

Report



Cabinet Member for Assets and Member Development

Part 1

Date: 22 May 2019

Item No: 03

Subject The Substation At Allt Yr Yn Close, Allt Yr Yn, Newport

Purpose To inform the Cabinet Member for Assets & Member Development (Deputy Leader) of the action taken by Western Power Distribution, (WPD), to replace a substation at Allt Yr Yn Close.

Author Housing and Asset Manager

Ward Allt Yr Yn

Summary Western Power Distribution have replaced an ageing substation from land that they owned to land that is within Newport City Council's ownership and is Covenanted Open Space. Unfortunately, this was an urgent matter and completed before the appropriate Legal documentation. As a result, it is recommended the Council dispose of the land to WPD. However, WPD would be required to indemnify the Council from the breach of the Open Space covenant as recommended by the Head of Law and Regulation.

Proposal That the subject land be declared surplus and disposed of on terms recommended by Newport Norse and approved by the Head of Law and Regulation.

Action by Head of Regeneration, Investment and Housing

Timetable Immediate

This report was prepared after consultation with:

- Strategic Director - Place
- Head of Finance – Chief Finance Officer
- Head of Law and Regulations – Monitoring Officer
- Head of People and Business Change
- Newport Norse
- Western Power Distribution

Signed

Background

Newport Norse were notified of a request for urgent works at a substation in Allt Yr Yn Close where Western Power Distribution (further referred to as WPD) own a parcel of land housing a substation. The substation is located adjacent to Newport City Council owned land.

The request was received on 31st July 2018 notifying that WPD would like to build a new substation, next to the existing one, on the Council owned land. This is in order to avoid any periods without power in the surrounding areas. The Council's Legal team involvement was required to confirm the Council's ownership and to make the appropriate checks to see if the disposal of the land was feasible.

The Legal team confirmed the land was within the Council's ownership; however, they also noted that the land was covenanted Open Space and therefore could not be disposed of. When this was relayed to WPD they responded saying as a preventative measure for loss of power the works had already begun with the new substation and was already in situ on Council owned land.

Given the circumstances Legal were consulted with again to find out the position and their comments were that it was a fait accompli, i.e. as it has already happened there wasn't anything they could do about it. As a result, the Legal team suggest that the land transaction be recorded to WPD, however they would request that WPD indemnify the Council adjust the breach of the Open Space covenant. They also advised that such a transaction would require Cabinet Member approval.

When collaborating with WPD on the matter, they suggested they will transfer their freehold land to Newport City Council to replace the land that has been taken by the new substation. This would result in the Council having more Open Space in the long term than original, however this would have an impact on maintenance budgets going forward.

It is recommended that the site be disposed of to WPD but in accordance with the advice from Legal that WPD indemnify Newport City Council against the Open Space covenant. It is also recommended that if the additional costs of maintenance are not within budget, some remittance is sought from WPD to cover these additional costs.

Financial Summary

There is currently no income being received or capital receipt as the land is Covenanted Open Space. The only financial implication is factoring the additional cost of maintaining the extra land received from the replacing of the substation. The HoF has commented that if possible, the legal agreement should allow for WPD contribution to reasonable excess costs in order that this can be actioned and enforced, if needed.

Risks

Risk	Impact of Risk if it occurs* (H/M/L)	Probability of risk occurring (H/M/L)	What is the Council doing or what has it done to avoid the risk or reduce its effect	Who is responsible for dealing with the risk?
On-going Maintenance	L	L	Factor the additional cost of the extra land to maintain.	Newport City Council

Links to Council Policies and Priorities

Property Rationalisation Programme
Medium Term Revenue Plan (MTRP)

Options Available and considered

1. Take no action
2. Dispose of the land to Western Power Distribution and on the advice from the Legal department seek indemnity for Newport City Council against the Open Space covenant. Seek remittance from Western Power Distribution to cover any additional maintenance costs.

Preferred Option and Why

Disposing of the land to Western Power Distribution to mitigate Newport City Council's liability for breaking the Open Space covenant.

Comments of Chief Financial Officer

There is no loss of income or capital receipt as a result of the disposal of the land. However, if WPD transfers the additional piece of land to the Council, there will be an increased financial burden to the council in the form of additional maintenance costs. Therefore, the legal agreement dealing with the transfer should allow for the possibility of WPD funding additional costs in order that the Council can action this, if this is possible.

Comments of Monitoring Officer

The proposed action is in accordance with the council's legal powers to acquire and dispose of land under sections 120 and 123 of the local Government act 1972. Given that WPD have already constructed their sub-station of this are of council land, then the land should be formally transferred to them in order to regularise the position. Because the land is covenanted as open space, then the transfer should contain an appropriate indemnity from WPD in respect of any claims against the Council for breach of this covenant. If the Council agrees to take their existing sub-station site as exchange land in substitution of the lost open space, then there should be a requirement to pay some form of commuted sum if the future maintenance obligations would exceed previous costs in relation to the sold open space.

Comments of Head of People and Business Change

There are no staffing implications to this report.

From a Well-being of Future Generations (Wales) Act 2015 perspective the sustainable development principle has been considered when writing this report and this is evidenced in the appropriate section of the report.

Comments of Cabinet Member

Cabinet Member has been briefed on the report.

Local issues – Ward Member Comments

Cllr David Fouweather

I note the report and have no objections. The generator is located on a piece of ground near the entrance to Allt-yr-yn Heights and is not used for any play or leisure provision by residents.

Scrutiny Committees

N/A

Equalities Impact Assessment and the Equalities Act 2010

The Equality Act 2010 contains a Public Sector Equality Duty which came into force on 06 April 2011. The Act identifies a number of 'protected characteristics', namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership. The new single duty aims to integrate consideration of equality and good relations into the regular business of public authorities. Compliance with the duty is a legal obligation and is intended to result in

better informed decision-making and policy development and services that are more effective for users. In exercising its functions, the Council must have due regard to the need to: eliminate unlawful discrimination, harassment, victimisation and other conduct that is prohibited by the Act; advance equality of opportunity between persons who share a protected characteristic and those who do not; and foster good relations between persons who share a protected characteristic and those who do not. The Act is not overly prescriptive about the approach a public authority should take to ensure due regard, although it does set out that due regard to advancing equality involves: removing or minimising disadvantages suffered by people due to their protected characteristics; taking steps to meet the needs of people from protected groups where these differ from the need of other people; and encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

Children and Families (Wales) Measure

Although no targeted consultation takes place specifically aimed at children and young people, consultation on planning applications and appeals is open to all of our citizens regardless of their age. Depending on the scale of the proposed development, applications are publicised via letters to neighbouring occupiers, site notices, press notices and/or social media. People replying to consultations are not required to provide their age or any other personal data, and therefore this data is not held or recorded in any way, and responses are not separated out by age.

Wellbeing of Future Generations (Wales) Act 2015

Although the action by WPD was taken without the involvement of the Council it was taken with the prevention of loss of power for the local community and residents. Through their actions WPD have preserved the supply of electricity to the area, without the risk of periods of no electricity. They have also increased the size of the Open Space surrounding the substation, allowing for a greater area for the public to use, albeit one that houses a substation. This will enable the community to remain cohesive and sustainable for the long term future. It was not possible for the Council to engage in any consultation with local residents and others as the decision was out of the Council's hands as an operational necessity to maintain a power supply to the area.

Crime and Disorder Act 1998

Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

Consultation

Comments received from wider consultation, including comments from elected members, are detailed in each application report in the attached schedule.

Background Papers

Site plan attached.

Date: 22 May 2019





