

To: Parish Council	From: Ian Sage / Chris Wildridge
--------------------	----------------------------------

Coney Wood – Lease evaluation assessment

Introduction

This document has been prepared to enable the Parish Council to decide whether to proceed with leasing Coney Wood from the Woodland Trust. Its context is as follows:

- 1 The draft lease issued by the Trust to the Council prior to 25th March 2015
- 2 The draft risk assessment prepared by the Clerk on 21st November 2014
- 3 Guidance provided by Mr David Stevens, a solicitor on 26th March 2015
- 4 Guidance provided by Mr Chris Eden, land agent at the request of the June meeting, on 23rd July 2015.
- 5 Coney Wood Working Party report, 4th August, 2014 [Coney Wood position statement]
- 6 Other documents referred to later

Risk assessment:

In the Risk Assessment prepared by the Clerk he advises that:

“the Parish Council has the power to “provide public walks and pleasure grounds, and may lay out, plant, improve and maintain them and may support or contribute to the support or purchase of such places provided by any person ... so long as they are situated conveniently for the inhabitants” under the Public Health Act 1875, section 164 ... [it] also has the power to lease land for “any statutory function or simply for the benefit, improvement or development of the area” under the Local Government Act 1972 section 124(1)”

Clearly, the Parish Council has the powers it needs to proceed to lease the wood.

While prepared before the draft lease was available, on the basis of discussions with the Trust, the Clerk addressed a number of practical issues relating to the maintenance of the Wood, the question of continuing support within the village, health and safety concerns, financial implications and management.

Guidance on the terms of the lease.

The Clerk quite rightly did not address any significant legal issues, not being qualified to do so. For guidance on legal issues we sought two views, one from a solicitor, the other from a land agent. Both gave their services free of charge.

Both individuals, although they differed in emphasis, expressed concerns about the one sided nature of the draft lease. Their concerns centred around Section 2, The Tenants’ Covenants. In this section all liabilities of the land owner are transferred to the tenant. In essence the Parish Council pays for anything its insurance doesn’t cover. That includes: legal costs, land disputes, enforcement

notices – e.g. trespass etc., annual maintenance, tree safety, litter, surveys, inspections, invasive species removal [e.g. Himalayan balsam].

A point both individuals identified in the lease was:

2.26: If the Trust gives the Tenant notice of any failure to maintain the Property in the state or condition required by this Lease within a reasonable period thereafter to commence and proceed diligently with and complete the work required to make good such failure, provided that in the case of default the Trust shall be entitled to enter the Property to do such work and the Tenant shall upon demand pay all costs (plus VAT, if any) incurred by the Trust in completing the works required to make good such failure.

Whilst this is standard phrasing in leases of this nature, there is no process identified through which such a point would be reached. The Parish Council might without notice, be exposed to whatever charge the Woodland Trust decided to impose with no right of appeal.

During the course of the Coney Wood project a local landowner suggested to the Chairman that the area identified by the Trust as comprising Coney Wood included some of his land. The Woodland Trust was advised that such a claim had been made. The Woodland Trust has confirmed by email, through Justin Milward on 6th August 2015, that it is aware of the dispute.

Mr Eden also identified that the lease would enable the Woodland Trust to charge for any application for consent for any deed of variation whether or not the consent is granted. Written notice would be required prior to any work [path upgrades, bridges, work on the pond, access for bicycles etc.].

The guidance received from Mr Eden strongly suggests that to proceed with the lease whilst a dispute exists or is threatened would be extremely unwise.

In all instances the degree of risk to which this exposes the Parish Council is severe.

Health and safety

In his Risk Assessment the Clerk highlighted a number of areas of concern, e.g. accidents to a child or adult whilst in the wood injury to a volunteer working in the wood.

A Woodland Trust worker said, in conversation with the Chairman, that he had fallen into the remnants of the lake up to his waist in silt and had only extricated himself with difficulty.

Recently, an environmental organisation, Buglife, wrote to Mr Henry Sage, 1st July 2015, regarding a Springs and Seepages Project which appeared to include Coney Wood as one of its sites in a five year study in association with Wessex Water. A telephone call to Buglife, 6th August, 2015, confirmed that is the case.

It may not be possible to stabilise the flooding of the wood because of the impact of the environmental constraints resulting from the Project. That raises serious risks for the Parish Council in terms of the increased utilisation of the wood by the community.

Finally, Mr Eden asked:

- Why does the Parish Council wish to take on the lease? The wood has a public access covenant even if the lease is required by a third party
- Does it have a possible income potential for the parish council?
- Would it be possible for the Parish Council to have a management agreement with the Woodland Trust to look after the wood [no liabilities for the Council]?

Summary

These are the key factors to be considered by the Parish Council:

- 1 The exposure of the Parish Council to significant financial risk
- 2 The imbalance in the terms of the proposed lease
- 3 The potential dispute over land ownership
- 4 Environmental constraints imposed by external bodies

Recommendation

We offer the following recommendations for consideration by the Council:

- 1 That the Parish Council advise the Woodland Trust that it can proceed with leasing Coney Wood
- 2 That the Parish Council advise the Woodland Trust that it cannot proceed with leasing Coney Wood