

Portfolio Holder Decision

Subject: Stangrove Area Residents Action Group (SACAG): Swap of minibus

Taken by: Cllr. Avril Hunter

Date of decision:

20-10-11

Details of Decision:

To swap SACAG's minibus CE02UKO for minibus OY53YTB, which has now become available and to dispose of minibus CE02UKO by auction.

Documents considered:

Standard Agreement for the transfer of Minibuses,

Disposal of Minibuses report

Reasons for Decision:

Rural Age Concern Darent Valley were gifted two minibuses by SDC under the Gift of Minibus Scheme in March 2011: OY53YTB and RF59DYJ. Rural Age Concern Darent Valley were unable to run both minibuses. Under the terms of the Standard Agreement for the transfer of Minibuses "if in the future it becomes impossible to deliver the service hereto, the Buyer will use their reasonable endeavours (or arrange for another non- profit organisation) to use the mini-bus(s)" and RACDV returned minibus OY53YTB to SDC.

SACAG were gifted minibus CE02UKO under the Gift of Minibus Scheme, but have had problems with the gearbox on this minibus. Minibus OY53YTB has a manual gearbox, which is easier and cheaper to maintain and has a lower mileage and so it has been proposed to swap the minibuses and to dispose of CE02UKO by action.

Local Member(s), other Portfolio Holders and/or Directors/Heads of Service consulted.

Richard Wilson, Head of Environmental & Operational Services

Lesley Bowles, Head of Community Development

Signed by Portfolio Holder:

Record made by: Simon Davies

Date: 20-10-11

Standard Agreement for the transfer of Minibuses

1. THE PARTIES TO THIS AGREEMENT ARE:

1.1 THE SELLER:

The District Council of Sevenoaks of Council Offices Argyle Road,
Sevenoaks, Kent, TN13 1HG.

1.2 THE BUYER:

Rural Age Concern Darent Valley, 27-37 High Street, Swanley, Kent,
BR8 8AE

- 2.** The object of this Agreement is to transfer a Vehicle (described in Schedule 1) from the Seller to the Buyer for a nominal consideration and the Buyer acknowledges that because of this nominal consideration they will comply with the certain requirements set out herein and produce the monitoring requirements to the Buyer.

NOW IT IS AGREED AS FOLLOWS:

3. Sale and Purchase of motor vehicle

- 3.1** In consideration of the terms of this Agreement the Seller agrees to sell and deliver to the Buyer and the Buyer agrees to buy and take from the Seller the Vehicle for the sum of £1.00 (one pound) ('the Purchase Price').
- 3.2** The Purchase Price does not include any taxes, duties, levies or similar charges (including without limitation VAT) payable in connection with the sale, delivery of the Vehicle or with this Agreement all of which the Buyer shall bear and upon demand pay to the Seller.

4. Delivery

- 4.1** Delivery shall take place by the Buyer collecting the Vehicle from the Sellers Direct Services at Dunbrik Depot at 2 Main Road Sundridge nr Sevenoaks Kent TN14 6EP upon a date to be mutually agreed between the parties hereto.
- 4.2** On or before delivery the Buyer shall pay the Purchase Price to the Seller and sign and give to the seller the Delivery Receipt in or substantially in the Form set out in Schedule 2.
- 4.3** Title to and risk in the Vehicle shall pass from the Seller to the Buyer upon the collection of the vehicle by the Buyer.

5. Ownership and Warranty

- 5.1 The Seller guarantees that they are the legal owner of the Vehicle and that it is free of all encumbrances and any and all legal claims and is clear of all liens charges and encumbrances.

6. Disclaimer

- 6.1 The vehicle is sold "As-Is" that is its actual state and condition at the time of Delivery and the Seller shall not be liable for any defects, patent, latent or otherwise.
- 6.2 The Buyer admits to having inspected the vehicle to their satisfaction and that no guarantees or warranties of any nature were expressed or implied by the Seller or any agent regarding its condition or quality.

7. Indemnity

The Buyer shall indemnify and keep indemnified the Seller and it's employees at all times after the Delivery from and against all liabilities, penalties, claims, proceedings, judgements, damages, obligations, costs and expenses of any nature whatever arising in any way directly or indirectly out of the ownership, management and control use or operation of the Vehicle provided that such indemnity shall not extend to any liability which would otherwise be assumed by the Seller as a result of the warranty given in clause 5.

