

## Advice Note prepared by Shape Legal Services and the Monitoring Officer

### Full Council 3 December 2020

#### Motion 1 to Council – Affordable and Social Housing Delivery Programme

At the meeting of Scrutiny Board on 16 November they referred Cabinet's decision of 2 November in respect of the Affordable and Social Housing Delivery Programme back to them for reconsideration. In response, at its meeting on 26 November 2020, Cabinet made the following decision: -

- *“To confirm their approval of 2 November 2020 to proceed with the transfer of Cemetery Lane Street, Cranhill Car Park Street (part only) and Norbins Road Car Park Glastonbury to Aster Housing Group, subject to contract and planning, consent for development of affordable and social housing*
- *To pause the proposed transfer of land adjoining Easthill Cemetery Frome to Aster to allow time for a review of issues raised by Members.”*

A Motion proposed by Cllr Tom Killen and seconded by Cllr Eve Berry is intended to be put before Full Council on the 3 December which can be summarised as follows –

1. In respect of the proposal to develop the land adjoining Easthill Cemetery Frome which is recognised as an Open Area of Local Significance and is ancient parkland and a species rich habitat. **Full Council requests the Cabinet not to proceed with the transfer of this site to Aster and to cease any plans to develop this site.**
2. In respect of the sites at Cemetery Lane, Street, Cranhill Car Park, Street (part only) and Norbins Road Car Park, Glastonbury **Full Council requests that Cabinet pause the proposed transfer of these sites to allow for a full consultation to be undertaken and for detailed reports considering the issues raised by the public and Scrutiny Board to be prepared and fully considered by the Cabinet and Scrutiny Board prior to giving final approval.**
3. More generally, **Full Council requests Cabinet not to transfer or propose for development any site in the ownership of the Council which has proven ecological/habitat value and/or community benefit without the prior approval of Full Council following provision of appropriate reports and public consultation.**

Prior to considering this motion Full Council should take in to account the following advice which has been prepared jointly by Shape Legal Services and the Monitoring Officer.

Parts 1 & 2 of the submitted motion are requesting that Cabinet cease any further plans to develop the Easthill site and to pause the proposed transfer of Cemetery Lane, Street, Cranhill Car Park, Street (part only) and Norbins Road Car Park, Glastonbury to allow full consultation to be undertaken - in effect changing Cabinet's decision.

This would be contrary to **Section 8.5.9 of the Constitution** which states that “Re-considered decisions will come into force as soon as they are made...” meaning that the decision of Cabinet on the 26 November came into immediate effect.

**Section 5.1.2 of the Constitution** sets out the specific functions of Cabinet one of which is -

*“To be responsible for the overall management of the Council’s financial, property and other resources, in accordance with the Financial Procedure Rules set out in Section 20”.*

Such a decision relating to the transfer of land for the Affordable and Social Housing Delivery Programme therefore falls within Cabinet’s executive functions and for Full Council to seek to determine such a decision is not permissible within the Constitution, which Full Council authorised and approved, and would also be in contravention of Section 9D (2) of the Local Government Act 2000.

Finally, through part 3 of the submitted motion, Full Council would be requesting *“Cabinet not to transfer or propose for development any site in the ownership of the Council which has proven ecological/habitat value and/or community benefit without the prior approval of Full Council following provision of appropriate reports and public consultation.”*

This part of the motion is also contrary to **Section 5.1.2 of the Constitution**, Cabinet is *“responsible for the overall management of the Council’s financial, property and other resources”* and Cabinet has made and reconsidered a decision. Therefore the decision it is not a matter which Full Council can determine or provide ‘prior approval’.

Should Full Council approve such a request, they would be acting contrary to the Council’s constitution. Full Council would also be in contravention of the legislation. **Section 9D (2) of the Local Government Act 2000** states *“that any function of the local authority which is not specified in regulations under subsection (3) is to be the responsibility of an executive of the authority under executive arrangements.”*

While it is recognised that the motion merely proposes that Cabinet be requested to act in a specific manner, these requests as presented will potentially alter decisions that have already been taken by Cabinet, with the altered decisions being subject to a mechanism of Full Council ‘prior approval’. Such a decision making process would not be in accordance with the Constitution, and would render the action/decision as ultra vires i.e. acting beyond its legal power or authority. Should Members pass such a motion this will also potentially bring into play contravention of **section 1.5 of the Member Code of Conduct** which requires Members when undertaking Council business .. to act in accordance with the Constitution.