



# PUBLIC TOILETS: FREEHOLD TRANSFER

TOWN COUNCIL MEETING

REPORT 78/16

14 NOVEMBER 2016

The purpose of this Report is to ask Members to consider the latest documentation supplied for the Freehold Transfer of the Eastern Esplanade and Ventnor Park Toilets.

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**No.    DETAIL**

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**1)    BACKGROUND**

- a) The Town Council took on responsibility for the management of the Eastern Esplanade, Marlborough Road and Ventnor Park Toilets from 1 April this year under Tenancies at Will as a transition stage while agreement was reached on their freehold Transfer.
- b) The draft documentation for the freehold transfer of the Eastern Esplanade and Ventnor Park toilets was received from the Isle of Wight Council on 22 July with a note that the Marlborough Road document required further work before submission.
- c) The Town Council meeting of 8 August adopted the proposal from its Public Buildings Working Group to refer the two transfers to its solicitor, Glanvilles, for advice.

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**2)    GLANVILLES' REPORT**

- a) The Report by Glanvilles' Rajinder Sangha has now been received and is attached to this Report.
- b) It is accompanied by considerable additional documentation including, for each:
  - the latest drafts of the Transfer Document, TP1 as agreed with the Isle of Wight Council;
  - the Title information and plan;
  - the completed Commercial Property Standard Enquiries;
  - drainage searches; and
  - side letters
- c) At a total of 63 pages, Members are asked to read the 6-page Report and to delegate responsibility for the remainder to the meeting of the Public Buildings Working Group on 15 November.
- d) It is not intended to provide copies of the documentation other than the Report with the papers for the meeting but full copies, already provided to members of the Public Buildings Working Group, although full sets will of course be provided to any Member on request and are available in the Town Council's Office.
- e) Although there are a small number of relatively minor matters to be finalised, the major concerns identified in that Group's previous discussions have now been fully and satisfactorily addressed.

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**3)    RECOMMENDATION**

Members are recommended to:

- i) read and comment accordingly on Rajinder Sanga's Report;
  - ii) approve and authorise the signature of the Transfer documentation for both the Eastern Esplanade and Ventnor Park Public Toilets subject to the Public Buildings Working Group being satisfied with the resolution of the remaining matters identified in the Report.
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## **REPORT ON TITLE – PUBLIC CONVENIENCES AT VENTNOR PARK & EASTERN ESPLANADE**

This report has been prepared for the sole benefit of you, Ventnor Town Council ('VTC'), in connection with your proposed purchase of the public conveniences from the Isle of Wight Council ('IWC') and for no other purpose.

The contents of this report are private and confidential. It must not be relied on by or made available to any other party without our written consent.

The report is based on our review of the title documents, search results, planning documents and replies to pre-contract enquiries given by the IWC.

Where the provisions of the Transfers (TP1s) are summarised, the wording of the provisions has been shortened. Provisions that are likely to be less important when assessing their effect on the value of the public conveniences have been omitted. This report should not be used as a substitute for reading the actual TP1s.

We have not inspected the properties and are unable to advise on the physical condition of them. We would advise you to arrange for a survey of the properties to be carried out, if this has not already been arranged. A survey should identify any physical defects in the properties and may warn of potential defects. It is important to be aware of any defects in the properties before you complete. Once you have completed you will not be entitled to any compensation from the IWC if you have to put right any defects.

We have made no enquiries of the actual occupiers of either of the properties (very unlikely in any event) and have not taken any steps to verify independently the information supplied by the IWC in replies to enquiries.

We express no opinion on the commerciality of the transaction.

