

## PROPOSED TOILET PROVISION ON LINDFIELD COMMON

REPORT OF: Head of Corporate Resources  
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Wards Affected: Lindfield  
Key Decision No

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### Purpose of Report

1. The purpose of this report is to:
  - a. To consider a request from Lindfield Parish Council (“Parish Council”) for consent from the District Council, as statutory managers of Lindfield Common under the Scheme of Management made on 8th June 1900 (“the Scheme”), to build a public convenience block on the Common in accordance with planning permission issued by the Local Planning Authority under DM/19/0071; and to place two grit bins, two noticeboards and a lamp post on the Common (‘the proposed works’);
  - b. To consider a request from the Parish Council to support the Parish Council in an application to the Planning Inspectorate for consent required under Section 38 of the Commons Act 2006 in respect of the proposed works; and
  - c. To note the implications of giving consent under the Scheme, the effect of consent from the Planning Inspectorate and the principal of granting a lease of the areas on Lindfield Common required for the construction of the public convenience block and the placing of the grit bins, the noticeboards and the lamp post on the Common, which will be considered by the Cabinet at a later date.

### Summary

2. Lindfield Common is a registered Common, owned by the District Council and managed by the District Council under a Scheme of Management made under the Commons Act 1899.
3. The Parish Council have obtained planning permission for the construction of a public convenience block on Lindfield Common to the north of the Car Park at Lindfield Bowling Club on Backwoods Lane in the area edged in blue on the plan. The Parish Council also wish to place one grit bin in each of the two locations marked with a red “G” on the attached plan, to install two noticeboards in the location marked with a red “I” on the plan, and to install a lamp post in the location marked with a green “L” on the plan. Lindfield Common has not had any public conveniences since 2005. The closest public conveniences to the Common are located in Denmans Lane. The Parish Council requires consent from the District Council under the Scheme of Management and as owners of the Common.
4. The District Council has to consider the impact of the proposed development of the public conveniences and the placing of the grit bins, the noticeboards

and the lamp post with regard to the rights and privileges under the Scheme of Management and has to decide whether to support the Parish Council's application to the Planning Inspectorate and whether to consent to the works under the Scheme of Management and as owner of the Common. As owner of the Common the District Council's consent is integral to the Parish Council's application, as the Planning Inspectorate will not issue consent without it.

5. If the District Council, is minded to support the application, and if the Planning Inspectorate issue consent, it will be necessary to grant a lease of the land required to accommodate the public convenience block, the grit bins, the noticeboards and the lamp post. However, the final decision on whether the proposed works can proceed rests with the District Council's Cabinet, as they will need to consider the grant of the proposed lease, at a later date, once the District Council has complied with its statutory duties under Section 123 of the Local Government Act 1972.
6. Members are recommended to approve the proposed works under the Scheme of Management, to support the Parish Council's application to the Planning Inspectorate and to agree, in principle, a lease of land to accommodate the proposed works.

#### **Recommendations**

7. **It is recommended that:**
    - a. **The District Council, as manager of the Common under the Scheme of Management, approve and consent to the works detailed in the planning permission issued by the Local Planning Authority under reference DM/19/0071 and to the installation of two grit bins; two noticeboards; and a lamp post in various locations on the Common as detailed on the plan;**
    - b. **The District Council, as owner of the Common, supports the Parish Council's application to the Planning Inspectorate in respect of the proposed works and to advise the Planning Inspectorate accordingly;**
    - c. **Subject to (b) above the District Council, as owner of the Common, agree, in principle, to the grant of a long lease of the areas of land at Lindfield Common to the Parish Council to accommodate the proposed works as detailed in the planning permission issued by the Local Planning Authority under reference DM/19/0071 and this report, subject to a report to the District Council's Cabinet on the detailed terms of the lease and subject to compliance with the requirements of Section 123(2A) of the Local Government Act 1972;**
    - d. **The Head of Regulatory Services and Solicitor to the Council be authorised to make further representations to the Planning Inspectorate as required in line with the District Council's decision in consultation with the Chairman and Vice-Chairman of Council; and**
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## **Background**