8. Possession and transfer of risk

- 8.1 The risk passes to the Buyer once the Buyer receives the keys to the vehicle.
- 8.2 Once the buyer has received the keys to the Vehicle the Buyer shall be responsible for all maintenance repairs and replacements to the Vehicle at their own cost.
- 8.3 The Buyer shall complete with the Seller all necessary registration documents required for the requisite Government agencies prior to taking the Vehicle away.

9. General

- 9.1 This Agreement constitutes the entire agreement between the parties in relation to its subject matter and no addition to or variation of it shall have any effect unless in writing and signed by a person duly authorised on behalf of each of the Seller and Buyer.
- 9.2 The Buyer may not assign, delegate or otherwise deal with any of its rights or obligations under this Agreement.

9.3 The rights of either party shall not be prejudiced or restricted by any indulgence or forbearance extended by such party or by any delay in exercising or failure to exercise any right and no waiver by either party of any breach shall operate as a waiver of any further breach.

9.4 The parties to this Agreement do not intend by this Agreement to confer any rights whatsoever on any other person. Accordingly, the parties hereby expressly exclude the provisions of the Contracts (Rights of Third Parties) Act 1999 (or any re-enactment thereof).

10. Monitoring

10.1 The Buyer acknowledges that any in operation of the Vehicle they will comply with all relevant legislation including but not limited to a Public Service Operators Licence and that the Vehicle will be driven by a qualified vocational driver.

10.2 The Buyer is aware that they as owners will be responsible for all outgoings in respect of the vehicle and that the Seller will have no future responsibility or liability in respect of the Vehicle or for delivery of any future strategy or service.

10.3 The Buyer agrees that every six months for a period of 1 year from Delivery that they will provide the following information to the Seller: -

10.3.1 The number of service users (passengers) of the vehicle

10.3.2 Number of journeys made and the routes used.

10.4 The Buyer confirms that they will predominately use the Vehicle within the Sevenoaks District administrative area but if in the future it becomes impossible to deliver the service as described in Schedule 3 hereto the Buyer will use their reasonable endeavours (or arrange for another non- profit organisation) to use the mini-bus(s) to support the Sellers Community Plan requirements in order to try to meet the needs of an ageing population, improve the lives of young people, improve health and well being so that the service helps to make strong and active communities and keeps people moving within the Sevenoaks District.

10.5 The Buyer shall recognise that the Vehicle is a gift from the Seller in any publicity and promotional material and shall use the Buyer's logo in that regard.

11. Notices

All notices and other communications under this Agreement (unless otherwise especially contemplated in this Agreement) shall be in writing and in English and either delivered by hand or fax in each case to the following address or fax number of the intended recipient:

In the case of the Seller :

Address: Legal Services, Sevenoaks District Council, Council Offices, Argyle Road, Sevenoaks, Kent, TN13 1HG.

Facsimile: 01732 227340

Attention: Legal Services Manager

In the case of the Buyer:

Address: Rural Age Concern Darent Valley, 27-37 High Street, Swanley, Kent, BR8 8AE

Facsimile:

Attention: John Arnold

12. Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with English law and the parties hereto agree that the English courts have exclusive jurisdiction to adjudicate any dispute which arises in connection with this Agreement.

Signed as a Deed by

the Seller in the presence of

Witness _____

Name:

Address:

Signed as a Deed by the Buyer

Witness _____

Name:

Address:

Schedule 1

The Vehicle the object of this sale is:

Type and make of vehicle: VW/UV Coach Build

Year of manufacture: 2003

Registration Number: OY53YTB

Schedule 2

I/we acknowledge having received and accepted Delivery of the Vehicle (and related documents) which is the type described below: -

Type and make of vehicle: VW/UV Coach Build

Year of manufacture: 2003

Registration Number: OY53YTB

and confirm that we are satisfied with the condition of the Vehicle having examined the same.

Dated day of 2011

Signed: _____

Print name: _____

Charity: _____

Schedule 3

Minibus will be used exclusively for the transport of Sevenoaks residents in the Northern part of the District using the same criteria as that of SDC.

CABINET – 10TH FEBRUARY 2011

DISPOSAL OF MINIBUSES

Report of the: Community & Planning Services Director

Also to be considered by: Performance & Governance Committee – 15 February 2011

Status: For decision

This report supports all the key aims of effective management of Council resources.

