

Agenda item 13

For Decision – Future actions for acquiring management of the Showfield

Author: Town Clerk

Summary

There have been lots of resources allocated to transferring the Showfield lease from MDC to FTC and consulted the public on what services should be provided by it. At the time of writing it appears that MDC has now decided not to transfer the lease. The reason for this is that MDC is not willing to transfer the lease to FTC whilst retaining the potential liability of a prosecution if FROGS' Village Green application is successful.

And, if this application is successful (SCC will determine the application in the next 2-3 years), MDC has decided not to spend the s106 budget to improve the facilities on anything that might possibly be considered unacceptable on a Village Green to someone in the future. MDC has decided that this includes fencing the play area to keep out dogs, establishing a kick about pitch for children and installing new footpaths to allow the public better all-weather access to the site: in short, the vast majority of the things that the community consultation identified as priorities.

Cllrs may believe that, if FTC was the lease holder, then taking the risk of fencing the play area while the Village Green application was pending was a reasonable one. Indeed, my view is that FTC could manage the Showfield and meet community priorities for it regardless of whether it was designated a Village Green.

Cllr Boyden has drafted a comprehensive report (below) on the history of discussions and suggests that FTC has the following options:

1. FTC agree not to pursue a transfer of leases or sublease further. This would allow MDC to allocate and spend the s106 funds in line with MDC priorities and MDC's interpretation of the current TVG restrictions
2. FTC still seek a transfer of leases, or a sub-lease, and management of s106 funds with the restrictions that a TVG application pending imposes
3. Request FROGS withdraw TVG application to allow MDC to transfer the lease to FTC. This could include alternative ways of conserving land as a Public Open Space
4. Requesting Somerset County Council's Regulation Committee prioritise the determination of the TVG at the Showfield and/or provide additional resources, to hear the application soon. I understand that Cllr Harvey Siggs is the relevant Cabinet portfolio holder
5. Consult local residents and organisations, involving Vision for Frome and others, on the way forward before making any decisions.

Reflecting the discussion on the Showfield at the last EAC, it has already been decided to explore directly with the Agricultural Society whether they would be willing to transfer the freehold to FTC. This meeting is being arranged.

Reading Cllr Boyden's report carefully, **the recommendations are as follows:**

1. Note the report from Cllr Boyden

2. Confirm to MDC that FTC is still prepared to take on the lease (or a sub-lease) of the Showfield and express FTC's disappointment that they unwilling to enable this
3. Retain the action to explore freehold acquisition with the Agricultural Society and if it is possible, in principle, explore how much this might cost and where funding could be sourced
4. Return to a future meeting of IAC with updates

Report on the old Showfield from Cllr Boyden

Summary

Mendip District Council and Frome Town Council officers and councillors, including myself, with help from Vision for Frome, have been working to help realise local residents' aspirations to improve the old Showfield. A transfer of leases to FTC had been agreed in principle which would enable FTC to take responsibility for both the S106 fund for improvements, and enhancements to long-term maintenance, and had been agreed as the best way to fully realise the community's aspirations as expressed in the FTC/V4F – led public consultation in Autumn 2012. FTC are also better able to consult and involve the local community more in its improvement and management.

With the undetermined Town & Village Green application pending consideration (which will still take several years), the landlord has objected to MDC transferring leases to FTC unless MDC retain legal liabilities, but MDC's Cabinet are unwilling to retain liability in any lease transfer. FROGS are currently unwilling to withdraw the TVG application, MDC will not transfer the leases to FTC and FTC cannot take responsibility for the S106 improvements or long-term maintenance. MDC's legal advice is that some important improvements identified by the public consultation cannot be carried out with the TVG application undetermined. MDC's budget decisions also mean that other enhancements are unlikely, and MDC might also not arrange further public consultation on their eventual S106 improvements plan. I bring this report to full Frome Town Council to examine and discuss the issues arising and the options ahead.

