

MAIDSTONE BOROUGH COUNCIL

CABINET MEMBER FOR ENVIRONMENT

**REPORT OF THE ASSISTANT DIRECTOR OF ENVIRONMENTAL
SERVICES**

Report prepared by R E Wallis PEHO

Date Issued: 14 May 2009

**1. Transfer of Food Safety, Pest Control and Sunday Trading
Enforcement Functions – The Hop Farm, Beltring**

1.1 Issue for Decision

- 1.1.1 To consider whether the Council should enter into a legal agreement to transfer the food safety, pest control and Sunday trading enforcement functions to Tonbridge and Malling Borough Council to ensure a coordinated approach to enforcement at the Hop Farm, Beltring.

1.2 Recommendation of Assistant Director of Environmental Services

- 1.2.1 That the Assistant Director of Environmental Services be given delegated authority to enter into a legal agreement with Tonbridge and Malling Borough Council and Tunbridge Wells Borough Council to transfer the food safety, pest control and Sunday trading enforcement functions to Tonbridge and Malling Borough Council, in relation to The Hop Farm, Beltring.

1.3 Reasons for Recommendation

- 1.3.1 The Council has a statutory duty to enforce a range of regulatory functions at the Hop Farm, Beltring. Those functions that are being considered for transfer relate to:

- Health and Safety at Work
- Food Safety
- Pest Control
- Sunday Trading
-

- 1.3.2 Health and Safety enforcement which is not part of this report is a non executive function and this was subject to a separate report that was submitted to and recommended by General Purposes Group on 8th April 2009 and approved by full Council on 22nd April 2009.

- 1.3.3 The Hop Farm site is mainly within the area of Tonbridge and Malling Borough Council, there are parts which fall within both Maidstone Borough Council and Tunbridge Wells Borough Council boundaries – but these are areas used for ancillary functions to the main activity of the Hop Farm, for example, car parking. It is important that the regulatory activities, previously identified, are coordinated by one authority at this venue which attracts many visitors, particularly over the summer months.
- 1.3.4 The Local Government Acts 1972 and 2000, together with associated regulations, provide for a council to exercise delegated functions on behalf of other councils. Discussions with neighbouring councils have resulted in an agreement which would permit Tonbridge and Malling Borough Council to exercise delegated functions on our behalf in respect of the Hop Farm site.
- 1.3.5 Tunbridge Wells Borough Council and Tonbridge and Malling Borough Council have already approved the agreement and full Council has approved the delegation of the Health and Safety function and only the executive functions of Food Safety, Pest Control and Sunday Trading need to be approved. A copy of the final agreement, together with a map of the site with the Council boundaries marked is attached at Appendix 1.
- 1.3.6 The final agreement now has an indemnity for Maidstone Borough Council for any breach of discharging the delegated functions by Tonbridge and Malling Borough Council and a 3 month termination clause. These issues were raised by General Purposes Group on the draft agreement, on the 7th January 2009 and negotiated changes agreed between the parties.
- 1.3.7 There are no cost implications for this Council.

1.4 Alternative Action and why not Recommended

The Council could choose not to enter into the proposed agreement. This would result in Maidstone Borough Council retaining enforcement responsibility for a small area of The Hop Farm, which could lead to a disjointed approach to enforcement at this site. Any major event, activity or incident on this small area relating to the legislation in the report may require Maidstone Borough Council Officers to attend. Event and site management is better controlled by one authority.

1.5 Impact on Corporate Objectives

1.5.1 Quality Living

The proposal will provide a coordinated approach to enforcement on the site for the benefit of both the business and public.

1.6 Risk Management

1.6.1 The failure to effectively coordinate enforcement activities could adversely affect public health and safety on this site.

1.7 Other Implications

1.7.1

1. Financial
2. Staffing
3. Legal
4. Equality Impact Needs Assessment
5. Environmental/Sustainable Development
6. Community Safety
7. Human Rights Act
8. Procurement
9. Asset Management

X

1.7.2 Legal

Tonbridge and Malling Borough Council will be able to carry out functions on behalf of other authorities once they have been properly delegated by those authorities under S101 of the Local Government Act 1972 for non executive functions and S20 of the Local Government Act 2000 and the Local Authorities (Arrangement for the Discharge of Functions) (England) Regulations 2000 for executive functions.

