

TITLE OF REPORT: KING GEORGE V PLAYING FIELDS, HITCHIN – CHARITABLE TRUST - LEASE TO HITCHIN RUGBY FOOTBALL CLUB LIMITED

REPORT OF THE HEAD OF FINANCE, PERFORMANCE AND ASSET MANAGEMENT

1. SUMMARY

- 1.1 To update the Cabinet Sub-Committee on the progress of lease negotiations since the former Cabinet Sub-Committee (King George V Playing Fields Charitable Trust) meeting that took place on 14 May 2013.
- 1.2 To report on additional issues arising in respect of Hitchin Rugby Football Club's occupation of the land that have been identified since the aforementioned Cabinet Sub-Committee meeting on 14 May 2013.

2. RECOMMENDATIONS

- 2.1 That Members note the update on the progress of lease negotiations provided by this report, and specifically that an independent chartered surveyor has been appointed to negotiate on behalf of the Council as Trustee in order to expedite compliance with charity law requirements.
- 2.2 That Members note that a future report will be presented to the Cabinet Sub-Committee confirming the outcome of the Independent Surveyor's negotiations, including proposals for future management of the trust property and playing fields.
- 2.3 That Members note the additional issues that have arisen in respect of Hitchin Rugby Club's occupation of the land and provide any comments that they may wish to make in respect of these.

3. REASONS FOR RECOMMENDATIONS

- 3.1 To enable the prospective transfer of the trust land to proceed.
- 3.2 To ensure that the charitable trust complies with its statutory duties.

4 FORWARD PLAN

- 4.1 This report does not contain a recommendation on a key decision and has not been referred to in the Forward Plan.

5. BACKGROUND

- 5.1. At a previous meeting held on 14 May 2013 Members of the former Cabinet Sub-Committee (King George V Playing Fields Charitable Trust) considered a number of issues relating to the ongoing management of the King George V Playing Fields, Hitchin. This included further consideration of the proposed heads of terms put forward by the Rugby Club.
- 5.2 The Sub-Committee resolved that the Council's Senior Estates Surveyor be delegated to continue negotiations with the Hitchin Rugby Football Club regarding the terms of a proposed new lease of the clubhouse. At that time there were a number of issues to be negotiated with the Club. This report provides an update.

- 5.3 Since the meeting of 14 May 2013 additional issues relating to the Rugby Club's occupation of the trust land have required consideration, namely;
- Management of the playing pitches
 - Public events

6. LEASE NEGOTIATIONS

- 6.1 The Senior Estates Surveyor has been in contact with the Chairman of Hitchin Rugby Football Club to progress negotiations. The Rugby Club require more land and buildings for their redevelopment than held under their existing ground lease of the club house. The Rugby Club were therefore requested to provide a formal plan showing the exact area they required. This plan is necessary to enable appropriate terms to be identified and incorporated into draft heads of terms, and ultimately the draft lease. Unfortunately it took some time for the plan to be provided, resulting in a delay in producing the heads of terms. However terms were produced in late August and on 2nd September a draft lease was sent to the Rugby Club's solicitor for comment.
- 6.2 In response to the draft lease the Rugby Club's solicitor indicated that there were some fundamental issues of dispute but did not provide any details of what these were. The solicitor requested a meeting to discuss these issues. NHDC's legal team asked that before a meeting be arranged, clarification of the matters in dispute be provided. The Senior Estates Surveyor has also contacted the Rugby Club's Chairman along similar lines. At the time of writing neither the Rugby Club or their solicitor have confirmed the issues of dispute other than that they are not prepared to contribute towards the future repair of the car park.
- 6.3 As explained in the Legal Implications at paragraph 9 the lease will need to be approved by an independent chartered surveyor before it can be effective. This is explained in more detail below. Jim Wilcock FRICS of Brown and Lee was previously appointed to fulfil this function prior to the Sub-Committee meeting in May 2013.
- 6.4 The earlier proposals put forward by the Rugby Club in respect of the lease (referred to at paragraph 5.1 above) are not terms that an independent surveyor could agree to recommend to the Trustees.
- 6.5 Given the current impasse in negotiations with the Rugby Club, Jim Wilcock has now been reappointed to proceed with the negotiations rather than the Council's Surveyor. The effect of this appointment will be to help minimise the risk of delay at a later stage. Members of the trust committee are asked to note this development.
- 6.6 One of the remaining uncertainties is how the Fields in Trust, who have the final say as to whether the Lease should be granted on the terms proposed, will deal with their decision making. The Rugby Club have been informed of this. It is understood that the Rugby Club have been in direct contact with Fields in Trust. Details of this contact have been requested by the Senior Estates Surveyor but have not yet been provided by the Rugby Club. It is hoped that the approval of the Independent Surveyor might be sufficient to satisfy Fields in Trust, but this is not certain.