The site

The old Showfield (or Showground) is an important open space in the north of Frome, owned by Frome & District Agricultural Society (FDAS) and leased in part to Mendip District Council (MDC), with areas also leased to Frome Cricket Club, and Frome Collegians. MDC lease the main western part on a 99 year lease, and the 'back fields' to the east on a separate lease.

The planning and development of the Frome Community Hospital on part of the site in 2006-08 led to a £106,000 Section 106 funded improvement scheme for the Showfield including new paths, lighting, seats and dog and litter bins, which was coordinated by a Steering Group and involved community consultations and a design plan prepared by consultants. Subsequently the children's playground was developed by Mendip District Council, with Lottery funding, and Frome Collegians also gained planning permission for and built their football pitch, which is used for senior games.

The Section 106 agreement

The planning and development of the Frome Health Centre led to a Section 106 Agreement signed in April 2010 when permission was granted, which provides £38,607 to MDC for 'improvements' to the Showfield. An additional £5791 is available for public consultation, which if unused would add to the improvements fund (although may have been at least partly spent). An additional sum is allocated for adult outdoor fitness equipment – I understand this sum has been passed to FTC.

Construction of the Health Centre started in July 2011, and it opened fully in January 2013. In autumn 2012, in order to hasten the use of the S106 funds to support the community, Frome Town Council (FTC) and Vision for Frome (V4F, who part funded the work) undertook a public consultation to identify what improvements the public would like to see the S106 fund spent on. Over 200 people responded in writing, online and at a public meeting.

This report tries to set out what has happened since the public consultation, and 'where we are now'. It is also necessary to note the issues arising from the village green application, and from the travellers' use of the site.

Village Green application

In 2011, Frome Recreation and Open Grounds Supporters (FROGS) group submitted a Village Green Application to Somerset County Council (SCC) under Section 15 of the Commons Act 2006, to register the old Showfield as a Town or Village Green (TVG). The application boundary was amended subsequently to exclude the health centre site. FDAS and MDC objected, and at a Full Council meeting in summer 2011, FTC voted not to support the application. SCC registered the application and will determine the application at a non-statutory public inquiry. Consultation with the SCC Senior Rights of Way officer revealed that this site is now 5th on the list of applications to be determined at public inquiry, but is unlikely to be heard within the next 2 years, although it is impossible to forecast accurately, due to a lack of departmental resources.

The FTC/V4F Consultation Report assumed the TVG application would not affect the implementation of the S106 improvements. However, in May 2014, legal advice from MDC has been obtained, which is that with a live TVG application on the site, certain improvements are unlikely to be considered legally compliant and would therefore not be implemented. A second opinion could also be obtained from Natural England.

Travellers

Securing the old Showfield against traveller incursion is also an issue, as groups of travellers have set up camp on the Showfield twice in recent years, in June/July 2012 (along a new ungated path, pushing past an MDC officer) and in April 2014 (breaking down a bollard). The travellers were evicted by MDC under court orders within 2-3 weeks each time, and have led to considerable clean up costs for MDC, alleged thefts of sports equipment and damage to facilities, and nuisance issues for neighbouring residents.

Timeline:

- **November 2012:** FTC/V4F prepared a Report of Consultation (see **Appendix A**). The consultation revealed it is valued highly as an open space while being in severe need of enhancement. Its recommendations are repeated here in full as they are worth noting:
 1. An active exploration takes place regarding the current **maintenance and mowing contract**. If the mowing contract fell under local control, residents would feel more connected with the service provider. This may also enable a different cutting regime that would encourage family use for picnics and relaxation but would also enable some areas left for longer periods to help develop **wildflower** meadows.

