

<b>SUBJECT:</b>	<b>CHIPPENHAM MEAD PLAY AREA, MONMOUTH</b>
<b>MEETING:</b>	<b>CABINET</b>
<b>DATE:</b>	<b>1<sup>st</sup> FEBRUARY 2017</b>
<b>DIVISION/WARDS AFFECTED:</b>	<b>ALL MONMOUTH WARDS</b>

**1. PURPOSE:**

- 1.1 To agree the location for the Chippenham Mead Play Area in Monmouth.

**2. RECOMMENDATIONS:**

That the Council proceeds with the refurbishment of the play area in its existing location on Chippenham Mead.

**3. KEY ISSUES:**

- 3.1 The land known as Chippenham Mead in Monmouth is owned by Monmouthshire County Council. It was registered as a village green in 1970 by the former Borough of Monmouth. In 1987 Monmouth District Council drew up a Scheme of Regulation to (1) regulate the use of the land; (2) maintain its village green status; and (3) vest responsibility in the Council for managing the land.
- 3.2 In June 2014 Cabinet allocated £85,000 from Section 106 balances to provide a “destination inclusive play area” at Chippenham Mead in Monmouth. This followed one of the outcomes of the 2013 Play Sufficiency Audit to provide an accessible centrally located play area with a significant amount of play equipment for children with disabilities/support needs in each of the five towns in the county and in the settlement of Magor with Undy.
- 3.3 The description given on the application form for which the grant was awarded reads: “The present play area is in need of replacement to meet current safety standards and the existing equipment & safety surfacing will be removed and replaced with new modern and accessible equipment that has play value, along with new surfacing and a dog proof fence. The siting will be subject to public consultation. Current site shown on attached plan.”
- 3.4 Following grant confirmation back in 2014 MCC officers came to the view that the play area should be refurbished in its existing location rather than try to relocate it to another position. The main factors taken into account in arriving at that view were as follows:
- The need to seek Welsh Government consent under the village green scheme of regulation if the play area was relocated, whereas refurbishment of the existing play area would not require such consent, as the play area has been in the same position for over 40 years, prior to adoption of the scheme of regulation;
  - The opposition of the Town Council to relocating the play area;
  - The possible objection from Natural Resources Wales to relocating the play area to a position outside of the flood embankment;
  - The impact that relocating the play area could have on other established uses/users of the village green;

- The fact that relocation would cost more money than upgrading, therefore less money would be available to spend on new equipment.
- 3.5 A refurbishment plan for the play area was drawn up and published for local consultation.
  - 3.6 During the consultation period a local group, the Friends of Chippenham Mead (FCM), began a campaign to get the play area relocated to another part of the village green.
  - 3.7 FCM has identified three possible alternative locations for the play area on Chippenham Mead – these are indicated as sites B, C and D on the plan attached at **APPENDIX C**. Area A shown on the plan is the position of the existing play area.
  - 3.8 The “spend by” date for the funding allocated to the Chippenham play area project is 13<sup>th</sup> August 2019. If it is not spent in full by that date then it has to be repaid to the developer.
  - 3.9 At a consultative meeting held on 1<sup>st</sup> September 2016 in Monmouth with representatives of a number of interested parties, it was agreed to allow FCM until the end of 2016 to present its detailed proposals for the relocation of the play area to the County Council.
  - 3.10 A detailed submission was received from FCM on 2<sup>nd</sup> December, proposing that the play area should be relocated to Area D. In this scenario the existing play area would be closed and the area reinstated as an open landscaped part of the village green. Subsequently there were some problems identified with Area D, principally the need to alter the means of emergency access onto the village green and, on 21<sup>st</sup> December, FCM asked the County Council to consider Area C as its preferred option for relocation.
  - 3.11 The detailed submission from FCM consists of 57 pages and a copy is available on request. Attached at **APPENDIX A** is an Executive Summary of the submission. FCM made an informal presentation of its proposals to Cabinet members on 9<sup>th</sup> January 2016.
  - 3.12 Essentially, members are being asked to make a decision between one of two options, namely refurbishment (of the existing play area – Area A) or relocation (from Area A to Area C). There is a third option and that is to remove the existing play area altogether, reinstate the site to an unfenced, open part of the village green and to spend the funding available on upgrading some of the other play areas in the town. The difficulty with this third option is that there would no longer be an accessible play area in the centre of the town. New play areas have been provided in the last two years at the Osbaston School site and at Tudor Road, Wyesham and another play area at Drybridge Park was substantially upgraded recently – all of these projects were funded in part from the same Section 106 funding balances from which the funding for the play area at Chippenham Mead was derived.
  - 3.13 If members were to decide to refurbish the existing play area (Area A) then the work could proceed with immediate effect, as this is a like for like replacement of a play area that has existed in that location for a period in excess of 40 years (prior to the Scheme of Regulation). However, if members wish to pursue relocation of the play area to Area C then a number of consents and permissions will need to be sought because of the status of Chippenham Mead, both as a registered village green and as a Grade II Historic Park. These include village green consent, planning permission and NRW consent.