### **1. ENCLOSURES**

- Draft TP1 – Ventnor Park
- Draft TP1 – Eastern Esplanade
- Title information and plan – IW68360 (Eastern Esplanade)
- Title information and plan – IW69626 (Ventnor Park)
- CPSE 7 (Eastern Esplanade)
- CPSE 7 (Ventnor Park)
- Email dated 12/10/16 received from Heather Legood
- Drainage Search – Eastern Esplanade
- Drainage Search – Ventnor Park
- Side Letter – Eastern Esplanade
- Side Letter – Ventnor Park

### **2. TRANSFER**

Both Transfers (TP1) are in an identical form so the explanation contained herein applies to both properties. The IWC have agreed to most of my amendments – see email dated 12/10/16 received from Heather Legood.

I can summarise the terms of the Transfer to you as follows:-

1. The property is identified by reference to a plan. It is important that you check the plans carefully and advise me of any errors or omissions.
2. The property is being transferred to Ventnor Town Council – see Panel 6.
3. VTC will pay a nominal consideration of £1.00 for the freehold of both toilets – see Panel 9.

4. VTC must comply with the restrictive covenants set out in 12.3. These will bind the Council and its successors in title. These are standard covenants which are as follows:

- i. You cannot do anything at the property that causes an annoyance or nuisance or damage or disturbance to the Council or any adjoining occupiers. You will see that I have qualified the covenant so that it only applies to matters that you are aware of. It worth stressing this is a standard nuisance/annoyance covenant.
- ii. You cannot do anything at the property that is likely to cause injury to members of the public or prevent access to the service media (see definition). Again this is a standard covenant. No doubt you will adequately insure the toilets in terms of both buildings and public liability risks.
- iii. Most importantly you cannot use the property other than as a public convenience. You cannot use the property for any other purposes or seek to develop it in any other way.
- iv. There don't appear to be any restrictions on your ability to make alterations to the toilets.

5. Clause 12.4 sets out what we call positive covenants. You will not these covenants are not restrictive but impose positive obligations upon VTC in connection with the property. These include the following:

- i. Maintenance of the property to ensure that it is kept open to the general public at all times that are reasonably appropriate for a public convenience.
- ii. You must pay a fair proportion of the cost of repairing and maintaining any party walls, structures or shared service media.
- iii. You must keep the property in good repair and condition.
- iv. You must keep any service media running through the property in good repair and condition.

6. If you transfer the property in the future then any subsequent purchaser must enter into a Deed of Covenant confirming they will comply with the terms of this Transfer. This is to ensure they comply with the positive covenants which traditionally are not binding.

7. The Transfer gives the Council the right to take back the freehold of the toilets at any time within a period of 21 years of the date of completion. The terms of this are provided for in clause 16 (Call Option). The Council may exercise the option if you are in breach of the covenant requiring the property to be kept open as a public toilet or any other term of the Transfer.

The Council also has the option of acquiring the toilets in the event of it looking to "redevelop, regenerate and/or refurbish land and/or premises in the nearby vicinity that necessitates and requires the inclusion of the property". Therefore, if the Council plans on redeveloping an adjoining site which would necessitate the inclusion of your toilet block within the development plans then the Council is entitled to exercise its rights under the Call Option. This is subject to the Council compensating VTC for any improvements made to the property. This is described as the "Transferee's Costs" and the formula for reimbursement is set out in clause 16.8 and 16.9. Have you agreed these terms with the Isle of Wight Council? VTC will need to keep all receipts evidencing any expenditure incurred in connection with the toilets. If the Council exercises the option then it must reimburse you the costs of the improvements – only improvements, not repair costs - but on the proviso that any such costs are discounted by 5% each year from the date on which the works were completed.

The Council have tried to include an example of how the formula would work within clause 16.9. I do not think it is really helpful since you could include lots of different scenarios. For example if you incur the expenditure in year 1 but the option is exercised in year 10 then you would be looking at a 45% reduction. I would welcome your thoughts on this before formally responding to the Council. In particular are you happy with the limitation on the recovery of costs for "improvements" only?

8. You have been granted certain rights in connection with your use and enjoyment of the property and these are set out in Schedule 1. These include standard rights for the free passage of services as well as rights of access on the Council's retained land for the purposes of repairing and maintaining the toilets.