2. There was a recurrent request for **more trees**: these could be small and fruit bearing. If planted along existing paths, interspersed with extra seating, then the area would take on a more attractive feel that echoes some of the features found in Victoria Park.
3. A **fence around the children's play area**, coupled with an increase in **play equipment for younger children** would have an immediate and positive impact on children and their families, many of whom are concerned about potential health hazards due to dog fouling. More equipment has also been requested for the **older children** to supplement what is already in existence.
4. Work is carried out with Frome Collegians to help realise their ambition of creating a **'mini pitch'** on the Showfield. This would be of benefit to the local community as the pitch would not be fenced thus enabling youngsters to use it at any time. The area suggested in Frome Collegian's proposal ... is located just beyond the large yellow barrier near the Frome and District Agricultural Society offices.
5. Although **'dog bins'** fall outside improvements and enhancements under the S106 agreement, it is recommended that the number and location of bins is increased. The Council may wish to explore ways of providing this facility from its own budgets with the associated costs for emptying and refreshing them. Placing of the bins is important; local residents gave detailed information as indicated on the consultant's location ground plan.
6. In order to maximise the positive impact of the new outdoor gym equipment, it is suggested that the **existing paths need to be improved**. These could be augmented with **lighting**. This will have the beneficial impact that Frome Running Club would feel able to use the area on dark evening. The addition of lights could encourage more people to take up an active, healthy lifestyle.
7. The creation of a **new path** to run parallel with Linnet Way would link up the north and south side of the Showfield at its northeast end. This desirable addition would enable wheelchair users, adults with buggies, cyclists, walkers and joggers to complete an entire circuit of the Showfield with much greater ease of access.
8. A small but important minority (6%) of respondents recognised that **security** on the Showfield is important and needs to be improved. This issue is the responsibility of the leaseholder. In the long term improved security would benefit the 6% who would like to see improvements to Frome **Collegians 'dug outs'**. A creative approach is to consider that extra use of the Showfield does, in itself help improve an overall sense of security and well-being for all.
9. Longer term suggestions include a **community flower garden**, extra allotments and perhaps a pond to encourage **wildlife**. Active groups that include The Allotment Association, Incredible Edible, Sustrans Supporters and Frogs members are ready and willing to support this work with knowledge and expertise.
10. It is important that the voice of young people is not lost. Theirs was the smallest percentage of respondents. However it was identified by 8% of all those who completed a questionnaire that improved **facilities for young people** is important. It is therefore recommended that further work with young people is carried out to establish exactly what is needed to support them in such a way

that intergenerational barriers are broken down and a rich and balanced community is reflected in the facilities at the Showfield.'

- In summary the 'top five' suggestions are to:
 1. improve the general appearance and feel of the Showfield by providing more seating, frequent grass cutting, a picnic area with more trees and areas that encourage wildlife;
 2. improve the children's play area with a fence and more equipment for both younger and older children;
 3. create a 'mini pitch' for community use and improve the 'dug out' on the pitch that is used by Frome Collegians;
 4. increase number of bins for dog owners to use and consider creating a designated 'dog area' or employing a dog warden
 5. create a community flower market garden with allotments.

- The authors also recommended a costing exercise was carried out to supplement the report.

- **April 2013:** FTC Grounds Manager prepares draft costings/quotes for recommended works, meets ward Cllrs Carole Bullen and Adam Boyden (the author of this report) and MDC Operational Assets Manager, to discuss and agree way forward.

- **May 2013:** FTC Internal Affairs Committee endorses Consultation report and supports improvements project. FTC Grounds Manager finalises 'Quotes and recommended works' for spending S106, the costing exercise called for in the Consultation Report. The costed works within the S106 budget included:
 - A new mini football pitch;
 - Improvements to the existing footpath between the Health Centre and Showfield office car park;
 - creating a new path to Ashtree Road;
 - installation of additional fitness equipment;
 - planting new trees;
 - benches.

- The costed works outside the S106 budget included:
 - Maintenance of the mini football pitch (which would be by Frome Collegians);
 - Fence around play area (FTC recommended MDC fund);
 - Dog litter bins (FTC recommended MDC fund);
 - Changing mowing regime around picnic area;
 - Tree and hedge work and drainage works.

- **Also May 2013:** FTC requests transfer of leases, in order to progress S106 and changes to management in consultation priorities. MDC Corporate Assets Management Group (CAMG) refuses FTC's request to transfer leases to FTC (along with other transfer

requests for playgrounds) due to prematurity as playground may be affected by MDC's Play Strategy Update, which was due soon.

