

## CABINET

6 OCTOBER 2023

### REFERENCE FROM COUNCIL

#### A.1 E-PETITION: BEACH HUT LEASE CHANGES

##### PART 1 – KEY INFORMATION

###### PURPOSE OF THE REPORT

To formally report the receipt of an e-petition submitted to the Council requesting that the Cabinet reconsiders its decision for all Beach Hut licences to be changed to leases.

###### EXECUTIVE SUMMARY

An e-petition submitted by Dale Westall, as lead petitioner, was received on 30 June 2023. The petition was signed by 164 persons and stated:-

*“We the undersigned petition the Council to have the Cabinet of the Council reconsider its decision that all Beach Hut licenses be changed to leases and further, we petition the Cabinet of the Council that Beach Hut Association members be shown the cost, length, and terms of the leases prior to them being put in place.”*

Beach Hut Licensing is an executive function and therefore the Cabinet is the appropriate body to consider this matter.

In accordance with the Council's adopted Scheme for Dealing with Petitions the receipt of this Petition was reported, for Members' information, to the meeting of the Full Council held on 11 July 2023. This matter has now been investigated and a report prepared and presented to the Cabinet on the basis that the Petition contained between 30 and 500 signatures.

Having discussed the petition it will be for Cabinet to decide what action, if any, will be taken.

###### RECOMMENDATION(S)

**It is recommended that:**

**That having duly considered the Petition together with the information provided in this report, the Cabinet decides what action, if any, it wishes to take.**

###### REASON(S) FOR THE RECOMMENDATION(S)

To comply with the adopted scheme for dealing with petitions, as set out in the Council's Constitution.

## ALTERNATIVE OPTIONS CONSIDERED

There are several courses of action available to the Cabinet once the petition has been considered, including:

- *No action (with reasons as to why no action is proposed)*
- *Taking the action requested in the petition*
- *Taking an alternative or amended course of action to that requested in the petition (with reasons as to why such action is being taken)*
- *Undertaking research into the matters raised (this could include referring the matter to the relevant Portfolio Holder, or officer of the Council) and holding a meeting with the petitioners*
- *Referring the petition to a Committee or Cabinet or an external person/body (such as the County Council or Government body or Public Services or the Ombudsman or Member(s) of Parliament)*
- *Holding a public meeting*
- *Holding an inquiry*
- *Providing a written response to the lead petitioner setting out the Council's views on the request in the petition*
- *Deferring consideration of the petition to a future Committee, Cabinet or Council meeting*
- *Calling for a referendum (if permitted under the legislation and subject to costs)*

## PART 2 – IMPLICATIONS OF THE DECISION

### DELIVERING PRIORITIES

In respect of the Corporate Plan 2020/24 Priority Themes the Cabinet's decision will contribute to:

- A Growing and Inclusive Economy (and specifically maximising our coastal and seafont opportunities).

### OUTCOME OF CONSULTATION AND ENGAGEMENT

Beach Huts is an executive function that is delegated by the Leader of the Council to the Cabinet collectively and, individually, to the Leisure and Public Realm Portfolio Holder (depending on the nature of the decision required) in schedule 3 of part 3 of the Council's Constitution. The overall function of the Council's Executive is the discharge, in accordance with the Council's policy framework all functions of the Council (including "local choice functions") except those functions which cannot by virtue of the Local Authorities (Functions

and Responsibilities) (England) Regulations 2000 (as amended) and other legislation, be the responsibility of the Executive.

**LEGAL REQUIREMENTS (including legislation & constitutional powers)**

Is the recommendation a Key Decision (see the criteria stated here)	NO	If Yes, indicate which by which criteria it is a Key Decision	<input type="checkbox"/> Significant effect on two or more wards <input type="checkbox"/> Involves £100,000 expenditure/income <input type="checkbox"/> Is otherwise significant for the service budget
		And when was the proposed decision published in the Notice of forthcoming decisions for the Council (must be 28 days at the latest prior to the meeting date)	

**YES** The Monitoring Officer confirms they have been made aware of the above and any additional comments from them are below:

It's important to refer back to the legal requirements section of the February 2023 Cabinet Report, which confirms that in coming to decisions in relation to management of assets, the Council must act in accordance with its statutory duties and responsibilities. Cases assessing principles of Section 120 of Local Government Act 1972 confirm that the Council is obliged to ensure that the management of its assets are for the benefit of the District.

Option for Beach Hut Agreements - The proposal in the February report was to move away from Licence Agreements to Leases from 1 April 2024. Cabinet had the option however to maintain the status quo and continue to operate Beach Hut agreements through licences. A licence only grants a personal right to use and occupy the site and place the hut in accordance with certain conditions (see current clause 2), it is not transferrable. Some Beach Huts are being sold on the impression that the licence will be transferred to the new owner and this is legally not possible. An application has to be made for a new Licence and the Council has the right to refuse, especially if the Hut is not compliant with the conditions of the former licence but in particular, (see current clause 4.11) the Council has a waiting list for our Beach Hut sites. Licences offer less protection and permits the Council to make changes to terms and conditions, with minimum notice and providing notice to end agreements with 28 days' notice (see current clause 4.4.2).