Portfolio Holder Cllr Mrs Hunter

Head of Service Head of Environmental & Operational Services – Richard Wilson

Recommendation: It be RESOLVED that:-

- a) Subject to the comments of the Performance & Governance Committee, Cabinet determine in principle whether to gift any or all of the Council's minibuses fleet to organisations offering to undertake passenger journeys currently provided by this Council.
 - b) If minibuses are to be gifted to any organisation, a gift aid criteria application process be devised enabling the buses to be used, for the remainder of their life, for undertaking passenger journeys currently provided by this Council.
 - c) All applications received in accordance with the agreed criteria be determined in consultation with the Portfolio Holders responsible for the minibus service and finance and value for money.
 - d) If it is agreed not to gift aid any minibuses to relevant organisations, the minibuses are offered to such organisations, rather than go to auction, at the estimated residual market value.
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Background

- 1. Members will be aware that as part of the budget approval for 2011/12 and beyond, it was agreed, with effect from 01/04/2011, to withdraw Council funding for the Council's Minibus Service. This decision reduces expenditure on the general fund by £333,000 per annum.
- 2. Since the savings proposals were published in October 2010, discussions have been taking place with various groups to consider the implications of the Council withdrawing its Minibus Service.

3. Discussions are still ongoing with Age UK (Sevenoaks); Rural Age Concern Darenth Valley; Swanley Volunteer Centre; Compaid; Voluntary Action Within Kent (VAWK); Edenbridge Voluntary Transport Service; KCC Social Services and KCC Transport Services; Sevenoaks Lions Club and other voluntary transport organisations to ascertain if any of the current journeys undertaken by the Council's minibus service could be delivered by any of the above organisations.
4. As part of these ongoing discussions, various voluntary groups have enquired about the possibility of the Council minibuses being made available to them, when the Council service ceases on 31st March 2011.

Existing Minibus Fleet

5. The Council owns nine minibuses, detailed on Appendix A. Four of these buses are still in depreciation and all have a residual market value, dependent on their age, totalling approximately £62,000.
6. Buses are normally disposed of by auction, when they have reached the end of their economic life, and receipts received from sales are 'paid back' into the vehicle replacement fund. The residual values quoted on the Appendix relate to the estimated sale price these vehicles would receive at auction.
7. The depreciation charges are also 'paid back' into the vehicle replacement fund to ensure that funds are available to replace vehicles, when due for replacement. As at January 2011, the outstanding value of depreciation costs on four buses is £102,101. When the vehicles are disposed of, this depreciation value will not be paid into the vehicle replacement fund. Clearly, once the service ceases, there will be no requirement to replace these buses.

Gifting of Minibuses

8. It is becoming clear, through discussions with the various voluntary groups, that their ability to deliver existing passenger journeys once the Council ceases its service, is dependent on the availability of funding. It has been suggested, by several groups, that their ability to do this would be greatly assisted by the 'gifting' of the Council's minibuses to them.
9. At the time of preparing this report requests for minibuses have been received from:

VAWK – RF59 DYJ or GN58 KNK
COMPAID – One or more vehicles
Rural Age Concern, Darenth Valley – Two of the newer buses
Age UK (Sevenoaks) – one vehicle
10. It is possible that further requests for minibuses from voluntary and other groups may be received.

Criteria

11. It is recommended, that if it is agreed to 'gift' any of the minibuses to relevant organisations a gift aid criteria application process be devised to ensure that the gifted minibus is used, predominately, for passenger journeys, to the clientele, that the Council's minibus services currently provide for (a draft of the criteria and application form is included at Appendix B).
12. It has become clear, through discussions with voluntary groups that their ability to deliver passenger journeys currently provided by the Council's minibus service, would be greatly assisted by the gifting of minibuses. As mentioned above, funding will be a key aspect for these organisations being able to deliver transport services that are additional to their current service. However if they are able to provide assurance that they will meet the Council's criteria regarding passenger journeys provided and offered, the gift of a minibus will significantly enhance their ability to do so.
13. This may also provide opportunities for existing drivers who are currently on redundancy notice with effect from 1st April. However, it must be clear that this is not a Transfer of Undertaking that would be covered by Transfer of Undertaking (Protection of Employment) legislation, (TUPE), where staff would transfer on the same terms and conditions they are currently employed on. Transfer of existing drivers under TUPE would, for cost reasons, likely to prevent any of the organisations fulfilling this role.

Comments of the External Auditor

14. In relation to this matter, the External Auditor has been consulted and the Council has received the following comments from them:

From an audit perspective, and on the basis of the information presented, we do not have any concerns regarding your proposal. I understand that the Council is planning to rely on using 'well being powers' under Local Government Act 2000. In using the well being power, councils need to demonstrate that they have properly considered how proposals or actions will contribute to wellbeing objectives. Hence there needs to be evidence that these matters were thought about at the time decisions were taken.

15. The legal implications below do set out how the Council would demonstrate proper consideration of contribution to well being objectives.

