

**CABINET**

**DATE: 1 OCTOBER 2020**

**TITLE OF REPORT: CAR BOOT SALES/SUNDAY MARKETS**

**Report of: Joint Chief Executive**

**Portfolio Holder: Councillor Richard Quarterman, Portfolio Holder for Commercialisation**

**1 PURPOSE OF REPORT**

1.1 This report invites Cabinet to consider and provide a strategic lead, on the options they would like the Council to pursue and further investigate, which would enable the delivery of Sunday Markets or Car Boot Sales to occur on council owned car parks.

**2 RECOMMENDATION**

- A. SUBJECT to Cabinet confirming that it is interested in the exploration of options for the future delivery of Sunday car boot sale/ markets Cabinet:
  - i) Endorses the proposal by the Head of Corporate Services to use delegated powers to temporarily waive Contract Standing Orders for the period between the period 4<sup>th</sup> October and 1<sup>st</sup> November 2020 to enable Sunday car Boot sales to resume on Victoria Road car park; and
  - ii) Agrees that a proper procurement exercise is undertaken in accordance with Contract Standing Orders to ensure that the Council from 7<sup>th</sup> November 2020 secures value for money in the use of its assets and that equal, open, and fair opportunity is given to bid for the opportunity to run Sunday Car Boot sales on Victoria Road car park if options C(i) or C(ii) are sought for further investigation.
- B. Cabinet agrees that any proposed car boot sale/Sunday market policy should review all Council car parks, across the whole district
- C. In drafting a Car boot sale/Sunday market policy Cabinet authorised the Joint Chief Executive to carry out further investigations, with the expectation of a report to Cabinet in November 2020 on one of the following options;
  - i) seeks a commercial value for the car boot sales, and to tender this opportunity
  - ii) seeks a commercial value for the car boot sales, tender for this opportunity, and provide all profits to agreed charities
  - iii) seeks to run the car boot sale by the Council, retaining or sharing proceeds as appropriate
  - iv) establishes a policy whereby the Council will only consider car boot sales where run for charitable purposes.

### **3 BACKGROUND**

- 3.1 Local Authorities in a number of areas have, for some years, provided the opportunity to run car boot sales, or Sunday markets from their own car parks. This is an opportunity that, until recently, the Council has not explored.
- 3.2 Members will be aware, that following the Covid-19 pandemic and the Government guidance on revitalising our high streets that the Council has been working hard, alongside businesses and key stakeholders to support the economy of the district.
- 3.3 As part of this, the Portfolio Holder for Environment, authorised in July 2020 a temporary arrangement for 6 car boot sales on Victoria Road car park. The objective was to add colour and vibrancy at a time of reduced footfall in Fleet, and to test the approach.
- 3.4 This initiative appears to have been well received and provides impetus to consider the opportunities available to the Council to build on this foundation, to provide car boot sales into the future.

### **4 CURRENT POSITION WITH REGARD TO THE USE OF VICTORIA ROAD CAR PARK**

- 4.1 The Portfolio Holder's use of delegated powers to allow Victoria Road car park on Sundays to be used for car boot sales was intended to be a temporary arrangement (6 events in total). The overall delegation itself does not extend to allowing longer-term activities.
- 4.2 For longer-term activities there must first be a proper, open, and transparent procurement exercise particular as a third-party financially benefits from free access to public land. Such an approach to procurement is a direct requirement of the Contract Standing Orders (CSOs). CSOs form part of the Council's Constitution. Compliance is therefore mandatory. CSOs have three main purposes:
- a) to ensure that the Council obtains value for money from procurement, so that in turn it may offer best value services to the public;
  - b) to comply with the laws that govern the spending of public money; and
  - c) to ensure procurement is carried out fairly and transparently.
- 4.3 The requirements of CSOs cannot be waived except in very exceptional circumstances and unless authorised either by the CSO itself or by delegation to Officers, will require the approval of Council.
- 4.4 However, subject to indication that Cabinet is interested in the exploration of options for the future delivery of a car boot sale/Sunday market, the Head of Corporate Services (in her capacity as Section 151 Officer) is prepared to use her delegated powers to authorise a "temporary" waiver of CSO's to enable Sunday car Boot sales to resume on Victoria Road car park from 4<sup>th</sup> October until 1<sup>st</sup> November 2020. In the meantime, it would allow a proper open and transparent procurement exercise in accordance with CSOs to be carried out to allow competitive access to future Sunday Car Boot sale/market opportunity

**RECOMMENDATION**

**SUBJECT to Cabinet confirming that it is interested in the exploration of options for the future delivery of Sunday car boot sale/ markets Cabinet**

- iii) Endorses the proposal by the Head of Corporate Services to use delegated powers to temporarily waive Contract Standing Orders for the period between the period 4<sup>th</sup> October and 1<sup>st</sup> November 2020 to enable Sunday car Boot sales to resume on Victoria Road car park; and**
- iv) Agrees that a proper procurement exercise is undertaken in accordance with Contract Standing Orders to ensure that the Council from 7<sup>th</sup> November 2020 secures value for money in the use of its assets and that equal, open, and fair opportunity is given to bid for the opportunity to run Sunday Car Boot sales on Victoria Road car park options C(i) or C(ii) are sought for further investigation.**

**5 CONSIDERATIONS**

- 5.1 In terms of the wider context of policy approach to the use of Council car parks for car boot sales/Sunday markets this report represents an initial, high level assessment of the opportunities. The aim is to gaining Cabinet's initial views of the potential strategic direction, which will enable further work on the preferred approach and provide greater detail on the implications and benefits to the Council.