- **August 2013:** MDC update to Play Strategy finalised and approved by Cabinet. Subsequent work by MDC officers identifies Showfield as a Town Park play area. I asked Town Clerk if FTC were still interested in the transfer of leases, to take over both the management of the site and the implementation of the S106 improvements; FTC re-apply.
- **Summer 2013:** Public consultation on the Showfield by Frome Community Gardens on proposal for a new community garden. I understand feedback was not sufficiently positive and the idea has not been progressed.
- **September 2013:** MDC CAMG agreed in principle to seek landlord approval to transfer the leases to FTC, and in effect agreed to pass responsibility for implementing S106 funds over to FTC if transfer is approved, subject to Cabinet approval.
- **October 2013:** MDC Cabinet agrees to transfer the leases to Frome Town Council subject to the consent of the landlord, the Frome and District Agricultural Society and subject to delegated authority being given to the Officer in consultation with the Portfolio Holder, Governance Assets and Public Spaces to enter into negotiations about whether the proposed fence to the children's play area should be included in the Section 106 spend.
- Importantly, while the officer's report to Cabinet noted that the cost and resource liability of the undetermined TVG application are likely to remain with MDC, Cabinet resolved to 'ensure the Council (MDC) has no contingent liabilities for the site in future' (see Cabinet report and minutes, **Appendices B and C**, and see <http://www.mendip.gov.uk/article/2712/Monday-14-October-2013> for associated costings and table of works agreed).
- MDC requested landlord consent from FDAS to transfer leases to FTC.
- **Late October 2013:** FDAS write to object to transfer due to their legal advice that MDC need to retain liability in relation to the undetermined TVG application, although are happy in principle. (N.B. I only became aware of this in February 2014).
- **Feb- April 2014:** MDC CAMG discusses issue again, decides to not progress transfer of leases if FDAS do not withdraw objection, and decides that MDC are to manage S106 improvements. I met FDAS briefly to see if FDAS can withdraw their objection. I and MDC Senior Strategic Assets officer met FROGS twice, once with FTC Community Projects Officer, to see if FROGS will withdraw TVG application. FTC officers met FROGS to discuss. I also arranged a meeting with MDC/FTC/FDAS, but MDC pulled out, so it was cancelled/postponed (not yet held).

- **May 2014:** MDC Senior Strategic Assets officer advised me by email (see extracts in **Appendix D**) that:
 - MDC Cabinet members do not intend to meet FDAS/FROGS/FTC further to discuss a lease transfer or sublease, and are unwilling to allow significant officer time to discuss further, until progress is made in persuading FROGS to withdraw their TVG application, and this was confirmed by the MDC Cabinet portfolio holder (cllr John Parham).
 - The outcome of MDC's legal review as to which key S106 improvements priorities can and cannot be progressed with TVG application in, and which may be affected by MDC maintenance budget restrictions.
 - MDC will now plan to allocate the S106 improvements budget.
 - There may be an opportunity for further public announcement/consultation although this depends on available resources.
 - MDC's legal advice is that the following cannot be progressed with a TVG application pending consideration:
 - Fence around the children's play area;
 - Mini pitch;
 - Improve Frome Collegians dug out;
 - Creating a designated dog area;
 - Creation of a community market garden with allotments;
 - Creation of new paths;
 - Fitness equipment.
 - The following improvements could be progressed with a TVG application pending, although some may depend on MDC revenue implications:
 - seating - this could be accommodated;
 - frequent grass cutting (but mowing to amenity standard has significant maintenance costs and is unlikely to be agreed by MDC);
 - creation and maintenance of a picnic area - this could be accommodated with relatively modest revenue implications;
 - tree planting (this could be accommodated but there are concerns about the history of vandalism against trees planted at the play area);
 - areas that encourage wildlife – (there may be scope for this depending on what the aspiration was in the public consultation);
 - more equipment for all children (status as a 'structure' under TVG law is uncertain but may be possible, and in line with MDC Play strategy).
 - Dog bins - This could be accommodated.
 - Employing a dog warden – This would have revenue maintenance implications but can be linked into the new dog warden contract.
 - Renew surface of path to hospital - This could be accommodated.
 - Tree and hedge work - This is already a responsibility of the grounds maintenance contract.
 - Drainage works to improve site drainage.
 - Site security could be a factor.

