

TITLE OF REPORT: TRANSFER OF KING GEORGE V PLAYING FIELDS, HITCHIN – CHARITABLE TRUST AND UPDATE ON HITCHIN TOWN HALL TRUST PROPERTY

REPORT OF THE SENIOR LAWYER (LEGAL ADVISER TO THE SUB-COMMITTEE)

1. SUMMARY

- 1.1 To update the Cabinet Sub-Committee on the progress made in finalising the terms of the Management Agreement between the Trust and Hitchin Rugby Club.
- 1.2 To inform members of an error on the registered title for Hitchin Town Hall Trust and efforts being made to rectify it.

2. RECOMMENDATIONS

- 2.1 The members of the Sub-Committee approve the Management Agreement and endorse the rewording of clauses as agreed in discussions between officers of the council and the club and as settled between the solicitors for both parties.
- 2.2 Members note the error regarding the registered title for Hitchin Town Hall Trust and that it is being rectified.

3. REASONS FOR RECOMMENDATIONS

- 3.1 To secure that the Trust property is managed in the best interests of the charitable trust's main purpose which is as "a recreation and playing field, to be preserved in perpetuity as a memorial to King George V, under the provisions of King George's Fields Foundation".
- 3.2 To demonstrate that despite the transfer to the rugby club, there is an on going regime in place to account for any income derived from use of the trust land and in order that the trust can properly discharge its own responsibilities to the Charity Commission and Fields in Trust, the umbrella charity for all land dedicated as a memorial to King George under the provisions of the King George's Fields Foundation.
- 3.3 In its role as corporate trustee for all assets of the council held on a charitable trust, the sub-committee is entitled to be informed of any matters arising on the extent of all its assets.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 None

5. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS

- 5.1 Hitchin Area Committee was informed of the proposed lease to Hitchin Rugby Club on 6 March 2013.

- 5.2 The proposed lease to Hitchin Rugby Club has been advertised for comment as required by section 121 of the Charities Act 2011
- 5.3 Fields in Trust has approved the transfer of the land to the rugby club along with the draft lease and management agreement.
- 5.4 An email from Peter Tasko, the vice-chairman of the rugby club dated 14 July 2014, sought to involve nominated councillor members of the user group (formerly management committee) of the playing fields in negotiations on the wording of the management agreement. The said members recognised that this is not in their remit and left matters with the Strategic Director, Finance Policy and Governance and other officers to take the necessary steps required to resolve any issues arising from the email.

6. FORWARD PLAN

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

7. BACKGROUND

- 7.1 As members will recall, at the last meeting of the Sub Committee part of members' resolution was:

(2) That the Management Agreement attached at Appendix C to the report, as amended, be approved, in principle, subject to a re-negotiation regarding Clause 8 to allow the Trust to minimise its financial liability, and subject also to Fields in Trust approval;

Following the meeting, the council's Property Solicitor therefore sent a revised draft of the management agreement together with an updated lease to the rugby club's solicitor on 9 May 2014. The revised management agreement contained an amended Clause 8 that stated:

8. FINANCIAL ARRANGEMENTS

- 8.1 *The Club shall supply to the Owner by 31 May each calendar year:*
- (a) a copy of its final accounts for the preceding financial year; and*
 - (b) a statement certified by the Club treasurer confirming the Pitch Management Costs and the Relevant Income for the preceding financial year.*
- 8.2 *Where the statement submitted in accordance with clause 8.1 (b) shows that the Relevant Income is less than the Pitch Management Costs then the Club shall retain the Relevant Income for the year.*
- 8.3 *Where the statement submitted in accordance with clause 8.1 (b) shows that Relevant Income exceeds the Pitch Management Costs then the amount by which the Relevant Income exceeds the Pitch Management Costs (the Excess) shall be applied as follows:*
- (a) Firstly the Excess shall be set off against the Management Payment due from the Owner to the Club under clause 26.4 of the Lease; and*
 - (b) If the Excess exceeds the Management Payment then the Club shall invest the remainder into the Pitches or the Property with a view to furthering the Trust objectives.*

8.4 *The Club shall provide the Owner with all reasonable assistance and information to enable the Owner to submit its annual return to the Charity Commission.*

On 14 July 2014 the club's vice chairman sent an email to a number of a number of Councillors and officers outlining their dissatisfaction with the wording of the management agreement.