1.8 Conclusions

- 1.8.1 The transfer of regulatory functions to Tonbridge and Malling Borough Council will ensure a coordinated approach and improved effectiveness to enforcement at The Hop Farm, Beltring.

1.9 Background Documents

1.9.1 Report to general Purposes Group April 2009

NO REPORT WILL BE ACCEPTED WITHOUT THIS BOX BEING COMPLETED

Is this a Key Decision? Yes ☐ No ☒

If yes, when did it appear in the Forward Plan? _____

Is this an Urgent Key Decision? Yes ☐ No ☒

Reason for Urgency

[State why the decision is urgent and cannot wait until the next issue of the forward plan.]

How to Comment

Should you have any comments on the issue that is being considered please contact either the relevant Officer or the Member of the Executive who will be taking the decision.

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Cabinet Member for Environment

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Ron Wallis

Principal Environmental Health Officer

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Appendix 1

THIS DEED is made the _____ day of _____
Two thousand and nine **BETWEEN TONBRIDGE AND MALLING BOROUGH COUNCIL** of
Gibson Building Gibson Drive Kings Hill Kent(“TMBC”) of the one part and **(1) MAIDSTONE
BOROUGH COUNCIL** of Maidstone House
King Street Maidstone Kent (“MBC”) and **(2) TUNBRIDGE WELLS BOROUGH COUNCIL** of Town
Hall Mount Pleasant Road Tunbridge Wells Kent(“TWBC”) of the other part

1. DEFINITIONS AND INTERPRETATION

In this Agreement:

1. References to any enactment include references to that enactment as for the time being amended, applied, consolidated, re-enacted by or having effect by virtue of any subsequent enactment and for this purpose “enactment” means any Act whether public, general or local and includes any byelaw, order, rule, regulation, scheme or other instrument having effect by virtue of an enactment;
2. the “Delegated Functions” has the meaning given in the Schedule below;
3. “Functions” means powers and duties and includes the power to do anything which is calculated to facilitate or is conducive or incidental to the discharge of functions.
4. the “1972 Act” means the Local Government Act 1972
5. the “2000 Act” means the Local Government Act 2000
6. the “Regulations” means the Local Authorities (Arrangement for the Discharge of Functions)(England) Regulations 2000
7. the “Site” means the area of land together with buildings thereon known as the Hop Farm Beltring Kent and more particularly identified on the plan attached to this Agreement and thereon shown outlined in red.
8. “the Plan” means the plan attached to this Agreement.

WHEREAS:-

- (1) TMBC, MBC and TWBC are all local authorities constituted by the 1972 Act and operate executive arrangements pursuant to the 2000 Act
- (2) By virtue of the 1972 Act the TMBC, MBC and TWBC are the authorities responsible inter alia for the Delegated Functions within their respective administrative areas
- (3) The Site is situate partly within the administrative area of TMBC (hatched blue on the Plan) and partly within the administrative areas of MBC (hatched green on the Plan) and TWBC (hatched yellow on the Plan)
- (4) By virtue of Section 101 of the 1972 Act (in respect of those matters that are non – executive functions) and Section 19 of the 2000 Act (in respect of those matters that are executive functions) and the Regulations and subject as therein provided a local authority may arrange for the discharge of any of its functions by (inter alia) any other local authority
- (5) TMBC wishes to exercise the Delegated Functions of MBC and TWBC in respect of the entirety of the Site
- (6) MBC and TWBC are willing to enter into arrangements with TMBC pursuant to Section 101 of the 1972 Act Section 19 of the 2000 Act and the Regulations and of all other enabling powers for the discharge of those functions on the following terms:

NOW THIS DEED WITNESSETH as follows:-

1. Commencement

This Agreement shall come into effect on the date hereof and shall continue for one year and thereafter run from year to year unless determined by either party pursuant to clause 5 below.