The IWC have now included a right of way over its retained land to the public highway.

9. The Council has reserved rights over the toilets and these are set out in Schedule 2. Basically these reciprocate the rights granted to you i.e. rights of free passage of services, access for repair and maintenance etc. You should also note the Council's right to redevelop any part of the retained land even if it reduces access of light or air to the property. Again this is standard wording.

The Council are willing to issue a side letter whereby it will agree to a release from the obligation to maintain the property as public toilets if the provision of toilets is no longer viable and/or sustainable. I attach a copy of the side letter for your information. The purpose of this letter is to give you comfort in the event of you seeking consent from the Council for change of use.

It is worth stressing that a side letter is only binding between the original parties to the agreement. Ordinarily this could be a problem especially when dealing with private individuals however I do not see this as being a material risk given the bodies involved. However, I would simply amend the Transfer Deed so that you are required to retain the properties as public toilets or such other use as the Council may reasonably approve from time to time. We can then build in the proviso whereby the Council must give consent to change of use if you can demonstrate the provision of toilets on the site are no longer viable or sustainable and that there is sufficient provision for public conveniences within the locality. Again I would welcome your thoughts on this and it may be the case that you need a discussion with the Council about this particular point.

### **3. TITLE**

Ventnor Park – I have supplied you with a copy of the IWC's title. There is nothing I can see contained therein should cause you any issues with regards to your use and enjoyment of the property.

Eastern Esplanade – I have supplied you with a copy of the IWC's title. There is nothing I can see contained therein should cause you any issues with regards to your use and enjoyment of the property. However, the neighbouring Cheetah Marine and Blakes Fishery properties may exercise rights over the toilets for the purposes of connecting into easements (services).

### **4. ENQUIRIES**

The IWC have responded to CPSE7 standard form enquiries for both toilets.

It would appear the Eastern Esplanade toilets are built into the Cascade Arches. The IWC suggest this is maintainable by Island Roads. Is this your understanding? It might be worth contacting Island Roads and asking them to confirm since this could result in a liability for you at some point in the future – enquiry 1.3.

You will note the IWC's comments in connection with a defective water turbine at Eastern Esplanade – enquiry 4.1.

The Eastern Esplanade toilets are served by water, electricity and mains drainage – enquiry 6.1. I believe you are already paying these costs!

I have not checked the planning history for Eastern Esplanade – see enquiry 8.6. You may wish to check the planning permission for any unusual conditions.

I have not undertaken an environmental search – enquiry 12. If you're concerned about contamination then please let me know.

I understand the toilets are exempt from business rates – see reply to enquiry 14.5.

I understand you have been supplied with a copy of the asbestos report in connection with Ventnor Park – enquiry 4.4. Please let me know if you need any advice on your asbestos management duties. Eastern Esplanade is newly built and has no asbestos.

## **5. SEARCHES**

The drainage search result for VENTNOR PARK confirms the following:

That foul drainage from the property drains to a main public sewer. The public sewer map contained in the search confirms the location of the main public sewers. However, the search does not show the route taken by the private drains leading from the property to the main public sewer.

As from the 1st October 2011, water and sewerage companies in England and Wales have become responsible for private sewers. In the event of any repair, maintenance or renewal being required in respect of any drain that is within the boundary to your property and serves no other property then this will be your responsibility. However, if works were required at a point where more than one property uses it or at a point where the drain is not within the boundary to your property, then the responsibility for the works falls on the water company.

Whether surface water from the property drains to a main public sewer (please see section 2.2) If so, there will be private drains leading to the main public sewer and the advice above in respect of private foul drains applies equally to the private surface water drains. If the search provides that surface water drainage does not drain to a main public adopted sewer then you may wish to seek advice from your surveyor or from a drainage specialist in order to clarify the arrangements.

