Tonbridge Racecourse Sportsground and Tonbridge Cemetery be retained;
- the existing Priory Road and Castle Grounds public conveniences in Tonbridge be retained;
- the existing Angel Centre public toilets be closed with the public redirected to existing alternative provision;
- further investigation be undertaken into the suitability of alternative toilets in the vicinity of Tonbridge Castle to determine the future provision of Castle Grounds toilets;
- the Building & Estates Manager be requested to bring forward, if required, an improvement programme for those facilities to be retained/transferred;

- future reports be submitted to the Street Scene & Environment Services Advisory Board on the outcome of the review, accompanied by an Equality Impact Assessment and financial appraisal.

1.1.2 It is worthy of note that the estimated annual operating cost of the public conveniences across the Borough in 2019/20 was £153,000 (excludes business rates, management and administration expenses and non-current asset depreciation). 8 of the existing public conveniences are in Parish/Town Centres, 3 in Tonbridge Town Centre and 4 in Open Spaces owned and managed by the Borough Council. A location plan of the existing facilities is shown at **Annex 1**.

## 1.2 Update

1.2.1 Following Cabinet on 14<sup>th</sup> February 2019 a number of immediate actions were taken:-

- the cleansing contract with the existing contractor (SHS Ltd) was extended by a further 12 months until 28<sup>th</sup> February 2020, in accordance with current contract conditions;
- Parish/Town Councils were updated on the outcome of the Council's review at the February meeting of the Parish Partnership Panel. Letters were sent to those Parish/Town Councils directly affected, to arrange individual meetings regarding the future. The outcome of the meetings is outlined later in this report at sub-section 1.3;
- the Angel Centre public toilets were closed to the public and, in liaison with the Council's Estates Manager, the area is being transferred to the Leisure Trust under a lease agreement;
- an Equality Impact Assessment was completed and approved by this Board and Cabinet.

1.2.2 In addition to the above, the Building and Estates Manager has been requested to develop an improvement programme for the facilities being retained/transferred. This is being assisted by the outcome of inspections of each public convenience and feedback from Parish/Town Councils. An appropriate allowance to progress the improvements will be made in the Building Repairs Reserve Expenditure Plan as part of the forthcoming budget setting process. The allowance focusses particularly on the renewal of the hand wash facilities, as a number of these are now obsolete and replacement parts not available. This is estimated to be iro. £15,000 in 2019/20 and £50,000 in 2020/21.

1.2.3 To ensure a fair and equitable approach to funding across the Borough, it was agreed by Cabinet that with the exception of 'strategic sites' (Leybourne Lakes and Haysden Country Parks and Tonbridge Cemetery), the future cost of the local public convenience function is met by taxpayers in that particular local area. The future cost of the public conveniences transferring to Parish/Town Council' will

therefore be met by the taxpayers of the relevant Parish/Town Councils. It is proposed thereafter that the cost of 'non-strategic sites' being retained in Tonbridge will be included within the Special Expenses Policy (subject to consultation) as a concurrent function, and would therefore be classed as a Special Expense for the purposes of levying Council Tax. An update to the Special Expenses Policy will need to be publicly consulted upon in due course.

### **1.3 Parish/Town Councils**

1.3.1 Meetings have taken place with all of the 8 Parish/Town Councils which have a public convenience in their Parish/Town area. The opportunity at each meeting was taken to fully explain the outcome of the review, provide relevant information (including operating costs and contract specifications), and to receive any feedback from the Parish/Town Council. The basis of the transfer to the Parish/Town Council is a freehold disposal for a consideration of £1. A restriction on title will be applied, with the land to only be used as a public convenience, and no other use or development permitted. Each party would bear its own costs with respect to legal costs in connection with the disposal. The proposal recognises that the Borough Council is obliged to seek an open market value when disposing of assets. By placing a restriction on the title that the premises can only be used as a public convenience, with no other use or development permitted, enables the valuation to be £1.