- 3.14 Attached at **APPENDIX B** are some notes on the main issues arising from the FCM proposals, some of the observations received on those proposals and on the procedures that will be required if members decide in favour of relocating the play area to Area C.
- 3.15 Although there is a wide range of issues that need to be taken into consideration, officers have set out below the main conclusions which they have taken into account when arriving at the recommendation set out in para 2 of this report.

#### 3.15.1 Child Safety and Safeguarding

Due to the nature of fixed play equipment and the fact play areas are not formally supervised, one of the most important factors when considering new provisions is the extent to which a site is overlooked on an informal basis. The more open and accessible a site is then the less likely it is to suffer from misuse and vandalism and the better it is in terms of informal surveillance by members of the general public. The view of FCM is that Area C is more open and accessible than Area A and that Area C is safer as it will be overlooked on a more regular basis by a greater number of people. In other words there is a higher pedestrian footfall passing Area C than there is walking past Area A and Area C is not hidden by an earth bank, which the current play area is.

#### 3.15.2 Cost and Affordability

The floor area of the existing playground is 1115m<sup>2</sup> compared to a proposed floor area for Area C of 1075m<sup>2</sup>, so the proposed new play area is slightly smaller than the existing one. The logic is that the enclosure of one area of the green is offset by returning another area of similar size to an open part of the village green. The costs submitted by FCM have been checked and it is considered that the new play area proposed at Area C is affordable from the £85,000 budget available. However, if there are additional costs associated with the Welsh Government consent application or the planning application, both of which are essential before such a scheme could proceed, then these would be extra costs for which there is no budget available.

#### 3.15.3 Support for the Proposal

There is strong support for the proposal to relocate the play area from a significant number of parents and families with children of school age living in the locality – there is also significant opposition to the proposal from a number of local residents and from the Town Council, who feel that relocation to Area C represents an unnecessary and unwelcome intrusion into the village green.

#### 3.15.4 Welsh Government Consent

The relevant sections of the 1987 Scheme of Regulation state:

(Clause 2) - “the Council shall do nothing that will otherwise vary or alter the natural features or aspects of the green or interfere with free access to any part thereof and shall not erect upon the green any shelter, pavilion, drinking fountain or other building without the consent of the person or persons entitled to the soil of the green and the Secretary of State for Wales. The Secretary of State (now the Welsh Government), in giving or withholding consent, shall have regard to the same considerations and shall, if necessary,

hold the same enquiries as are directed by the Commons Act 1876, to be taken into consideration and held by the Secretary of State (Welsh Government) before forming an opinion whether an application under the Inclosures Acts 1845 and 1882 shall be acceded to or not.”

(Clause 3) – “the Council shall maintain the green free from all encroachments and shall not permit any trespass on or partial enclosure thereof or of any part thereof.”

(Clause 4) – “the inhabitants of the neighbourhood shall have a right of free access to every part of the green and a privilege of playing games and enjoying other forms of recreation thereon, subject to any byelaws made by the Council under this Scheme.”

It is clear that the Council will need to apply for Welsh Government (WG) consent for development on the village green – this is consistent with the legal advice set out in the notes accompanying this report. Previous applications have taken between 6 months and over three years to process. In the case of the most recent application for a consent application on Chippenham Mead, the processing of the application by WG took some 8 months to complete. Recent advice given by WG Inspectors to a Town Council representative is that the average time taken to process a village green consent application is two years. In the opinion of officers, it would be unwise to allow a period of any less than 12 months for the village green consent application to be determined from the time that it is submitted, especially given the strength of opposition to this proposal.

