

**Date:** 7 December 2017

**Title:** Report Item 5: Downlands Way Covenants

**By:** Cllr Stewart Fuller

**Purpose of Report:** To provide high level background regarding the covenants for the car parking area in Downlands Way

**Recommendations:** To APPROVE the winding up of the covenants

Around 1997 the PC took over ownership and hence responsibility for the Downlands Way parking area (not the road). It was in need of significant maintenance (retarmacing) at the time and to help recoup the costs, the seven shop occupiers undertook to make annual covenanted payments to the PC. These were originally set at £50 with the facility for the PC to increase them each year by the change in the RPI. The covenants still exist, and the current annual payment is £62.15 – a potential annual income of £435.05. The council is required to collect VAT on the payments, so the total annual cost to each covenantor is £74.58. The recoveries to date have more than met the original tarmacing outlays for the parking areas and indeed the further costs of marking out the car parking spaces in 2006.

It is now proposed that the covenants be wound-up.

Speaking with the Hon Solicitor who was involved with the original arrangement, it seems they were set up simply to recover the initial refurbishment outlays at the time. The covenants were therefore set at a personal level and not registered against the individual freehold properties as this was considered an unnecessary expense as it would have involved a larger scale legal exercise. If the PC wishes to continue the covenanted payments indefinitely then further formal arrangements will be necessary involving potentially significant legal costs. There are admin costs associated with collection of the payments and it is already the case that these are being refused on two of the seven units.

If the covenants are to be formally wound up, the PC and each current covenantor would sign a single deed releasing obligations on both parts - presumably the covenantors would be content with this as it would relieve them of payment; the PC would still have liability as owners of the parking area to keep it in good repair. The Hon Solicitor would be agreeable to deal with the winding up on a *pro bono* basis.

For the draft 2018/19 budget no further covenant receipts are assumed but allowance has been made for ongoing maintenance costs which will be met from the general precept.

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