1.3.2 The meetings have generally been very positive, with a number of the Parish/Town Councils basing their decision on public consultation with their residents. Subject to formal approval by their Parish/Town Council Members, the following Parish/Town Councils have agreed to the transfer in principle:-

- East Peckham Parish Council (see sub-section 1.3.3)
- Borough Green Parish Council
- West Malling Parish Council (see sub-section 1.3.4)
- Aylesford Parish Council (see sub-section 1.3.5)
- East Malling & Larkfield Parish Council
- Snodland Town Council

1.3.3 East Peckham Parish Council has already confirmed that its Parish Council Members have formally agreed to the transfer of the service. The Parish Council has advised that this is subject to three conditions:-

- TMBC and the Parish Council meet on site to agree any building works prior to the transfer;
- TMBC meets the Parish Council's legal costs;

- The Parish Council receives 50% transitional funding for the first 5 years.

1.3.4 Whilst West Malling Parish Council has agreed to the transfer in principle, it wishes to discuss with the Council whether the toilets could be relocated from its current location to the Short Stay car park.

1.3.5 Aylesford Parish Council has already confirmed that its Parish Council Members have formally agreed to the transfer of the Service. Similar to East Peckham Parish Council, Aylesford Parish Council has stated that this is subject to certain conditions. These are as follows:-

- Payment of the Parish Council's legal costs in respect of the transfer;
- TMBC to pay the Parish Council 2 full year's transitional costs plus 50% transitional cost in Year 3.

In addition it should be noted that the facility at Aylesford is leasehold, in that the Borough Council was granted a lease of the land in 1972, to construct a public convenience on, and manage and maintain as such. The lease expires in May 2021 and there is no requirement within the lease to reinstate (remove the building). As it stands, the Borough Council can serve notice on the Parish Council that as of May 2021, it is not our intention to renew the lease and therefore we would have no further involvement with the facility or obligation to make any future contribution towards. Our discussions with Aylesford Parish Council gave indication that they would continue to maintain the facility.

1.3.6 Hadlow Parish Council indicated that whilst it supported the retention of the public convenience in the village for local residents, it did not wish to add to its portfolio of buildings, nor did it wish to take on any additional financial costs. The Parish Council has therefore declined the transfer, and understands the facility, subject to Borough Council approval, will therefore be closed and alternative uses of the site considered by the Borough Council. It is not felt appropriate for the Borough Council to retain responsibility for the public convenience in Hadlow, for the reasons identified in the original Overview & Scrutiny Committee review. It is also considered that this would be unfair on the other Parish/Town Councils willing to take on and fund these local facilities.

1.3.5 With regard to Wrotham, the position is slightly different as the Parish Council already own the current public convenience, and the Borough Council maintain and operate it under a licence agreement. Under the terms of the licence responsibility for the building will now be returned to the Parish Council, once improvements to the building have been progressed to bring it up to good order. This is currently being progressed in liaison with our insurers following a fire earlier in the year. In accordance with the licence either party can determine the licence given not less than twelve months' notice. The Parish Council has yet to determine the longer term use of the building.

- 1.3.6 Each of the Parish/Town Councils were advised that an update report would be considered by this Board, formal transfer arrangements would need to be reported to the Finance, Innovation & Property Advisory Board, and the new arrangements would commence as soon as is practicable. In order to enable all the legal arrangements to be progressed, building improvement work to be completed and for each Parish/Town Council to put operational and financial arrangements in place, it is suggested that the new arrangements formally commence on 1<sup>st</sup> April 2021. This will require a further extension of the existing cleansing contract, which the current contractor has agreed in principle is acceptable.
- 1.3.7 During the discussions two key issues were raised by a number of the Parish/Town Councils. The first related to the proposal to share the cost of the legal fees associated with the transfer. The Parish/Town Councils suggested this should be met in full by the Borough Council. This is considered to be a fair point bearing in mind the financial benefits of the proposal to the Borough Council, and it is suggested that the Borough Council cover the Parishes/Towns' legal fees up to a maximum of £1,000. The second issue raised was whether the Borough Council would be willing to provide financial support to the Parish/Town Council for a specific period after the transfer. East Peckham Parish Council and Aylesford Parish Council have made this a condition of the transfer. The average annual cost of each public convenience is in the region of £8,000.
- 1.3.8 The Director of Finance & Transformation has considered the possibility of transitional payments and is of the view that this should not be accommodated for practical and budgetary reasons, and also the implications for special expenses. **However**, as an alternative, she has suggested that an option of providing a one-off support payment could be considered as an appropriate way forward, which would also include the payment of legal fees. Each Parish Council taking on responsibility for the continued provision of public conveniences could be provided with a one-off support payment of up to say £9,000 covering the average annual cost and a contribution towards legal costs (see paragraph 1.3.7). **Member's views on this suggestion are sought.**
- 1.3.9 In practical terms, subject to Members supporting the above, an outline timetable might be as follows:
- 1) During the next 12 months legal agreements are drawn up and concluded with those parish councils wishing to take on responsibility
  - 2) During the next 12 months works to upgrade relevant sites agreed and funded by the Borough Council.
  - 3) Parish/town councils take on responsibility from 1 April 2021, with support payments made on or around 1 April 2021.
  - 4) As the delivery of public conveniences within the Borough would then be a concurrent function, during the course of 2021/22 the Borough Council