Key Implications

Financial

16. Finance procedure rules require that:

Where the value of any individual item exceeds £5,000 but is below £10,000, a report must be presented to the Value for Money Portfolio Holder for approval before being disposed of and removed from the asset register.

17. Where the value of an individual item exceeds £10,000 the report must be presented to the Cabinet for approval before being disposed of and removed from the asset register.
18. The current residual market value of the minibuses is estimated at £62,000, if sold at auction. This residual value, if the buses were sold at auction, would be repaid back into the vehicle replacement fund. In addition, depreciation charges of approximately £102,000, that would have been paid into the vehicle replacement fund, if the vehicles had been retained to the end of their depreciation life (7 years) will not be repaid back into the vehicle replacement fund. Clearly, when the service ceases with effect from 1st April 2011, there will no longer be a requirement to replace these vehicles.

Legal, Human Rights etc.

19. Section 2 of the Local Government Act 2000 enables local government to do anything which it considers is likely to achieve any one or more of the following objectives:-
 - a) the promotion or improvement of the economic well being of their area,
 - a) the promotion or improvement of the social well-being of their area, and
 - b) the promotion or improvement of the environmental well-being of its area.
20. The power may be exercised in relation to or for the benefit of the whole or any part of a local authority's area, or all or any persons resident or present in a local authority's area. In determining whether or how to exercise the power a local authority must have regard to their community strategy. The Council's Community Plan has identified that:
 - Keeping Sevenoaks District moving is a key priority in the Sevenoaks District Sustainable Community Action Plan 2010-13. The emerging Sevenoaks District Transport Strategy recognises the vital role transport has in dealing with social as well as economic issues. The sparsely populated and rural nature of the District presents problems in accessing services due to a lack of rural transport services.
 - In a rural District like Sevenoaks, it is easy for people to find themselves cut off from important services and recreational facilities. Older people need to have access to appropriate services to maintain and improve their quality of life and to live as independently as possible. One of the barriers that young people face is the issue of transport and accessibility.
21. The power includes the power for a local authority to incur expenditure, give financial assistance to any person, enter into arrangements or agreements with any person, co-operate with, or facilitate or co-ordinate the activities of, any person, exercise on behalf of any person any functions of that person, and provide staff, goods, services or accommodation to any person. The power includes power for a local authority to do anything in relation to, or for the

benefit of, any person or area situated outside their area if they consider that it is likely to achieve any one or more of the objectives as set out above.

22. This power can be relied upon in respect of any recommendations set out in this report which amount to a gift in whole or in part of the Council minibuses fleet to organisations who this Council believes would use the minibuses to achieve any one or more of the objectives as set out above.
23. In order to satisfy itself that one or more of the objectives as set out above will be achieved it is recommended that this Council obtains from the organisations who are willing to undertake passenger journeys for the benefit of the community their proposals for how they intend to use the mini buses which can be appraised by this Council according to a set of criteria as set out in Appendix B to this report. By using such methodology this Council will be able to demonstrate that it has chosen organisation(s) according to a fair and equitable process thus reducing the risk of a legal challenge from an unsuccessful organisation.
24. It is recommended that the chosen proposal(s) be documented within either a Letter of Intention or a Legal Agreement. Such documentation would reduce the risk of the chosen organisation(s) failing to honour any of the commitments made to this Council.

Resources (Non Finance)

25. The disposal of nine minibuses, by gift, or other method.

Community Impact and Outcome

26. The current minibus service provides approximately 54,000 passenger journeys per annum to predominately elderly and disabled residents. It is anticipated that enabling other organisations to undertake the journeys will minimise the impact on the existing clientele.

Equality

27. The current service is delivered to primarily elderly and disabled residents of the District. Enabling other organisations to undertake these journeys will assist in minimising the impact on the existing clientele.

Risk Assessment Statement

28. The Council's minibus service will cease operation from 1st April 2011. It is considered that through discussions, other organisations may be able to deliver some of the current journeys to existing passengers in the future. The enabling of this would be assisted by gifting minibuses to these organisations, on the agreement that they would fulfil the agreed criteria. The gifting of minibuses will result in a financial loss to the Council of the residual market value of the vehicles, if sold at auction.

29. By not gifting minibuses to organisations likely to be willing to undertake existing passenger journeys, the ability to enable these organisations to do so, would be diminished.

Sources of Information:

Minibus data 2010/11
Budget 2011/12
Minutes of discussion meetings with various groups

Contact Officer(s):

Richard Wilson – 01732 227262 or 01959 567351

Kristen Paterson

Deputy Chief Executive & Director of Community and Planning