#### **4. REASONS:**

Although relocation of the play area to Area C would offer some advantages in terms of improved visibility and accessibility, the Council has a responsibility to protect the village green in line with the Scheme of Regulation drawn up in 1987. This responsibility to preserve the village green for the general enjoyment of the wider local population overrides the benefits of relocating the play area to another, more open part of the green.

The Open Spaces Society’s advice has been consistent “that any proposed change must not result in there being a breach of the protective village green legislation namely Section 29 Commons Act 1876 and Section 12 of the Inclosure Act 1857. The Friends of Chippenham Mead have been advised that any proposals must not breach the scheme of regulation dated 9<sup>th</sup> March 1987. In relation to Area C its updated advice is that this appears to be even more intrusive on the main open area of Chippenham Mead whereas the existing play area is in the corner on the other side of the flood bund. In addition, there is no guarantee that consent will be granted under section 38 of the Commons Act 2006, even if planning permission is given”.

The Council is happy to work with the Friends of Chippenham Mead on the design, layout and commissioning of the works to upgrade the play area in its existing location.

#### **5. RESOURCE IMPLICATIONS:**

A budget of £85,000 is available for the play area. The cost of refurbishment is achievable from within the budget available. If members are minded to relocate the play area then there will be additional costs for the planning application (approximately £200) plus the cost of any supporting surveys (possibly £3,000 or thereabouts) for which there is no

separate budget provision. If a consent application is made and the WG Inspectors decide to hold an inquiry then there will also be additional legal fees and barrister costs.

## 6. FUTURE GENERATIONS EVALUATION

See attached at **APPENDIX D**

## 7. CONSULTEES:

Cabinet Members	Local Monmouth Members
Monmouth Town Council	Monmouth Civic Society
Open Spaces Society	Natural Resources Wales
Monmouth Town Football Club	Monmouth Rugby Club
Senior Leadership Team	Monitoring Officer
Assistant Head of Finance/Deputy S151 Officer	Head of Legal Services
Specialist Environmental Health Officers dealing with air and noise pollution	

The comments received through consultation have been incorporated in the report, with the exception of the Town Council's views, which are set out below.

The Town Council's supports refurbishing the existing play area in situ because

- relocation would involve encroachment on the village green in breach of the associated regulations;
- refurbishment is possible immediately, avoiding delays and with no risk of losing the funding available;
- pollution concerns have not been proven or are not conclusive one way or the other;
- relocation is likely to fail at some stage when the necessary permissions are applied for and there are concerns that the time taken up in applying for the necessary permissions may overrun the timescale for spending the available funding;
- most of the residents living close to Area C (the site proposed for relocation) are elderly and/or retired and are opposed to this site due to its proximity to their homes;
- there are more benefits to refurbishing the existing site than developing a new play area on another part of the village green, including more efficient use of funding.

## 8. BACKGROUND PAPERS:

i	Declaration of land ownership date 30 <sup>th</sup> Nov 1973
ii	Village Green Scheme of Regulation dated 9 <sup>th</sup> March 1987
iii	Completed application form for S106 funding dated 24 <sup>th</sup> January 2014
iv	Plan of proposals for refurbishing the play area in its existing location
v	Notes of consultative meeting held with interested parties on 1 <sup>st</sup> September 2016
vi	Completed questionnaires from local playgroups 14 <sup>th</sup> – 20 <sup>th</sup> March 2016
vii	Email of support for relocation from Monmouth Civic Society dated 1 <sup>st</sup> December
viii	Emails opposing relocation from local resident dated 22 <sup>nd</sup> and 26 <sup>th</sup> December
xi	Letters of objection from local resident dates 6 <sup>th</sup> and 10 <sup>th</sup> January 2017
x	Monmouth Town Council email dated 16 <sup>th</sup> January 2017
xi	Open Spaces Society (updated advice) email dated 17 <sup>th</sup> January 2017
xii	Statement of objection from local resident dated 22 <sup>nd</sup> January 2017

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# CHIPPENHAM MEAD PLAY AREA, MONMOUTH

## ALTERNATIVE LOCATION AS PROPOSED BY THE FRIENDS OF CHIPPENHAM MEAD

### Executive Summary

The provision of engaging, safe and accessible children's play spaces is vital both for the well-being of children themselves, as well as their parents and the wider community. Thanks to the efforts of the town and county councils, the existing playground on Chippenham Mead is due to be replaced with a new 'destination playground' funded by S106 money.