consult on an update to Special Expenses Policy with a view to bringing in a change to the policy from April 2022.

## **1.4 Legal Implications**

- 1.4.1 There is no statutory requirement for the Council to provide public conveniences. The current public convenience cleansing contract has been extended until 28<sup>th</sup> February 2020 and will require a further extension in accordance with the conditions of contract. The current contract conditions allows for a 12 month extension, and an exception from contract procedure rules will be required for the additional month.
- 1.4.2 The 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. The Special Expenses policy adopted by Full Council in November 2016 would need to be updated and approved at the appropriate time if changes as outlined in the report went ahead.

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

- 1.5.1 On the assumption public conveniences are either transferred or closed as detailed in the report the estimated cost saving in a full year is circa £65,000. Of this sum building repairs and maintenance costs in the order of £12,000 funded from the Building Repairs Reserve will help lessen the ongoing budgetary pressure on the annual contribution to the Reserve.
- 1.5.2 The above excludes any funding for improvement works to be carried out prior to transfer which will be funded separately from the Building Repairs Reserve.
- 1.5.3 If Members are minded to offer a one-off support payment to the relevant Parish/Town Councils as set out in paragraph 1.3.8 during the financial year 2021/22, , the anticipated savings would not actually accrue in the Borough Council’s budget until April 2022. However, this is felt to be a reasonable compromise.
- 1.5.4 If Hadlow Parish Council remains unwilling to accept the transfer of the public convenience, the facility will be closed and alternative options for the site will be considered, including the sale of the site at auction. This could provide a capital receipt to the Council.

## **1.6 Risk Assessment**

- 1.6.1 The review of public conveniences was undertaken to ensure that existing services are being provided in accordance with need, there is no duplication of

alternative provision and the services are being delivered as cost effectively as possible.

## **1.7 Equality Impact Assessment**

1.7.1 An Equality Impact Assessment has been completed and was reported to the February 2019 meeting of this Board. The Assessment followed the agreed corporate template, looking at each of the protected characteristics included in the Public Sector Equality Duty.

## **1.8 Policy Considerations**

1.8.1 Asset Management

1.8.2 Communications

1.8.3 Community

1.8.4 Procurement

## **1.9 Recommendations**

1.9.1 It is RECOMMENDED to CABINET that:-

- 1) the Estates Services Manager progress the transfer of the public conveniences to the relevant Parish/Town Council, in liaison with the Finance & Property Advisory Board;
- 2) Hadlow Parish Council be advised that if it remains unwilling to accept the transfer of the public convenience in the village, the facility will be closed and the Estates Services Manager will be requested to bring forward proposals for the future use/disposal of the site;
- 3) the Corporate Support Manager implement a programme of improvements to the public conveniences that are to be retained or transferred;
- 4) the transfer arrangements with Parish/Town Councils commence on 1<sup>st</sup> April 2021, and the current cleansing contract be extended for a period of 13 months;
- 5) at the appropriate time during 2021/22, a consultation be undertaken with a view to updating the Special expenses policy to reflect the new arrangements for the provision of public conveniences as a concurrent function;
- 6) the Parish/Town Councils, legal fees associated with the transfer be met by the Borough Council and alongside this Members consider the principle of supporting the Parish/Town Council's financially with a one-off payment;

the Council seeks quotations for cleansing those public conveniences being retained in Tonbridge and at 'strategic sites'; and

- 7) the anticipated cost saving from the new arrangements be reflected in the Council's revenue estimates from April 2022.

Background papers:

Nil

contact: Simon Collard  
Katie Iggleden

Robert Styles  
Director of Street Scene, Leisure & Technical Services