A Holistic District Wide Policy Approach to the use of Council car parks

- 5.2 The Council owns 12 car parks (two only open to the public at the weekends (e.g. the Council staff car park), spread across the district, serving different towns and villages. Whilst to date, requests for car boot sales have been related to Fleet, it is proposed that the policy associated with car boot sales/Sunday markets covers all council car parks, to ensure a strategic and holistic approach that services all parts of the district.
- 5.3 Recognising the car parks form an important part of the infrastructure for local communities, each of the relevant Parish and Town Councils were approached with a view to garnering any views they might have on the potential use of car parks in their area. Information had not been received in response at the point of publication of the report but any feedback will be provided to Cabinet when the report is considered.

**Recommendation**

**That any proposed car boot sale/Sunday market policy covers all council car parks, across the whole district**

The Policy Framework

- 5.4 If Cabinet accepts the proposal to any policy for car boot sales or Sunday markets covers the whole district, then the next issue Cabinet will wish to

consider is the outcomes it wishes to achieve and the policy framework already in place to support such decision making.

- 5.5 The Council's Corporate Plan 2017-2022 established the need to increase the resilience of the Councils financial position, to deliver vital services to our residents by;
- Maximising income opportunities, and identifying new opportunities for income generation
  - Maximising Council income through effective asset management and collection activities
- 5.6 The Commercialisation Strategy provides greater detail including a requirement that the Council will ensure that "its own estate is effectively managed to generate income "
- 5.7 In reaching any decisions regarding Commercialisation, the Strategy set out that the approach would be ethical, which for the Council meant:
- Ensuring that the Council is legally and state aid compliant; and.
  - When evaluating the business case of projects with similar returns, in accordance with the Public Service (Social Values) Act, it will look to deliver those initiatives that provide the best social or environmental outcome.
- 5.8 Additionally, we must consider the Councils financial position (subject to a separate report to Cabinet this evening), the impact that Covid-19 has had on our own finances as well as the Medium-Term Financial Strategy reported to and adopted by Cabinet in September

#### The Policy Development Options

- 5.9 Recognising the existing policy framework helps inform any decision. There are a number of key approaches Cabinet could choose, which meet commercial or social outcomes, or a mixture of both which would enable the use of the council's car parks for a car boot sales/Sunday:
- seek a commercial value for the car boot sales, and to tender this opportunity
  - seek a commercial value for the car boot sales, tender for this opportunity, and provide a percentage or all profits to agreed charities
  - seek to run the car boot sale by the Council, retaining or sharing profits based on a similar scheme suggested in b. as appropriate
  - establish a policy whereby the Council will only consider car boot sales where run for charitable purposes.
- i) Seek a commercial value for our car boot sales and to tender this opportunity

This would require, in accordance with the Councils Contract Standing Orders, the creation of a detailed specification and (subject to contract value) gaining three competitive quotes from the marketplace.

Whilst no market testing by the Council has been carried out in the past, it should be noted that Rushmoor Borough Council in 2015 considered that the

well-established car boot sales in Farnborough and Aldershot, could achieve an income of approximately £100,000.

Naturally, expectations of commercial benefit for a 'start up' car boot sale should be very cautious by comparison to such an established sale but it does raise the potential of significant income streams over time.

Nevertheless, there are some advantages and disadvantages to an external procurement approach which included

- Other than an initial procurement exercise, there would be no additional resource requirement to ensure future provision.
- Income would however be fixed.
- Car parks in different towns/villages could be let on separate bespoke contracts, with different operators. This could enable each event to develop its own identity and could potentially open the way to interested community groups to run a market.
- There may only be limited interest generated by seeking quotes
- No direct control over quality and appearance of markets other than through service level agreements attached to the quotation process.

ii) Seek a commercial value for the car boot sales, tender for this opportunity, and provide all profits to agreed charities

This option places the same Contract Standing Order obligations as outlined in above in terms of seeking competitive quotes. However, the Council could create a new policy for the disbursement of some or all of the profits from the car boot sales, to support existing grant funding provided to charities in the area, or to expand that approach to a new grant funding scheme.

iii) Seek to run the car boot sale by the Council, retaining or sharing profits as appropriate

The benefit of this approach could be

- Potential to develop the 'offer' and work flexibly around pre-existing charitable uses in doing so.
- All fees charged would be retained by the Council or they could share profits with charities, as considered in above subject to a policy approach.