While Friends of Chippenham Mead (FoCM) applaud the Council's decision to upgrade Monmouth's main playground, we refuse to believe that refurbishment of the existing site is the best solution in the long-term. This proposal document aims to show clearly both that the current playground location is not appropriate and that relocating the playground to an alternative location on Chippenham Mead is both affordable and achievable within the required timescales.

#### **The need to relocate**

The overwhelming weight of public opinion is against building the new playground on the current site. Just 8% of potential playground users say they are satisfied with the current playground location and this results in them using the playground less than they otherwise would.

The hidden location of the current playground makes it a magnet for graffiti and vandalism, as well as the use of the site in evenings for drink and drugs. This makes the playground unpleasant and potentially dangerous for children, and also imposes an additional cost on MCC who are responsible for maintaining the playground.

The impact of pollution and noise from the A40 is also a concern for almost all users. Site monitoring reveals that Nitrogen Dioxide levels are above legal limits. Additionally, children playing there will also be exposed to higher levels of Diesel Particulate Matter from the dual carriageway than in other locations. Further safety concerns with the current site identified by users include difficult and dangerous access routes and poor natural surveillance.

As well as addressing these problems, relocation will also deliver further benefits. The evidence shows that a site closer to Monnow Street will lead to increased usage, delivering both direct economic benefits for the town as well as maximising broader economic and social benefits associated with high quality play provision, including improved health outcomes, educational attainment and social cohesion. Relocation will also provide increased visual amenity for a key gateway into a town for which tourism is a vital part of its economy.

## **The proposal**

Friends of Chippenham Mead present a fully costed proposal for a new playground in the area of Chippenham Mead near the Sports Ground and Blestium Street.

This location is supported by 86% of playground users, with 85% saying they would use a playground in this location more often. Relocating would therefore help the Council demonstrate they are meeting their legal obligation to support the well-being of future generations. Other stakeholders, including the sports clubs and the Open Spaces Society, have also indicated that they are content with this site.

The proposed design of the playground has been developed in consultation with Monmouth's children, through a playground design competition judged by Axel Scheffler. This has helped ensure a proposal in which the needs of Monmouth's children have taken centre stage.

The proposed design will deliver a high-quality playground within the £85,000 budget. A full cost breakdown, including planning, landscaping, installation and restoration of the old site is provided, based on estimates provided by playground developers. Opportunities for further enhancing the playground, through the inclusion of a zipwire, funded by Friends of Chippenham Mead, are also presented.

Legal advice, including from the Environmental Law Foundation, is consistent with the view that the relocation to this site would be permissible under both the Commons Act and Chippenham Mead's own scheme of regulation. Welsh Government approval will be required but, given the obvious community benefit, this should be obtained within 6 months. Pre-application enquiries with both NRW and MCC have been positive, indicating support for the development in principle.

Assuming agreement in principle to relocate to this site on 9<sup>th</sup> January, a timetable is set out showing that, by MCC and FoCM working in partnership on this project, the commitment of monies to the new playground on the new site should be possible before the June 2017 date for review of S106 allocations set by MCC.

Furthermore, a completed playground can be delivered by September 2017, over 20 months ahead of when any S106 monies may have to be repaid to developers.

This proposal to invest the S106 monies in this new location has wide support within the town, is accepted in principle by planning and environmental authorities, and can be delivered within the time and budget constraints. Accepting the proposal will bring vital benefits to the health, safety and well-being of Monmouth's children, deliver best value for money to the taxpayer, and provide major economic and tourism benefits to the town at a time when business and trading in the town is under challenge.

**Report to Cabinet on 1<sup>st</sup> February 2017 regarding the location of the Chippenham Mead Play Area in Monmouth**

**ISSUES FOR CONSIDERATION**

**Site Area**

The floor area of the existing playground is 1115m<sup>2</sup> and the floor area of Area C is 1075m<sup>2</sup>, so the area proposed is slightly smaller than that of the existing play area.