7. MANAGEMENT OF THE PLAYING PITCHES

- 7.1 For a number of years the Rugby Club have been managing the Trust's playing fields together with the adjoining St Michael's Pitches owned by Hertfordshire County Council. Under this arrangement the Rugby Club take bookings for pitches and rooms, collect hire charges and provide use of the Trust's changing rooms to the hirers.

- 7.2. The Rugby Club are now aware that revised arrangements need to be set up for the management of the playing fields to comply with Charity Law and to account properly for all income and expenditure from King George V Playing Fields. The pitches are outside the Rugby Club's existing and proposed future lease. The Rugby Club have indicated that they are willing to continue to manage the bookings and provision of the facilities. This will incur administrative costs for the Rugby Club. These could be offset against the income that the Rugby Club receives from hire charges.
- 7.3 Currently the Trust's changing rooms are subject to an existing management agreement (between the Rugby Club and the Council). When the management agreement was put in place in 2002 it created a management committee comprising Members of the Rugby Club and other users, NHDC Councillors and Officers. Whether or not a new lease is granted to the Rugby Club, it is recommended that in the best interests of the Trust these arrangements will need to be reviewed to bring them in line with the objectives of the Trust. An appropriate mechanism for achieving this would be to put a new management arrangement in place which simply governs use of the pitches and removes the need for a management committee. The agreement could operate alongside the existing or new lease. The current function of the management committee could be replaced by creating a user group for the premises and pitches.
- 7.4 Proposed terms for a new management agreement were partially included in the heads of terms drawn up in August 2013. However, given that the Rugby Club have confirmed that there are fundamental points of dispute in respect of those terms, a draft management agreement has not yet been prepared.

8. PUBLIC EVENTS

- 8.1 Earlier in the year the Rugby Club held a beer festival at the King George V Playing Field. It is understood that tickets and drinks were sold from both a marquee on the playing fields and the club house. This was a special event outside the clubs normal use of the pitches for rugby and other sports which is the use envisaged and permitted by the existing lease and management agreement. It appears that although the Rugby Club obtained an events licence they did not request consent from the Trustees as landowner to use the land for the beer festival. As the event was carried out on the Trust's land and was not specifically permitted by the existing legal documentation, the Rugby Club should have obtained prior consent from the Trust and accounted for all income and expenditure. They have been asked to provide details of income and expenditure from the beer festival but this has not yet been received.
- 8.2 It is possible for the proposed new lease and management agreement to permit use of the trust land for special events. However any such use would have to be consistent with the trust objectives. The Council's Senior Estates Surveyor has enquired from the Rugby Club what aspirations they have in this regard to establish whether the Council acting as trustee, rather than licensing authority, can accommodate the club's future plans. These discussions have taken place alongside the lease negotiations but officers remained mindful that a new lease is the primary focus. Any proposals to allow the Rugby Club to hold further public events will form part of a future report to members.

9. LEGAL IMPLICATIONS

- 9.1 The Council is the trustee of the property and this Sub Committee of the Council's Cabinet are in effect a managing committee appointed on behalf of the Council to manage this charitable trust. This Sub Committee's powers to deal with matters relating to management of the King George V Playing Fields are contained in its terms of reference.

9.2 The Charities Act 2011 provides that any disposal of Charity Land must have the specific consent of the Charities Commission unless it can be dealt with under the procedure for the disposal of charities land contained in sections 119-121 of the Charities Act 2011.

9.3 Sections 119-121 of the Charities Act 2011 provide that a charity may dispose of land without a specific consent from the Charities Commission if that disposal satisfies the following conditions

the disposition is made to a person who is not:-

- a connected person (as defined in section 118), or
- a trustee for, or nominee of, a connected person, and

The trustees take the following steps:-

- obtain and consider a written report on the proposed disposition from a qualified surveyor instructed by the trustees and acting exclusively for the charity,
- advertise the proposed disposition for such period and in such manner as is advised in the surveyor's report (unless it advises that it would not be in the best interests of the charity to advertise the proposed disposition), and
- decide that they are satisfied, having considered the surveyor's report, that the terms on which the disposition is proposed to be made are the best that can reasonably be obtained for the charity.