8. Lindfield Common is statutory common land. It was originally owned by the Earl of Chichester and was known as the waste of the Manor of South Malling, Lindfield. On 8<sup>th</sup> June 1900, the District Council's predecessor, the Cuckfield Rural District Council, made a Scheme of Management pursuant to the Commons Act 1899, which was approved by the Board of Agriculture on 21<sup>st</sup> June 1900. A copy of the Scheme of Management and a copy of the Plan of registration showing the extent of the Common subject to the Scheme of Management are annexed to this report Appendix 1.
9. On the 15<sup>th</sup> April 1924 the Earl of Chichester conveyed ownership of the main body of the Common, but not Lindfield Pond and the verge to the north of Black Hill Road to Lindfield Parish Council. Lindfield Parish Council was abolished in 1934 by virtue of an executive order of Parliament namely, the East Sussex Review Order 1934 and the ownership of the Common vested in Cuckfield Rural District Council, as the statutory successors to Lindfield Parish Council.
10. The Scheme of Management and ownership of the Common vested in Mid Sussex District Council on 1<sup>st</sup> April 1974, as the statutory successor to Cuckfield Rural District Council, by virtue of Local Government Re-organisation brought about by the Local Government Act 1972.
11. There are three distinct areas of decision making for the District Council to consider in respect of this the Common and its use:
  - a. as the Local Planning Authority;
  - b. as the Scheme Manager; and
  - c. as the Landowner.
12. The matter before Members at District Council relates to that second function, that as the Scheme Manager.

## **Parish Council's Proposals**

13. The Parish Council would like:
  - a. to construct a Public Convenience block on Common Land to the north of the car park at Lindfield Bowling Club on Backwoods Lane as detailed in the Parish Council's planning consent, copy of which is annexed to this report in Appendix 2;
  - b. to install a lamp post at the top of the Common by the logs car park. The Parish Council would pay for the column, installation, electric charges and maintenance for the lamp post, which would match the existing lamp posts in the area;
  - c. to install two oak display boards on the Common. One would display a street map of the village and the other would display a list of local by-laws. It is proposed that they are located next to the existing display board by the logs car park. The Parish Council would pay for the boards, installation and any ongoing maintenance and repair; and
  - d. to place 2 additional grit bins on the Common.

## Works on the Common

14. On 29<sup>th</sup> March 2019, the Parish Council was granted planning permission by the local planning authority for the construction of a Public Convenience block on Common Land to the North of the car park at Lindfield Bowling Club on Backwoods Lane. Planning reference: DM/19/0071. The proposed public convenience block would measure approximately 5 metres in depth and 7.3 metres in width incorporating a men's toilet, a women's toilet, a disabled toilet with baby changing facilities, a unisex toilet, a unisex toilet with baby changing facilities, and a storage room.
15. Prior to 2006, in order to carry out development and other works to Lindfield Common all that was required was planning permission from the local planning authority (or permitted development rights) and the District Council's agreement, as landowner, and as managers of the Common under the Scheme of Management. This involved the consideration of a disposal of part of the Common for the facilities being provided and compliance with the District Council's statutory duties under the Local Government Act 1972.
16. All that changed on 19<sup>th</sup> July 2006 when the Commons Act received Royal Assent. Under Section 38 of the Commons Act 2006, all significant works on registered Common Land e.g. any that prevent or impede access to or over the Common, and also any resurfacing works, such as a new car park or access road require the consent of the appropriate national authority, but minor repairs are permissible provided that there is no material change in the general appearance of or access to the Common. In the Commons Act 2006, works that require consent are referred to as 'restricted works' and include the erection of fencing; the construction of buildings and other structures and the digging of ditches and trenches and the building of embankments, so any such works of operations require the consent of the appropriate national authority. In England the appropriate national authority is the Secretary of State, but these powers have been delegated to the Planning Inspectorate.
17. The Planning Inspectorate have provided guidance on works and processes that do not require Section 38 consent. Generally, these will be works or processes that are so small or of such short duration that they do not impede access; do not constitute a new impediment to access; facilitate access or are processes (rather than works) that do not need consent because they do not impede access. Examples of such works and processes are: new gates and stiles in existing boundaries; erecting small direction signs and information boards; setting out areas for sports and games, where these are in keeping with the character and traditional use of the land, but excluding any permanent structures, and placing seats which are in keeping with the character and use of the land.
18. As a result, in addition to obtaining planning permission (or permitted development rights), the District Council's consent under the Scheme of Management and as owner of the Common, the Parish Council now requires the consent of the Planning Inspectorate before they can progress the proposed works on the Lindfield Common authorised by their planning permission (or permitted development rights).
19. The lamp post will not need planning permission as Part 12 Class A of the Town and Country Planning (General Permitted Development) (England)

Order 2015 as amended allows for the Parish Council to install lamp posts (lamp standards) without the need for formal planning permission provided they meet the criteria, specifically they do not exceed 4 metres in height. The proposed lamp post will not exceed this height. However, notwithstanding that planning permission will not be required, any works that change the general appearance of the Common or impede the rights of access to each and every part of the Common fall within the scope of restricted works and therefore, consent from the Planning Inspectorate will be required for the erection of the lamp post on the Common.