The position of FCM is that the relocated play area will not enclose an additional part of the village green, but it will enclose a smaller area of the green than that taken up by the existing play area.

The enclosure of any part of the village green will be one of the main issues taken into consideration by the Welsh Government Ministers if a village green consent application is made – this is explained in more detail later in these notes.

**Site Location – Area C**

The original proposal submitted by FCM (Area D) involved the removal of a number of overgrown leylandii trees, the translocation of one oak sapling and possible alterations to the access for emergency vehicles onto Chippenham Mead. Area C does not involve the removal of any trees and it also does not involve any alterations to the existing emergency access onto the village green.

Area C has been surveyed by the MCC Landscape Unit and it is confident that the play area will fit into this location – it will be set back a distance of approx. 7 metres in from the main footpath leading through Chippenham and approx. 6 metres from the dead ball line of the junior rugby pitch. It may be possible to use the existing bow top boundary fence to the road elevation, utilizing the existing open entrance as a proposed entrance into the play area.

There is one small tree and stake that may have to be relocated if Area C is used.

In terms of proximity to residential properties, the Council has adopted the standards of Fields in Trust (formerly the National Playing Fields Association), which requires a minimum distance of 20 metres between a LEAP (Local Equipped Area for Play) and the nearest residential curtilage. The nearest properties to Area C are Chippenham Court and St German's Cottages and there is a distance of well over 20 metres to either of these properties.

**Equipment and Affordability**

As part of the FCM submission there was a list of equipment proposed to be included in the new play area, together with a cost breakdown for the whole project.



The equipment proposed has been informed by consultation with local children and proposes the use of natural materials to blend in with the landscape of the village green. This was also a requirement brought to the attention of FCM as part of the pre-planning advice received from the Planning Section of MCC. Officers have carried out an assessment of the cost breakdown submitted by FCM in its submission and they are confident that the majority of the costs, in particular those relating to equipment supply & installation and reinstatement of the existing play area site, are accurate. However, the costs for fencing and safety surfacing are still being assessed. These costs are likely to be more expensive than those quoted in the FCM submission, but there will be some savings as the cost breakdown provided was for Area D and this included costs for certain works (tree removal and translocation and new emergency access gate) that do not apply to Area C. On balance, the financial comparisons between Area D and Area C are cost neutral.

## **Air and Noise Pollution**

### ***Air***

In its submission, FCM claims that the air pollution level at the existing play area site is significantly above legal limits. This is based on readings taken by FCM at the play area site in October 2016 and analysed on its behalf by Friends of the Earth. Also, that children using the existing play area are likely to be exposed to high levels of diesel particulate matter which can be particularly harmful to children of a young age.

The Council's position is that air pollution at the existing site is within accepted tolerance levels, based on consistent monitoring on an adjacent site over a three year period. The actual advice received from the Specialist Environmental Health Officers of the Council in relation to air pollution is as follows:

*We have been monitoring nitrogen dioxide with a diffusion tube since 2014 on the fence of the Monmouth School Playground, which is right next to the play area but closer to the A40, and therefore should have higher concentrations than the children's play area itself.*

*The type of exposure we look at here is short term exposure as people are likely to spend an hour or more in the area.*

*The UK and EU objective level for nitrogen dioxide short term exposure is 200  $\mu\text{g}/\text{m}^3$  as a 1- hour mean, which must not be exceeded more than 18 times a year.*

*As diffusion tubes are not able to record hourly means, we use an annual mean concentration of 60 $\mu\text{g}/\text{m}^3$ . Studies have shown that annual concentrations below 60 will mean that the 1-hour mean objective level has not been exceeded.*

*As the annual mean concentrations were 31.6 $\mu\text{g}/\text{m}^3$  in 2014 and 26.4 $\mu\text{g}/\text{m}^3$  in 2015, there is confidence that the 1-hour mean objective level was not exceeded in either year.*

*Full data is available in the 2016 progress report which is on the MCC website*

FCM claims that its results are more accurate as the diffusion tube that it used was located on the actual play area site and was set at the level of a child, whereas the diffusion tube used by MCC is set at a much higher level to avoid damage and vandalism.