However, the disadvantages would be:

- All risks and liabilities would be held by the Council in an area of work that in which it currently has no resources, knowledge or experience in (an example of the difficulty is reflected in the background as to why the Council agreed to Fleet Town Council taking over the management of the Saturday Gurkha Square market).
- The Council would also need to employ a dedicated resource to proactively invest in the management of car boot sales/Sunday markets as an 'invest to save' addition to the revenue budget. However, to the cost implications may outweigh any financial benefit that could be accrued. Whilst this has not been explored in detail, a similar role was considered by Rushmoor Borough Council (noting it also included a market) was estimated at a cost of £80,000.

An alternative would be explore the opportunity of working with an adjacent local authority to provide the requisite knowledge, technical expertise and capacity to manage the events. Initial discussions suggest that there may be some interest in this approach and if Cabinet were minded to give preference to Recommendation C above, this may be a quicker and more cost effective opportunity.

- iv) Establish a policy whereby the Council will only consider car boot sales where run for charitable purposes.

The Council could create a policy which enabled charitable organisations only to take up the offer of the use of the Council's car parks for the purposes of a car boot sale/Sunday market either on a one off, or longer-term arrangement.

Clearly this would (as would all options) necessitate a consideration of the maximum utilisation the Council would wish to offer; as clearly any alternative use deprives the Council of the income generated from the primary use as a car park.

Additionally, charitable organisation would be required to provide evidence that they could run the car boot sale safely, including suitable public liability insurance and other forms of documentation associated with safe events. Presently this would naturally include a need to show how they would make the event Covid-19 secure.

#### **RECOMMENDATION**

**Cabinet authorises the Joint Chief Executive to carry out further investigations with the expectation of a report to Cabinet in November on one of the following options;**

- i) seek a commercial value for the car boot sales, and to tender this opportunity**
- ii) seek a commercial value for the car boot sales, tender for this opportunity, and provide all profits to agreed charities**
- iii) seek to run the car boot sale by the Council, retaining or sharing proceeds as appropriate**
- iv) establish a policy whereby the Council will only consider car boot sales where run for charitable purposes.**

## **6 FINANCIAL IMPLICATIONS**

- 6.1 The financial impact of a car boot sale/Sunday Market policy will be subject to the level of utilisation of our car parks that it seeks to permit.

This can be considered in light of any potential for income generation, provides for; recognising any policy of sharing this benefit with the charitable organisations will decrease the commercial return which both Corporate Plan and Commercial Strategy otherwise seeks the Council to achieve.

- 6.2 Once Cabinet has established which of the options it wishes the Council to consider in further detail, a more comprehensive analysis of financial implications will be provided.

## 7 PLANNING IMPLICATIONS

- 7.1 Under existing Permitted Development (PD) rules on the temporary use of land, open land (such as car parks) can be used "for any purpose" for up to 28 days in any single calendar year, of which up to 14 days can be to "*hold a market* [by definition this includes car boot sales] *or for motor car and motorcycle racing*". The right also allows the erection of moveable structures such as stalls or a marquee on that land. Therefore, under the long-term rules there is an inbuilt limitation on 14 days for the holding of car boot sales and markets. However, under temporary COVID-19 Regulations a new temporary PD right that effectively doubles this allowance - allowing land to be used for any purpose for 56 days of which 28 days can be used for markets or motor racing - from 1<sup>st</sup> July to 31<sup>st</sup> December 2020. The temporary Regulations allow the local authority to hold a market themselves on most land (except in an [SSSI](#)) between 25<sup>th</sup> June 2020 and 23<sup>rd</sup> March 2021. There is no restriction to the number of days in this temporary period.
- 7.2 None of this has any immediate implication for the Council but it is a consideration for the new year and the nature of any future contracts/licenses.

## 8 LEGAL IMPLICATIONS

- 8.1 Subject to Cabinet's decision to investigate options C(i), C(ii), C(iii) or C(iv) the Council may need to
- a. explore whether the current Street Trading Policy is sufficient and whether it requires the Council to adopt Section 37 of the Local Government (Miscellaneous Provisions) Act 1982 which would provide greater control of markets across the District.
  - b. Explore use of Section 93 of the Local Government Act 2003 which covers the local authority powers to charge for discretionary services

## 9 ACTION

- 9.1 Subject to the strategic direction provided by Cabinet, officers will work on a more comprehensive appraisal of the option chosen by Cabinet in anticipation a report to Cabinet in November 2020.

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Background Reports

Executive Decision of Cllr Oliver 14<sup>th</sup> August 2020

[Hart Corporate Plan 2017-2022](#)

[Hart Commercial Strategy](#)

[Medium Term Financial Strategy report to Cabinet September 2020](#)

[Rushmoor Borough Council Review of Markets and Car Boot Sales 2015](#)