

Meeting	Finance & Policy Committee
Date	19 th July 2022
Report Title	Swindon Borough Council / HWPC Public Open Space Transfers
Agenda Reference	13
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Officer's Recommendation:

1. To note the report.

Background

In 2014-15 Swindon Borough Council (SBC) transferred the various Public Open Spaces (POS) and Play Areas to Haydon Wick Parish Council (HWPC). The lease has since been updated following after SBC eventually managing to sort out the Deeds of Covenants that are required from the North Swindon Development Company.

Deed of Covenants are applicable to:

1. Havisham Drive
2. Lilian Close
3. Luna Close
4. Maurek Way

Revised Lease applies to:

5. Basil Close
6. Brookfield
7. Capestone Park
8. Galloway Road
9. Gaynor Close
10. Heaton Close
11. Little Copse
12. Pembroke Park
13. Queen Elizabeth Drive
14. Village Green
15. Wick Farm Orchard
16. Voyager Drive
17. White Eagle

Remaining POS that has not been addressed by SBC in the above revised lease include:

18. Doyle Close
19. Francomes

Are there any that are missing?



In June HWPC agreed to seek legal advice to review the lease and covenants [FP 032]. The Council's solicitors have since been instructed to liaise with SBC's legal department to review the revised lease, giving proper consideration of the titles and Land Registry documentation. They gave the following initial advice.

Initial Legal Advice

There are two issues as the lease is concerned: the title investigation and the acceptability of the lease terms themselves. There is a need, therefore for each of the titles to be properly investigated. There is no substitute for doing the job properly.

There are provisions in the transfers to SBC requiring deeds of covenant to ensure that the restrictive and, possibly, positive covenants in the transfers are enforceable directly by the transferors to SBC against SBC's successors in title. The deeds of covenant are in a conventional form, but they need to be investigated further with the titles as it is not clear what the deeds of covenants relate to.

There is no evidence of SBC's having published the statutory notices under s 123 of the Local Government Act 1972.

On the draft lease itself the following are the salient terms:

- 1 term – 99 years without breaks
- 2 rent £1 pa if demanded; there are no rent reviews
- 3 all existing arrangements lease etc are deemed to be surrendered – this will need to be checked
- 4 the Council is to pay all outgoings
- 5 the Council is to maintain and to repair the properties and the equipment [cl 3.3 – 3.5]
 - a. for the purposes of 4 above SBC is to hand over (or already has handed over) two funds: the Lilian Close and the Upkeep Fund – these appear to commuted sums payable by the developers to SBC under the terms of the s 106 agreement. They are evidently single payments not indexed linked (unless there was such provision in the s 106 agreement although one suspects that any indexation would have accrued to the sums as they were paid to SBC). I shall need to check the s 106 agreement(s).
 - b. the repairing obligations extend to the fences and to the play areas themselves cl 3.5 although I think that there is a definitional issue about the scope of the permitted use
- 6 cl 3.6 alienation needs amendment
- 7 cl 3.9 there is a ban on any building, structures, hardstanding without SBC's consent – I think that this conflicts with the idea of a public open space and recreational facilities and is unreasonably restrictive in a 99-year lease. There is a potential conflict with cl 3.13.
- 8 cl 3.10 needs amending to ensure that the properties can properly be used as public open space
- 9 cl 3.14 requires the Council to insure against third party liability but the clause is silent on property insurance – this needs resolution. It would be usual for the Council as tenant to insure the properties and the structures and equipment
- 10 cl 3.16 graffiti – is this acceptable?
- 11 the landlord is to maintain the street lighting



- 12 the provisions of the Landlord and Tenant Act 1954 are not excluded which means at the end of the term the lease continues until terminated in accordance with the Act.
- 13 consider the lease checklist alongside the lease (see attached)
- 14 there are no plans which are of course an integral part of a lease.

Allotment Leases

Additional legal advice will be given once the above matters are settled to review the allotment leases and whether it would be beneficial to seek the transfer of the freehold. As a matter of principle, leaving aside any strange or unduly restrictive covenants, freehold ownership is always better than leasehold. Checks will also be made to see whether the land were held as statutory allotments before the lease. If the land was so held it would not have been for SBC to grant leases as the land would already have been vested in the parish council.