## **Noise**

FCM claims that the sheer volume of traffic using the A40, as well as the speed at which it travels, creates enough noise for it to be a dominating feature at the current playground. The Welsh Government mapping data shows the play area to be in a zone of between 70.0-74.9 and 75.0+ decibels, whereas the sound reading levels for Area D (not Area C) has sound levels of between 55.0-59.9 and 60.00-64.9 decibels.

The Noise Action Plan for Wales provides information on the Environmental Noise Maps and gives an overview on why noise matters. The current plan shows the Welsh Government (WG) noise action planning priority areas in south east Wales as a result of its noise mapping to date. The section of A40 adjacent to Monmouth has been included. Officers are not aware of any noise mitigation work proposed by WG and understand that the current priority list will be reviewed following the next noise surveying exercise of the motorway and trunk road network, which is programmed to start in 2017.

In summary MCC Environmental Health Officers cannot argue that redevelopment must not take place at the existing site, but clearly there may be a number of benefits of relocating to an area of improved air quality / soundscape.

## **Consultees**

There is a large number of potential consultees whose views will inform the decision making process. The most significant and time consuming consultation process, if relocation is agreed as the preferred option, will be the village green consent application to the Welsh Government Ministers.

However, below are some comments on other significant consultees:

### ***MCC Planning***

The Planning Section has confirmed that planning permission will be required if the play area on Chippenham is to be relocated from its present position. FCM has obtained pre application advice from the planners in relation to Area D – the broad conclusion was that the siting of a play area there was considered acceptable in principle, however exact details of the proposed layout and play equipment would establish whether the development would be acceptable if a formal planning application was submitted. It also pointed out the need to consult with CADW in respect of the site's status as a Grade II historic park and its location within a conservation area and with Natural Resources Wales (NRW) as the site (Area D) lies within a floodplain.

### ***NRW***

Included in the FCM submission is advice received from Natural Resources Wales (NRW) in relation to Area D – that site is located within the 1% (1 in 100 year) and the 0.1% (1 in a 1,000 year) annual probability fluvial flood outlines – records show that the site has previously flooded during the 1979 flood event. Given the scale of the development proposed the NRW considered (October 2016) that the risk could be acceptable, but it reserved the right to change its position and will only comment with any certainty if and when a formal planning application is made.

**CADW**

CADW was not consulted by FCM but enquiries have been made and for Grade II historic parks, the formal consultee at planning permission stage would be the Welsh Historic Gardens Trust.

**Monmouth Civic Society**

A letter has been received from Monmouth Civic Society supporting relocation of the play area to an alternative site on the village green – specifically Area C.

**Open Spaces Society (OSS)**

The Open Spaces Society is a statutory consultee in respect of village green consent applications. The Open Spaces Society's advice has been consistent that any proposed change must not result in there being a breach of the protective village green legislation namely Section 29 Commons Act 1876 and Section 12 of the Inclosure Act 1857. The Friends of Chippenham Mead have been advised that any proposals must not breach the scheme of regulation dated 9<sup>th</sup> March 1987.

In relation to Area C its updated advice is that this appears to be even more intrusive on the main open area of Chippenham Mead whereas the existing area is in the corner on the other side of the flood bund. In addition, there is no guarantee that consent will be granted under section 38 of the Commons Act 2006, even if planning permission is given.

When officers formed their initial view in 2014 to refurbish the play area there was a concern that relocating the play area to another site could adversely affect other users of the village green, principally the Monmouth Town Football Club and Monmouth Rugby Club. Relocation of the play area would be unlikely to affect the other constituent clubs of Monmouth Sports Association, namely the Bowling, Cricket and Tennis Clubs. The views of the Football Club and the Rugby Club have been sought in relation to Area C.

**Monmouth Town Football Club**

The football club has advised that it will not be affected by the proposal to relocate the play area to Area C.

**Monmouth Rugby Club**

The rugby club has mixed views about the proposal – if Area C is developed then the play area would be located approx. 6 metres from the dead ball line of the junior rugby pitch, so there may be some issues when the pitch is being used for matches and/or training by the rugby club. However, the main play area in Bailey Park in Abergavenny is located approx. 6 metres away from the dead ball line of the main rugby pitch in the park used by Abergavenny RFC Seniors and this does not seem to cause any problems to the club or to the users of the play area in that particular location.