9.4 A connected person is defined in the Charities Act as follows:-

(1)“*connected person*”, in relation to a charity, means any person who falls within—

- (a) a charity trustee or trustee for the charity,
- (b) a person who is the donor of any land to the charity (whether the gift was made on or after the establishment of the charity),
- (c) a child, parent, grandchild, grandparent, brother or sister of any such trustee or donor,
- (d) an officer, agent or employee of the charity,
- (e) the spouse or civil partner of any person falling within any of paragraphs (a) to (d),
- (f) a person carrying on business in partnership with any person falling within any of paragraphs (a) to (e),
- (g) an institution which is controlled—
 - (i) by any person falling within any of paragraphs (a) to (f), or
 - (ii) by two or more such persons taken together, or
- (h) a body corporate in which—
 - (i) any connected person falling within any of paragraphs (a) to (g) has a substantial interest, or (ii) two or more such persons, taken together, have a substantial interest.

9.5 The Rugby Club are not "connected" to the Council within the meaning of the above paragraph, this is an aspect of the transaction that will need to be kept under review.

9.6 The Trust arrangements under which the Council owns the land are further complicated by the fact that the Council owns the land on behalf of the King George's Fields Foundation Trust also known as Fields in Trust (FIT). The practical effect of this arrangement is that the Council must obtain FIT's approval to the transfer.

9.7 FIT will only approve a transaction that is compliant with the requirements of the Charities Act 2011. Therefore decision makers will need to be aware that any decision that is made by this sub-committee will be subject to the decision of FIT. This is a peculiarity of the arrangements governing this charitable trust.

9.8 In addition to the requirements outlined above, s.121 of the Charities Act states that trusts of land will need to be advertised prior to completion. The Council complied with this obligation following the meeting of the sub-committee convened in May 2013.

10. FINANCIAL AND RISK IMPLICATIONS

10.1 The Council is subject to the following duties in making this decision

- Fiduciary duty as a the trustee of the King Georges V Fields trust
- Contractual duty as the nominee of Fields in Trust
- Statutory duty as Charity Trustee
- Statutory duties as Local Authority land owner.

There is a risk that failure to comply with the correct procedures in this case could lead to a breach of one or more of the above duties.

10.2 A failure to follow the statutory procedure in any particular disposal could result in an ineffective transfer and resultant damages.

11. HUMAN RESOURCE IMPLICATIONS

11.1 There are no Human Resource implications from this report.

12. EQUALITIES IMPLICATIONS

12.1 The Equality Act 2010 came into force on the 1st October 2010, a major piece of legislation. The Act also created a new Public Sector Equality Duty, which came into force on the 5th April 2011. There is a General duty, described in 12.2, that public bodies must meet, underpinned by more specific duties which are designed to help meet them.

12.2 In line with the Public Sector Equality Duty, public bodies must, in the exercise of its functions, give **due regard** to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.

12.3 There is unlikely to be any loss of public amenity land arising from the proposals in this report as the proposals are to replace existing property using a similar footprint. There are also positive equality implications. Were Cabinet minded to support the granting of a new long lease the proposal would be of benefit to the wider North Hertfordshire community and provide changing facilities to the very latest standards, including in terms of accessibility.

13. SOCIAL VALUE IMPLICATIONS

13.1 As the recommendations made in this report do not constitute a public sector contract, the measurement of "social value" as required by the Public Services (Social Value) Act 2012 need not be applied, although equalities implications and opportunities are identified in the relevant section at Paragraph 12.

14. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS

- 14.1 Hitchin Area Committee were informed of the proposed lease to Hitchin Rugby Club at the Committee meeting on the 6th March 2013.

15. APPENDICES

None.

16. CONTACT OFFICERS

- 16.1 Property Services, David Charlton, Senior Estates Surveyor, 01462 474320
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- 16.2 Legal Services, Jas Lyall, Senior Lawyer, 01462 474370, Jas.Lyall@north-herts.gov.uk

- 16.3 Legal Service, Marie Searle, Property Solicitor, 01462 474218, marie.searle@north-herts.gov.uk

- 16.4 Tim Neill, Accountancy Manager, 01462 474461, tim.neill@north-herts.gov.uk

17. BACKGROUND PAPERS

- 17.1 Freehold title number HD493587.