

Agenda Item 26/27/162

Amenities Committee 23 September 26

Buggy Refuge Area, Ricketts Lane - Legal Advice, Insurance Advice and Risk Assessment

1. Purpose of Report

To provide Members with the findings of legal advice obtained from Danielle Maxwell of Battens Solicitors regarding the Town Council-owned buggy refuge area at Ricketts Lane, together with advice received from the Council's insurance broker, and to seek a decision on how the Council wishes to proceed.

2. Background

The Town Council is the registered owner of the land forming the buggy refuge area adjacent to Ricketts Lane following a transfer completed on 19 March 2014. The land was acquired for public benefit and forms an extension to the pavement, allowing pedestrians, wheelchair users, mobility scooter users and those with pushchairs to pass safely without stepping into the carriageway.

The Town Council subsequently funded highway works costing £4,420.80 to create the refuge for public use.

In early 2025 the Council became aware that a commercial trade waste bin belonging to the adjacent restaurant business had been placed on the refuge area without the Town Council's permission. The business was contacted and requested to remove the bin; however, the bin remains in situ.

The Town Council has also received reports and observations that:

The bin obstructs the use of the refuge by pedestrians.

The refuge cannot be used as originally intended by pedestrians with pushchairs, wheelchairs and mobility scooters.

Waste has periodically been left around the bin.

Oil leakage has been observed around the area.

Odour nuisance has been reported.

The refuge is situated on a key pedestrian route through the town, including access to the recreation ground and routes used by families and school children.

At the Amenities Committee meeting held on 24 September 2025, Members resolved that clarification should be sought regarding the conditions attached to the transfer of the land and that a further report be brought back to Committee. Apologies for the length of time this has taken. Issues with solicitors and other work priorities have prevented this matter from being brought back to the Committee sooner.

3. Legal Advice Obtained

The Town Council instructed Battens Solicitors to review the title documentation and provide advice regarding ownership, liability and available remedies.

The solicitor confirmed that Sturminster Newton Town Council is the registered owner of the land.

During the review Battens identified an error within the Land Registry records which incorrectly described the location as being within Okeford Fitzpaine rather than Sturminster Newton. Battens subsequently liaised with HM Land Registry and the address issue has now been corrected.

Covenants and Restrictions

Members had previously queried whether the transfer documentation required the land to be used solely as a buggy refuge.

Following review of the title documents and transfer deed, Battens advised that they were unable to identify any covenant requiring the land to be used exclusively as a buggy refuge.

The transfer deed does, however, contain provisions requiring the Town Council to maintain appropriate liability insurance and to indemnify the former owners against claims arising from use of the land.

Use of the Land by the Adjacent Business

Battens advised that the adjacent business has no established right to occupy or use the Town Council's land for storage of a commercial waste bin and that such use constitutes a trespass.

The solicitor recommended that:

The occupiers should be formally requested to cease using the land.

A solicitor's letter could be issued if necessary.

If informal requests fail, further legal remedies including an injunction would be available to the Town Council.

Liability

Battens advised that liability for accidents occurring on the public highway outside the Council's land would not ordinarily fall upon the Town Council merely because the refuge was obstructed.

4. Insurance Advice Obtained

Following receipt of the legal advice, the Town Clerk sought guidance from the Council's insurance broker regarding the practical insurance and risk implications of allowing the bin to remain on Town Council land.

Insurance Cover

The Town Clerk has confirmed that the buggy refuge area is included within the Council's insured assets and is covered by the Council's existing insurance arrangements.

The broker advised, however, that the existence of insurance cover should not be interpreted as removing risk. Insurance is intended to mitigate financial loss in the event of an incident and does not remove the Council's responsibility to manage foreseeable risks where reasonably practicable.

The broker further advised that permitting the continued storage of a commercial waste bin on Council land increases the likelihood of incidents occurring which may result in claims, disputes, increased premiums or uninsured costs.

Fire Risk

The bin is positioned beneath overhanging residential accommodation.

The broker advised that:

The location presents a potential fire risk.

The bin is not secured and can be accessed by members of the public.

Deliberate or accidental ignition could result in damage to the residential property above.

Insurance response in such circumstances could become a matter of dispute depending on the circumstances of any claim.

Public Liability and Safety Risk

The broker noted that oil leakage has been observed around the bin.

This creates potential risks including:

Slips and falls.

Injury claims.

Costs associated with claims investigation and defence.

As the Council owns the land, such incidents could result in the Town Council becoming involved in liability disputes regardless of ultimate responsibility.

Environmental and Nuisance Issues

The broker raised concerns regarding:

Leakage from the bin.

Potential contamination of surfaces.

Drainage concerns.

Complaints from neighbouring properties.

Damage to the Council Asset

The broker also raised concerns regarding:

The weight of the commercial waste bin.

Repeated movement and handling of the bin.

Potential deterioration or damage to the refuge surface.

Members may therefore wish to consider who would be responsible for any future repair costs arising from continued commercial use of the site.

Overall Risk Position

The broker's overall advice was that allowing the bin to remain on Town Council land increases the Council's exposure to avoidable liability and asset management risks.

5. Officer Assessment

The legal advice confirms that the adjacent business has no identified right to occupy Town Council land and that the continued storage of the bin constitutes a trespass.

Whilst Battens found no covenant requiring the land to be used exclusively as a buggy refuge, there is equally no evidence that the land was intended to be used for the storage of commercial waste facilities.

The insurance advice highlights a number of practical risks associated with allowing the bin to remain, including:

Fire risk.

Public liability exposure.

Environmental risk.

Potential damage to Council infrastructure.

Future insurance and claims implications.

It should also be noted that the Town Council invested public funds to establish the refuge area for pedestrian safety purposes. Allowing a private commercial waste bin to occupy the site removes much of that public benefit whilst introducing risks which are borne by the Council as landowner.

6. Matters for Members to Consider

Members are asked to consider:

The solicitor's advice that the current use of the land constitutes trespass.

The absence of any identified legal right permitting the business to occupy the land.

The Council's responsibilities as landowner.

The fire risk identified by the Council's insurance broker.

The possibility of public liability claims arising from slips, trips or falls.

The potential for environmental nuisance and contamination.

The potential for damage to the refuge surface and future repair costs.

The original purpose of the refuge area as a pedestrian safety feature.

The wider implications of permitting commercial use of Town Council land without formal agreement.

The reputational implications of knowingly accepting identified risks.

7. Officer Recommendation

Having considered both the legal advice provided by Battens Solicitors and the advice received from the Council's insurance broker, it is the professional recommendation of the Town Clerk that the Council require the removal of the commercial waste bin from Town Council land and take appropriate steps to prevent future unauthorised use of the refuge area.

This recommendation is made because:

The current occupation has been identified by the Council's solicitor as a trespass.

No legal right has been identified permitting the use of the land for the storage of a commercial waste bin.

The continued presence of the bin exposes the Council to avoidable fire, liability, environmental and asset management risks.

The risks identified primarily benefit a private business whilst being borne by the Town Council as landowner.

Removal represents the lowest-risk option available to the Council.

Should Members determine that the bin is permitted to remain on Town Council land, they should do so in full knowledge of the legal and insurance considerations identified within this report.