**Monmouth Town Council**

At its meeting on 16<sup>th</sup> January the Town Council considered the matter and decided to support the refurbishment of the play area in its existing location

### **Timescales**

There are a number of timescales that need to be taken into consideration.

Working “backwards” perhaps the most significant of these is the “spend by” date for the S106 funding - this date is 13<sup>th</sup> August 2019. If the money is not expended by this date then the Council has a legal duty to return the money to the developers that made the contribution in the first place.

The FCM submission allows a timescale of six months for Welsh Government to process a village green consent application. However, previous experience has shown that the timescale for WG to determine a consent application is likely to be much longer than six months. There is a considerable amount of preparatory work that needs to be undertaken before a consent application can be made – this involves consultation with a large number of bodies and advertising the proposal both locally and nationally prior to any submission – and, because of this, there would be a delay of at least four weeks before any application is submitted to the Welsh Government.

The view of MCC officers, as previously advised in September 2016, is that it would be unwise to allow a period of any less than 12 months for a WG consent application to be processed.

### **Child Safety and Welfare**

The strong view expressed in the FCM submission is that the majority of parents they have spoken to (a representative sample of 150 people) favour relocation and have three major concerns about refurbishing the play area in its current location, as follows:

1. Hidden, “tucked away” location encourages anti-social behaviour, vandalism and misuse, which makes the current location intimidating for younger children and their families;
2. The effect of air and noise pollution because of the site’s location close to the A40;
3. Location is inaccessible and it is difficult to monitor children when using the site – the site because of its location does not have a high level of informal/natural surveillance by members of the public, whereas a location in a more open part of the village green would be overlooked on a more regular basis by more people. Area C would be overlooked by people from all around the village green, particularly pedestrians using the main footpath across Chippenham and the footpath in Blestium Street.

Safeguarding of children & vulnerable people is of course a major priority for the County Council.

It may be possible to either remove or reduce the height of the earth bund located in front of the present play area, if a decision is made to retain the play area in its existing location, in order to make the play equipment more visible from other parts of the village green and to reduce the impact of the A40 by screening and/or further tree planting.

### **Village Green Status**

Chippenham Mead is a registered village green and a Grade II historic park and the Council has a responsibility to protect the status of the land given these designations.

Representations have been received from a number of local residents expressing concern that the overall area of the village green has already been eroded over the years and that the development of a play area in a new location may well be the “thin end of the wedge”, leading to applications for future developments that will erode the village green still further.

If the Council came to the view that Area C is the best option available for the development of a play area, it could not proceed without first obtaining village green consent.

In considering an application for enclosure of part of the village green, the Welsh Government Ministers must have regard to “the benefit of the neighbourhood”, which means the health, comfort and convenience of the inhabitants of the community in which the land required for the proposals is situated, and who may enjoy it as an open space for air and exercise, as it exists before any proposals are carried out, and to the “private interests” being, amongst other things, the interests of the soil owner, tenants, licensees or other parties with a legal interest in the land. Any interests of the public are also taken into consideration as are any objections or representations received by the Welsh Government Ministers.

### **Legal Advice**

The advice received from the Council’s Solicitor is as follows:

Town and Village Greens (T&VG) are protected by section 12 of the Inclosure Act 1857 and Section 29 of the Commons Act 1876. Section 12 makes it a criminal offence to do anything which injures a green or interrupts its use as a place for exercise and recreation. Section 29 also makes it an offence to permanently encroach upon or inclose a green, or to build upon or disturb the soil of a green otherwise than with a view to its better enjoyment.

It is not possible to apply for consent under section 38 of the Commons Act 2006 to carry out works on a T&VG unless it is subject to a scheme of management under the Metropolitan Commons Act 1866 or Commons Act 1899, or to a Provisional Order Confirmation under the Commons Act 1876. Even where there is such a scheme or Act consent under section 38 does not authorise works which constitute an offence under sections 12 or 29.

As Chippenham Mead is subject to a scheme of regulation then the Council would need to apply for consent under Section 38 of the Commons Act 2006. Such an application would be considered by the Welsh Government Planning Inspectorate. If a consent application is made then the main costs would be the amount of officer time involved (this would not be charged against the £85,000 budget available for the play area project). However, there may be barrister costs incurred if the Planning Inspectorate decides to hold an inquiry to determine the S38 application.