A lease is a legal interest and grant of a right to the exclusive possession of land for a determinable period of time. It is important for both parties to understand the type of agreement into which they are entering. With Beach Huts changing hands for very significant values, the lease agreements would provide protection to those making sizeable investments. Despite huts being sold for tens of thousands of pounds, licences have no transferable value.

Furthermore, if licences were operated to their terms and conditions, there is no obligation on the Council to provide new licence agreements to any prospective new owner (see current clause 4.11). As such, any 'vacant' licence (following a hut sale) could be offered to those on a waiting list, held by the Council. This would be a significant risk to Beach Hut users, where as a lease would provide increased security of tenure and allow them to assign the benefit of their

lease to a new owner. If a decision is taken to continue with Licence Agreements, it is important that the lack of security this provides is clearly highlighted to potential hut owners when considering a purchase.

Ultimately, it is important to ensure the correct legal status is given to the occupation of the Beach Hut sites and in accordance with the intentions of the parties.

The Land Registration Act 2002, together with the Land Registration Rules 2003, sets the categories of leases that are either compulsorily or voluntarily registrable. Section 27(2)(b)(i) of the Land Registration Act 2002 requires leases granted out of existing registered titles, that are for a term of more than seven years from the date of the grant are compulsorily registrable at the Land Registry.

The decision to approve the Heads of Terms for the Leases has been delegated to the Portfolio Holder for Leisure and Public Realm and consultation prior to these decisions being made could be undertaken, should the Portfolio Holder wish to do so.

### **FINANCE AND OTHER RESOURCE IMPLICATIONS**

Not immediately applicable, although subject to Cabinet's response, consideration may have to be given in due course to the impact on the Council's financial position.

**YES**    **The Section 151 Officer confirms they have been made aware of the above and any additional comments from them are below:**

No additional comments.

### **USE OF RESOURCES AND VALUE FOR MONEY**

*External Audit expect the following matters to be demonstrated in the Council's decision making:*

- A) Financial sustainability: how the body plans and manages resources to ensure it can continue to deliver its services;*
- B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and*
- C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.*

*As such, set out in this section the relevant facts for the proposal set out in this report.*

The following are submitted in respect of the indicated use of resources and value for money indicators:

A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;	Not applicable in this instance.
B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and	Nothing in addition to those matters already set out in the report.

C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.	Not applicable in this instance.
<b>MILESTONES AND DELIVERY</b>	
Not applicable in this instance.	
<b>ASSOCIATED RISKS AND MITIGATION</b>	
Not applicable in this instance.	
<b>OUTCOME OF CONSULTATION AND ENGAGEMENT</b>	
<p>The Council's adopted Scheme for Dealing with Petitions states, inter alia:-</p> <ul style="list-style-type: none"> <li>• Receipt of a petition will be formally acknowledged to the lead petitioner in writing or by email as appropriate, within five working days of its receipt.</li> <li>• The appropriate Ward Member(s) will be informed of receipt of a petition and when and how the petition will be considered.</li> <li>• When a petition is being considered by Cabinet or Council/Committee the lead petitioner will be invited to address the Cabinet or Council/Committee, outlining the reasons for the submission of the petition and what action they would like the Council to take. The lead petitioner (or his or her representative) will have a time limit of three minutes for their speech and the petition will then be discussed by Councillors. A Ward Councillor can, at the request of the lead petitioner, present the petition to Cabinet or Council/Committee on behalf of the relevant petitioners.</li> <li>• The lead petitioner will be informed, in writing, of the Cabinet or Council's decision and this information will also be published on the Council's website via the Minutes of the relevant meeting at which the petition was dealt with. If a further meeting is to be held to consider the issues raised in the petition, the lead petitioner will be supplied with the relevant details and will also be given the opportunity to attend and address that meeting and if appropriate, answer any questions posed at the meeting.</li> </ul>	
<b>EQUALITY IMPLICATIONS</b>	
<p><i>In line with the Public Sector Equality Duty, public bodies such as the Council must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.</i></p> <p><i>The protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race religion or belief, sex, sexual orientation.</i></p> <p>Not applicable in this instance.</p>	
<b>SOCIAL VALUE CONSIDERATIONS</b>	

There are no social value considerations relevant to this report having regard to the Public Services (Social Value) Act 2012.

#### **IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO BY 2030**

There is no impact on the Council's aim for its activities to be carbon neutral by 2030 including the actions, policies and milestones in its Climate Change Action Plan.

#### **OTHER RELEVANT CONSIDERATIONS OR IMPLICATIONS**

**Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.**

**Crime and Disorder**

None.

**Health Inequalities**

None.

**Area or Ward affected**

Most of the coastal Wards in the District.