Whether there are any public sewers within the boundaries of the Property (please see section 2.4 and the public sewer map). If there are then you should bear in mind the considerable inconvenience and upheaval that will arise should this part of the main public sewer require inspection, maintenance, repair or renewal. The Water Authority would have statutory rights in this respect and it would not be possible for you to refuse or object to such action and they would not be under any obligation to make good any damage caused to the property. Further, the Water Authority do not permit building works over or within 3 metres of a main sewer unless a written building agreement is entered into with them setting out the basis upon which such building works can be undertaken. A building agreement may require that you pay for the expense of strengthening or diverting the sewers, installing manhole covers and the strengthening of foundations for the proposed building. If you have plans to carry out any works which you think might be affected because of the proximity of the main public sewers, please let us know. Equally if you suspect that existing buildings are in close proximity, please contact us so that we can make appropriate enquiries. Please be aware that if you proceed to build over or in close proximity to public sewers without obtaining a building agreement then the Water Authority has the power to remove/demolish any unauthorised works.

Because of the changes from 1 October 2011 mentioned above there may be other public sewers within the boundaries of the property which are not accurately shown on the result of this drainage search. They would still however be subject to the restrictions on development and building as set out earlier in this letter. I would strongly suggest that you have a specialist drainage service report carried out to ascertain the location of all of the public drains and sewers within the boundaries of the property.

Whether the property is connected to mains water and the location of the main water supply pipes (please see the waterworks map and section 3.1 of the search). The advice above with regard to private pipes in respect of foul and surface water sewers and the maintenance of the same applies equally to private water supply pipes. It is important that you ascertain the location of the external stopcock as you are responsible for the length of pipe from the stopcock to the property (or a contribution if shared). If the external stopcock is not within the boundaries of the property or immediately outside the front boundary then you must let us know straightaway so that we can advise you further. Please note that you must not build over a water supply pipe and it is not possible to obtain consent to do so. The search also confirms the current basis for charges for sewerage, surface water drainage and the supply of water, whether the property has a water meter and whether a change of occupation will affect the basis upon which sewerage and water services are charged.

Whether the property is at risk of flooding due to overloading of public sewers or at risk of low water pressure or flow. If section 2.8 of the search result reveals that the property is subject to any such risks then you should seek further advice from your surveyor and/or a drainage specialist.

Water quality information (please see sections 3.5 and 3.6). If you have any queries in this respect then please contact the Water Authority for further information and if necessary you should seek further specialist advice.

The distance between the property and the nearest sewerage treatment works (please see section 4.1). If you are concerned as to the proximity of any sewerage treatment works then please seek advice from your surveyor.

Please read the result of the drainage search carefully and let us know if you have any queries or concerns.

**EASTERN ESPLANADE** – rather alarmingly the search for this property indicates the property is neither connected to mains drainage or water. However, it does seem to be built over a main sewer. Surely, this cannot be correct? Do you have a Southern Water bill? Would you like me to pursue this further?

Please note that I have not undertaken local or environmental searches. If you would like me to undertake either of these searches please let me know. To assist I would offer the following explanation:-

### **Local Search**

Raising enquiries of the local authority is one of the standard pre-exchange searches that is often carried out when acquiring a property or an interest in it, or taking a charge over it.

Each local authority fulfils a range of functions that may affect a property or its immediate surroundings. Areas of responsibility include roads, environmental health, planning, building control and housing.

Please be aware of the limitations of the local authority search, for example, that the search will not reveal matters affecting neighbouring properties, such as planning information for properties nearby.

### **Environment Search**

On the basis of research on historic and current land use, the Environment Agency has estimated that there are 325,000 potentially contaminated sites in England and Wales, of which some 33,500 are considered to require remediation (Environment Agency Indicators for Land Contamination (August 2005)). The types of activities that help to make up this estimate include petrol stations and garages, gas works, waste treatment sites (including landfills) and engineering works.

Desktop reports are produced through the assessment of electronic data and maps (both historic and current) from which an overall assessment of potential contaminated land liabilities can be made.

As a successor in title to the IWC you may be liable for any clean up costs associated with contamination originating from either of the properties.