



Town Hall | 61 Newland Street | Witham | CM8 2FE
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witham.gov.uk

AGENDA

Meeting of: **Policy and Resources Committee**

Date: 27th January 2020 Time: **9.30pm**

Place: **Town Hall, 61 Newland Street, Witham.**

Members are hereby summoned to attend the above Meeting to transact the following business. Members are respectfully reminded that each item on the Agenda should be carefully examined. If you have any interest, it must be duly declared.

To be present:	Councillors	M.C. M	Lager	(Chairman)
		R.	Williams	(Vice Chairman)
	Mrs	S.	Ager	
		K.L.	Atwill	
		P.R.	Barlow	
		J.C.	Goodman	
	Mrs	A.	Kilmartin	
		T.A.	Pleasance	
		R.P.	Ramage	
	Miss	M.L.	Weeks	

1. APOLOGIES

To receive apologies for absence.

2. MINUTES

To receive the Minutes of the Meeting of the Policy and Resources Committee held 9th December 2019 (previously circulated).

3. INTERESTS

To receive any declarations of interests that Members may wish to give notice of on matters pertaining to any item on this Agenda.

4. QUESTIONS AND STATEMENTS FROM THE PUBLIC

An opportunity to enable members of the press and public present to comment upon any item on the Agenda.

EXCLUSION OF THE PRESS AND PUBLIC

TO RESOLVE That under the Public Bodies (Admissions to Meetings) Act 1960, the press and public be excluded from the Meeting for the following items of business due to the confidential nature, legal proceedings and commercial sensitivity.

5. LEGAL MATTERS

To receive a report regarding ongoing legal matters (attached).



James Sheehy
Town Clerk

JS/21.01.2020

Officer Report: Legal Matters: Review of Proposed Easements for Gimsons Development

Issue: The Policy & Resources Committee resolved in private session on 25th June 2018 to give consent to two easement requests subject to BDC paying legal costs for both parties and that £5,000 per easement would be sought, with the total sum of £10,000 once received being allocated to the footpath repair Earmarked Fund.

Since this resolution, Holmes & Hills LLP were instructed to review the easement documentation and prepare a legal report to ensure that any agreement is robust. It has subsequently been proposed by the Policy & Resources Chairman to review the amounts sought in payment in light of a number of material developments.

The Town Clerk has now reviewed the legal basis on which the Council can grant Deeds of Easement and a number of significant due-diligence items have come to light which require the Council to revisit the grants of deeds in their entirety. Specific key legal points that need to be satisfied are as follows:

- The grant of easements is defined as a 'disposal' of land under S127 of the Local Government Act which therefore invokes the need to make a statutory advertisement of our intention to make the disposal.
- S127 and our overarching statutory duty to exercise value for money places a specific onus on the Council to ensure that we have obtained 'Best Value'.
- Where the Council wishes to grant an easement at below the market value, it would require permission from the Secretary of State.

Considerations:

- Due diligence has not been carried out by the Council as we have no evidence that can demonstrate we have obtained the market rate for Easements. This would best be demonstrated by an independent surveyor's report who has commissioned a survey with regards to the Charities Act 2011 (which does not apply to the proposed easements but a survey completed in accordance with this act by a professional is virtually unquestionable evidence that we have been informed what price to charge)
- Minutes serve as key evidence of Council's decisions and the minute under 25th June 2018 states: ***"The Town Clerk said that he did not want to jeopardise the transfer particularly as the Town Council has aspirations of taking on the Town Park in due course. He said that to employ a Land Agent may cost c£275 per hour and might entail site visits as well as meetings. He explained that utility companies have a statutory right to lay water and sewage pipes. Members commented that it is usual practice to charge between £5,000 and £10,000 per wayleave."*** This minute does not support the Council in demonstrating that a qualified opinion was sought and implies that the charges for wayleaves were based on 'gut feeling'.

Proposal:

- It is suggested that an independent surveyor be instructed to value the proposed easements and supply the Council with a report of proposed market value and legal negotiations be placed on hold until the report is received.