20. There already exists, information signage about the Common, that has been erected by the District Council and the proposed signage is concerned about providing information about the village as opposed to the Common and therefore, there is a question mark as to whether the proposed noticeboards fall within the scope of works and processes that do not need Planning Inspectorate consent. The Parish Council will be making an application for Planning Inspectorate consent for the proposed Public Convenience block and the lamp post, so it would be prudent for the Parish Council to include request for consent for the noticeboards.
21. Any works that change the general appearance of the Common or impede the rights of access to each and every part of the Common fall within the scope of restricted works and therefore, consent from the Planning Inspectorate will be required for the placing of the grit bins on the Common.

### **Financial Implications**

22. There are no costs associated with this report save for some minor Estates and Legal costs.

### **Risk Management Implications**

23. Construction of the Public Convenience block will lead to a temporary disturbance to the Common during construction works but this will be set out in the Parish Council's agreement and will be fully reinstated to the District Council's satisfaction upon completion.

### **Equality and customer service implications**

24. An Equality Impact Assessment has been carried out and whilst the proposals to increase the "bulk" on the Common, there are retained many access points to the Common for those using wheelchairs and pushchairs. The grit bins and lamp post and the notice boards, given their size and location, will have a marginal impact on users of the Common. The provision of the public convenience block to be situated on the Common will impact on the accessible open space available for public use, but given the size of the public convenience block in relation to the overall size of the Common the loss of accessible open space is very small and will be counteracted by the provision for public conveniences including the provision of disabled toilets which will enhance and make the Common more accessible and a more pleasant place for users of the Common.

### **Legal Implications**

Scheme of Management

25. Paragraph 5 of the Scheme of Management provides that the inhabitants of the district and neighbourhood have a right of free access to each and every part of the Common, for air and exercise, and the privilege of playing games and enjoying other species of recreation on the Common, subject to any bye-laws affecting the Common.
26. Paragraph 3 of the Scheme of Management provides that the Council may execute works of drainage, raising, levelling, or fencing or other works for the protection or improvement of the Common so far as is necessary for the purposes of the Commons Act 1899. The Scheme also provides that the Council may otherwise make the Common more pleasant as a place for exercise and recreation, but shall do nothing that may otherwise vary or alter the natural features or aspect of the Common, or interfere with free access to ever part thereof. Officers believe the proposed toilets are in compliance with the Scheme of Management because they facilitate the use of the common by the public.
27. It should be noted however, that Section 42 of the Commons Act 2006 provides that where a Scheme of Management under the Commons Act 1899 is in place and works that require the consent of the Planning Inspectorate under Section 38 of the Commons Act 2006 are prohibited under the Scheme of Management, and the Scheme of Management does not allow for any person (other than the owner of the soil) to give consent, works carried out under a consent issued by the Planning Inspectorate will not contravene the prohibition contained in the Scheme of Management. This does not remove the requirement for the Parish Council to seek the Council's consent under the Scheme of Management or requirement for the Council to consider their request, as managers of the Common under the Scheme of Management, but it would seem to make the Council's decision on whether or not the Council is able to authorise the works under the Scheme of Management academic, as any consent from the Planning Inspectorate would override the restrictions, if any, in the Scheme of Management. This is a logical outcome of the Commons Act 2006, as the applications to the Planning Inspectorate are subject to advertising and public consultation, whereas applications under the Scheme of Management are not. This being the case, all that the Council need do is decide whether the Council supports the Parish Council's proposals.

#### Public Open Space

28. As with any other formal recreation land, Lindfield Common is public open space for the purposes of the Local Government Act 1972. This being the case, any proposed lease of land to the Parish Council will be subject to the Council complying with Section 123(2A) of the Local Government Act 1972, which provides that the Council must advertise its intension to dispose of land consisting or forming part of an open space for two consecutive weeks in a local newspaper inviting comments from those who may object to the proposed disposal. The Council's Cabinet must then consider those comments very carefully and must decide whether or not to grant the lease.