### **PART 3 – SUPPORTING INFORMATION**

#### **ASSISTANT DIRECTOR (BUILDING & PUBLIC REALM)'S ASSESMENT AND ADVICE**

The preceding Cabinet adopted the Beach Hut Strategy in February 2023. The broad aims of the strategy are to regularise the management arrangements around beach huts and to establish a sustainable legal, financial and practical position in relation to the operation. The transition from licences to leases is intended to address some key issues and should benefit the Council and hut owners alike.

For the Council:

- A five-year renewal cycle instead of one
- Clearer terms and framework for enforcement
- Addressing the uncertainties around the market for beach hut sales
- Regularising a position around third party lettings and hires

For the hut owners:

- Five-year security instead of one.
- A real legal estate that can be transferred or inherited.
- Clarity around responsibilities.

If the strategy overall is successful, all parties will benefit from greater certainty and ability to address issues that have concerned the parties at various of the beach hut locations. Officers recommend that the transition to leases is advisable and is likely to be advantageous to all of the parties.

The beach hut associations have been consulted on the draft lease for commercial huts and the Officer team is engaged in creating a finalised version that reflects the comments received, where appropriate. The team will consult similarly on the leases for non-

commercial users. Some resourcing issues have affected progress and ongoing programme is being reviewed. It is not planned that the transition to leases of itself will increase or decrease fees (rents). Of course, time and external factors will lead to general increases but these will not be driven by the nature of the agreement. Future fees (rents) will be set as part of the Council's annual review processes.

#### **Leisure & Public Realm Portfolio Holder's Comments:**

*"I am aware that beach hut owners have been concerned by the proposed changes. I am also convinced that there is genuine need to get beach huts and coastal matters into a sustainable position and that availability of resources has for various reasons, challenged implementation during the current financial year.*

*I have asked the Officer team to refresh the timeline for the implementation of the strategy, including a phased transition to leases, and to review draft leases to make them as simple as possible, also review the presentation of strategy issues, including the development of simplified guidance and a frequently asked questions document. This in order to reassure hut owners to the extent possible, that changes are on balance positive for all involved."*

#### **BACKGROUND**

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Having discussed the petition it will be for Cabinet to decide what action, if any, will be taken.

#### **PREVIOUS RELEVANT DECISIONS**

Cabinet meeting on 4 November 2022 – Minute 71 – Cabinet Members' Item (Report of the Leisure & Tourism Portfolio Holder – A.4 – Tendring Beach Hut Strategy Revisited)

*"**RESOLVED** that Cabinet approves the content of the revised draft Beach Hut Strategy for consultation purposes and authorises Officers to seek stakeholder comment on the document for a minimum six-week period."*

Cabinet meeting on 17 February 2023 – Minute 119 – Cabinet Members' Item (Report of the Leisure and Tourism Portfolio Holder – A.10 – Tendring Beach Hut Strategy Revisited –

Following Consultation)

**“RESOLVED** that Cabinet –

- (a) notes the outcome of the public consultation undertaken on the draft Beach Hut Strategy, as set out in the Portfolio Holder’s report;
- (b) notes the outcome of the Task and Finish Review Working Group undertaken on behalf of the Resources and Services Overview and Scrutiny Committee and their recommendations received as considered earlier in the meeting;
- (c) in relation to (a) and (b) above, notes the changes made to the draft strategy as a result of the consultation exercise, including the process for issuing commercial beach hut leases (following the first round of consultation) and the consideration of a ‘buffer period’ in restricting future agreements to one per household;
- (d) notes the proposed changes to the revised draft Beach Hut Strategy, and approves the same for adoption;
- (e) delegates the approval of a revised Beach Hut design specification to the Assistant Director (Building & Public Realm), in consultation with the Portfolio Holder for Leisure and Tourism;
- (f) agrees the Heads of Terms for a new commercial lease (Appendix C) and delegates authorisation for the final lease agreement to the Corporate Director (Operations & Delivery), in consultation with the Portfolio Holder for Leisure and Tourism and the Head of Legal Services;
- (g) delegates agreement of an approved criteria, upon which applications for commercial licences can be made, to the Assistant Director (Building & Public Realm), in consultation with the Portfolio Holder for Leisure and Tourism;
- (h) agrees to set fees and charges for commercial leases at twice the value (double) of the comparative standard annual charge;
- (i) agrees to the overall principle of changing from licence agreements to leases from 1 April 2024, for a term of less than 7 years and based on the market valuation for the relevant location, recognising the increased administration and costs to all parties on leases for longer than 7 years with the respective fees and charges and detailed lease terms to be agreed by the Portfolio Holder for Leisure and Tourism; and
- (j) agrees that operational implementation of (i) above will be authorised by the Corporate Director (Operations and Delivery), in consultation with the Portfolio Holder for Leisure and Tourism and the Head of Legal Services, reflecting the resources required.”

#### **BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL**

E-Petition to the Council submitted by the Lead Petitioner (Mr Dale Westall).

Published Minutes of the Cabinet meetings held on 4 November 2022 and 17 February 2023.



**APPENDICES**

None.

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