Problem

Up to this point, I had been working to help realise local residents' aspirations to improve the old Showfield in the way which had been agreed by FTC, and by MDC (at CAMG and Cabinet), i.e. that a transfer of leases to FTC would enable FTC to take responsibility for both the S106 funded improvements and enhancements to long-term maintenance, and would be the best way to fully realise the community's aspirations as expressed in the consultation in autumn 2012. I also believe that FTC are better able to consult and involve the local community more in its improvement and management. I am particularly concerned a fence around the children's playground (as that prevents many families and children enjoying this area safely) cannot currently be provided.

The problem remains, with the undetermined TVG application (which will take several years), FDAS' legal advice requiring MDC to retain legal liabilities, MDC's unwillingness to retain legal liabilities in any lease transfer to FTC, and FROGS' current unwillingness to withdraw the TVG application, MDC will not transfer the leases to FTC and FTC cannot take responsibility for the S106 improvements or long-term maintenance. MDC's legal advice is that some important improvements identified by the public consultation cannot be carried out with the TVG application undetermined. MDC's budget decisions also mean that other enhancements are unlikely, and further public consultation may not be undertaken on the S106 improvements plan. MDC officers have worked hard on this issue up to now, and I wish no criticism of them. I hope this report informs the Council fully and hope that council can agree a way forward.

Recommendations:

FTC should consider and decide on the best way forward of the available alternatives:

1. FTC agree not to pursue a transfer of leases or sublease further. This would allow MDC to allocate and spend the S106 funds in line with MDC priorities and the current TVG restrictions. This would mean some priorities identified by local residents not being realised (including areas of shorter grass, fence around playground, outdoor gym, new paths, mini pitch), but other priorities could be progressed. MDC may or may not undertake further community consultation.
 - a. FTC could request MDC consult local residents and involve FTC (and V4F) in gaining public feedback on MDC's plans when these are defined.
 - b. FTC could also request MDC implement only a portion of the S106 funds, on facilities that are acceptable under a TVG, and delaying spending the rest until the TVG application is heard.
2. FTC still seek a transfer of leases, or a sub-lease, and management of S106 funds with the restrictions that a TVG application pending imposes:
 - a. Formally requesting a meeting and dialogue with FDAS and MDC to work towards overcoming the current landlord objection to the transfer of leases, including to overcome the current MDC decision not to retain contingent liabilities.
 - b. Pursue alternative arrangements to allow FTC to implement S106 improvements plan, e.g. a sublease or work under licence. Pursue a meeting and dialogue with FDAS even if MDC are reluctant to meet.

- c. FTC could also obtain a second opinion on the restrictions a TVG application poses to the S106 improvements, e.g. from Natural England or legal advisors.
3. FTC still seek a transfer of leases, or a sub-lease, and management of the S106 funds to implement the identified improvements plan more fully in line with the community's aspirations, by:
 - a. Requesting FROGS withdraw TVG application, and to consider alternative ways of conserving land as POS, such as through any other ways identified in the Save Our Spaces report (which may be due shortly).
 - b. Requesting Somerset County Council's Regulation Committee prioritise the determination of the TVG at the Showfield and/or provide additional resources, to hear the application soon. I understand that Cllr Harvey Siggs is the relevant Cabinet portfolio holder.
4. Consult local residents and organisations, involving Vision for Frome and others, on the way forward before making any decisions.

Appendices:

- A. FTC/V4F Report of Showfield Public Consultation, October 2012
- B. Report to MDC Cabinet, October 2013
- C. Minutes of MDC Cabinet, October 2013
- D. MDC officer advice, May 2014

Councillor Adam Boyden, Frome College ward, 14 May 2014