- 7.2 In summary, Mr Tasko stated that the draft management agreement contained a clause for unreasonable charges given they are a community club. However the email was not clear as to which wording was objectionable and no alternative was proposed. Mr Tasko was invited to meet with officers on 31 July 2014. Members of the Sub-Committee also met to consider a response to the email.
- 7.3 The trustees' response clarified its position on charges and advised the club that its obligations included the annual filing of returns to the Charity Commission and that any income derived from trust land has to be declared. The sub committee members also invited the club to put forward its suggested wording for the clause it objected to.
- 7.4 At the meeting between officers of the council and the club, Mr Tasko and his colleague were advised that while the council was looking to resolve the impasse, the final decision remained with the sub committee (trustees). The club's request for the removal of clause 8.3 of the draft management agreement was refused. It states "Where the statement submitted in accordance with clause 8.1(b) shows that the total of the pitch fee and the third party payments exceeds the pitch management costs then the owner and the club shall agree how to account for the excess sum in a manner consistent with the Trust objectives". In the spirit of compromise and acknowledging the efforts of volunteers in achieving the Trust's objectives, the rugby club was invited to suggest a threshold figure that had to be reached in profit from activities on trust land before any payments became payable to the Trust. The threshold figure was agreed to be set at £10,000 and index linked by CPI.
- 7.5.1 A reworded draft of the management agreement was sent to the council's Property Solicitor by the rugby club's solicitor on 27 August 2014 and is attached as Appendix 1. The key changes are:
- 7.5.2 The Club have proposed a new clause 8 which gives effect to the proposals as discussed at the meeting of 31 July 2014. This has the effect of requiring the profit made by the Club to be assessed each year, and then for that to be applied in accordance with the table at clause 8.4.
- 7.5.3 The range of issues proposed to be monitored by the User Group has been removed so as to be limited to issues of maintenance. Initially it had been suggested that the User Group would also monitor matters such as allocation of the Pitches and hire charges for the Pitches. It was considered that asking the User Group to monitor these issues would ensure a degree of scrutiny of the Club's actions. However the Club have amended the agreement to require the User Group only to monitor those issues that are currently discussed at the existing management committee meetings and therefore the Club consider that the revised agreement is consistent with current practice.
- 7.5.4 Members are invited to consider the revised agreement generally and specifically indicate whether the revised clause 8 suitably addresses allay the concerns expressed at the April Sub-Committee meeting over the financial accountability of the Club to the Trust.

- 7.6 Officers have recently received correspondence from the Land Registry highlighting a minor error on the registered title for the Hitchin Town Hall Gymnasium and Workman's Hall Trust. The land shaded blue on the plan marked Appendix 2. Hitchin Property Trust owns the adjacent property, 16/17 Brand Street and recently applied to register its title. It became apparent in the course of doing this that the area shaded blue should have been included within the title of 16/17 Brand Street and had been erroneously included within the Trust's title. Officers were consulted on this development and a site survey was undertaken by the land Registry. Officers considered whether and determined that there were no potential land management issues arising and that the rectification would not have any impact on the Hitchin Town Hall redevelopment project. It was also considered that there was no evidence immediately available to challenge the assertion that the land had been incorrectly registered and as such Officers will confirm to the Land Registry that the Council has no objection to the rectification of its records to reflect the area shaded blue as part of the title of 16/17 Brand Street.

8. LEGAL IMPLICATIONS

- 8.1 The Council remains the Trustee of the property and this Sub-Committee of the Cabinet is the managing committee appointed on behalf of the Council to manage this charitable trust among others.
- 8.2 Members of the Sub-Committee (Council Charities) are referred to as "Trustees" in this report and their powers to deal with all matters relating to the management of King George V Playing Fields Hitchin, as contained in the constitution include: To act on behalf of the Council as Corporate Trustee for all assets of the Council that are held on charitable trust, to consider all matters relating to trusts including the use, operation and management of all trust assets and the preservation of the objectives of those trusts so instituted and, to consider all proposals and representations from and on behalf of the Council or any third party, in connection with the use, operation, management and ownership of trust assets. Negotiations on the terms and wording of the lease and management agreement in relation to the disposal of this land are therefore matters for the determination of the Trustees.

9. FINANCIAL IMPLICATIONS

- 9.1 The Council is subject to the following duties in relation to this proposed transfer:
- Fiduciary duty as Trustee of the King George V Playing Fields Trust
 - Contractual duty as the nominee of Fields in Trust
 - Statutory duty as Charity Trustee
 - Statutory duties as a local authority landowner

10. RISK IMPLICATIONS

- 10.1 There is a risk that the transfer becomes ineffective if the correct procedures are not followed or any of the duties outlined above are breached.

11. EQUALITIES IMPLICATIONS

- 11.1 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.

- 11.2 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.
- 11.3 There will be no loss of public amenity land occasioned by this transfer. Furthermore, the opportunities derived from the proposal will benefit the community by bringing modern changing facilities to users and enabling greater accessibility.

12. SOCIAL VALUE IMPLICATIONS

- 12.1 The Public Services (Social Value) Act was passed at the end of February 2012; under the Act, public bodies in England and Wales are required to consider how the services they commission and procure might improve the economic, social and environmental well-being of the area. 'Social Value' involves looking at what the collective benefit to a community is when a public body awards a contract. It applies to all public services contracts and those public services contracts with only an element of goods or works. It does not apply to public work contracts or public supply (goods) contracts. The Act requires public authorities at the pre-procurement phase of procuring services to consider how what is being procured might improve the economic, social and environmental well-being of an area and how the authority might secure that improvement through the procurement process itself.
- 12.2 As the recommendations made in this report do not constitute a public service 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 paragraphs 11. The proposal also has obvious benefits to the economic, social and environmental well being of the North Hertfordshire area and more specifically, Hitchin.

13. HUMAN RESOURCE IMPLICATIONS

- 13.1 There are no human resources implications from this report.

14. APPENDICES

- 14.1 Appendix 1 – Revised Management Agreement for King George V Playing Fields, Hitchin.
Appendix 2 – Plan of 16/17 Brand Street, Hitchin.

15. CONTACT OFFICERS

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