2. Delegation of Functions

In consideration of the provisions of this Agreement and pursuant to the powers contained in Section 101 of the 1972 Act Section 19 of the 2000 Act and the Regulations, MBC and TWBC hereby delegate to TMBC and TMBC hereby accepts such delegation of the Functions of MBC and TWBC relating to their respective administrative areas at the Site subject to the conditions and restrictions contained in this Agreement.

3. Discharge of Functions

TMBC may arrange for the discharge of the Delegated Functions at the Site in accordance with the provisions of Section 101 of the 1972 Act and Section 19 of the 2000 Act and regulation 10 of the Regulations shall apply in relation to those functions as it applies in relation to the functions of TMBC. TMBC is empowered to take all such action including legal proceedings as may be necessary arising out of or in connection with the Delegated Functions in respect of the Site.

4. Agency

4.1 TMBC shall act as the agent of MBC and TWBC in respect of the discharge of the Delegated Functions in respect of the administrative areas of MBC and TWBC at the Site.

4.2 TMBC shall indemnify and keep indemnified MBC and TWBC from and against any and all loss damage or liability (whether criminal or civil) suffered and legal fees and costs incurred by MBC and TWBC resulting from a breach of the discharging of the delegated functions by TMBC including any act neglect or default of TMBC's employees servants contractors or agents

5. Termination

This Agreement may without prejudice to the Local Government Act 1972 Section 101(4) and regulation 8(3) of the Regulations be terminated at any time by either party giving to the other not less than 3 months notice in writing.

6. NOTWITHSTANDING Clause 2 hereof and as provided in Section 101(4) of the 1972 Act and regulation 8(3) of the Regulations nothing herein contained shall prevent the MBC and TWBC from exercising the Delegated Functions in respect of their own administrative areas **PROVIDED** that it is agreed that MBC and TWBC will not normally exercise any of such functions in respect of their administrative areas at the Site except in the case of emergency and then only after consultation with TMBC unless the urgency of the situation does not permit such consultation.

7. Expenses

All expenses costs or charges arising out of the exercise by TMBC of the Delegated Functions shall be defrayed by TMBC.

8. Contracts (Rights of Third Parties) Act 1999

The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this agreement unless expressly stated within it.

IN WITNESS whereof TMBC, MBC and TWBC have caused their respective Common Seals to be hereunto affixed the day and year first above written

THE SCHEDULE

The Delegated Functions

To their full extent the environment health functions relating to:-

- (i) Health and Safety at work
- (ii) Food safety
- (iii) Pest control
- (iv) Sunday trading

AND which functions arise from or are carried out pursuant to the following statutes and the regulations and orders made thereunder and any statutory modification or re-enactment thereof

- (a) Offices, Shops and Railway Premises Act 1963
- (b) Health and Safety at Work etc Act 1974
- (c) Sunday Trading Act 1994
- (d) Local Government (Miscellaneous Provisions) Act 1976
- (e) Food Safety Act 1990
- (f) Food and Environment Protection Act 1985
- (g) Prevention of Damage by Pests Act 1949
- (h) EC regulations 882/2004, 852/2004, 853/2004, 854/2004, 2073/2005, 2075/2005

AND for the avoidance of doubt any reference to non-executive functions in this Agreement refers to all functions arising under or relating to the said Health and Safety at Work etc Act 1974 and the said

Offices, Shops and Railway Premises Act 1963 and any reference to executive functions refers to all other matters.

THE COMMON SEAL of TONBRIDGE)
& MALLING BOROUGH COUNCIL was)
hereunto affixed in the presence of:-)

Chief Solicitor

THE COMMON SEAL of MAIDSTONE)
BOROUGH COUNCIL was)
hereunto affixed in the presence of:-)

Solicitor – Authorised Signatory

THE COMMON SEAL OF TUNBRIDGE)
WELLS BOROUGH COUNCIL was)
hereunto affixed in the presence of: -)

