

REPORT DUE TO BE CONSIDERED BY CABINET ON 16th March 2021

TITLE OF REPORT: COMMUNITY ASSET TRANSFER: HITCHIN BRIDGE CLUB

REPORT OF: SENIOR ESTATES SURVEYOR

EXECUTIVE MEMBER: CLLR JARVIS, EXECUTIVE MEMBER FOR ENVIRONMENT & LEISURE

COUNCIL PRIORITY: BUILD THRIVING AND RESILIENT COMMUNITIES

1. EXECUTIVE SUMMARY

- 1.1 To seek Cabinet's decision in principle to grant a leasehold interest in land at Cadwell Lane, Hitchin to Hitchin Bridge Club (HBC).

OR:

- 1.2 To seek Cabinet's agreement to place the matter into abeyance until HBC obtains pre-application advice from the local Planning authority and Highway authority on their proposed development at Cadwell Lane.

OR:

- 1.3 To reject the proposal to grant a leasehold interest in the land to HBC with reason(s).

2. RECOMMENDATIONS

- 2.1 That Cabinet provides its decision in principle to grant a leasehold interest in land at Cadwell Lane, Hitchin to HBC.

OR:

- 2.2 That Cabinet agrees to place the matter into abeyance until the pre-application advice is obtained by HBC.

OR:

- 2.3 That Cabinet rejects the proposal to grant a leasehold interest in the land to HBC and provides reason(s) for this decision.

3. REASONS FOR RECOMMENDATIONS

- 3.1 Should Cabinet decide in principle to grant a leasehold interest, this will signal officers to commence exploring the feasibility of the proposed leasehold transfer to HBC, in accordance with the Detailed Development Stage of NHDC's Community Asset Transfer (CAT) policy. This with a view to reporting back to Cabinet at a later date.

- 3.2 Should Cabinet agree to place the matter into abeyance, this will signal officers to request HBC to obtain pre-application advice from the Planning and Highway authorities on HBC's proposed development. This with a view to reporting back to Cabinet at a later date.
- 3.3 Should Cabinet reject the proposal to grant a leasehold interest in the land to HBC, officers will contact HBC to inform their expression of interest will not be pursued further by NHDC. Cabinet will need to provide a reason(s) for its decision to reject the proposal in accordance with the CAT policy, which will be communicated to HBC. Offices propose to continue discussions with HBC to consider alternative solutions as outlined in 8.13.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 No reasonable alternative options are considered.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1 The following Members, Committees and Officers have been consulted:

- Cllr Jarvis, Executive Member for Environment & Leisure.
- Cllr Albert, Executive Member for Finance & IT.
- Cllr Albert, Cllr Billing and Cllr Bryant in their capacity of Hitchin Bearton Ward Members.
- Cllr Stears-Handscorn, Leader of the Council.
- Cllr Hoskins, Enterprise and Co-Operative Development.
- Hitchin Area Committee.
- Asset Management Group.
- Leadership Team (including Service Director – Resources and the relevant Service Head).

6. FORWARD PLAN

- 6.1 This report contains a recommendation on a key Executive decision that was first notified to the public in the Forward Plan on 7th December 2020.

7. BACKGROUND

- 7.1 NHDC owns the freehold interest in public recreation ground at Cadwell Lane, Hitchin. The land is indicated by the area shaded pink and yellow edged blue on the site plan in Appendix A. The land is approximately 4.19 acres in total and is comprised in the two Title Numbers HD493650 and HD524230. The land is laid out as a football pitch and is in serviceable condition. A single storey football pavilion of circa 60 square metres gross external area stood on part of the land. This was demolished in 2018. No replacement structure has since been erected. The land has a recorded asset valuation of £25,000, based on existing use. This value would increase if planning permission for development of the land is granted.

- 7.2 NHDC has received an expression of interest from HBC to acquire a leasehold interest in circa 0.35 acres of the land. This expression invokes NHDC's CAT policy. The area shaded yellow edged blue on the site plan in Appendix B indicates the extent of the proposed lease demise. Apportioning the existing use asset valuation stated in 7.1 by area indicates this land has an asset value of just over £2,000.
- 7.3 This report details the expression of interest, provides background information and evaluates the proposed leasehold transfer in the context of NHDC, HBC and the wider community. This in order to assist Cabinet in making a decision in principle regarding the proposed leasehold transfer of NHDC's land.
- 7.4 To date, no feedback has been received from those consulted in 5.1, except from Asset Management Group. The Group enquired whether the CAT policy applies to HBC's expression of interest to acquire an interest in land, as opposed to an existing building. NHDC's Service Director - Legal & Community subsequently confirmed that the policy *does* apply to this case.

8. RELEVANT CONSIDERATIONS

- 8.1 Hitchin Bridge Club is a Charitable Incorporated Organisation (CIO), registered at the Charity Commission for England and Wales under charity number 1140362. According to figures published on the Charity Commission's website, for the five financial periods ending 31st December 2015 to 31st December 2019, the mean yearly average of HBC's total income was £31,978. The mean yearly average of its total expenditure for the same period was £19,310. HBC members and visitors are from across the district and surrounding counties. HBC has seven trustees, 268 members and its stated charitable objects are as follows:

(a)

The advancement of amateur sport by promoting the game of bridge for the benefit of the residents of Hitchin and the surrounding area.

(b)

The provision of facilities for the learning, teaching and playing of bridge for the benefit of the residents of Hitchin and the surrounding area with the object of improving conditions of life.

- 8.2 HBC's expression of interest under the CAT policy proposes that NHDC grants HBC a long lease in part of the recreation ground at Cadwell Lane to enable HBC to then construct and operate a permanent club house with surface car park. This to support and sustain the Club's charitable objects and activities. NHDC would retain the freehold. Initial details proposed by HBC to date are:

The lease

- Landlord: NHDC. Tenant: HBC.
- Contractual term of 99 years.
- Tenant responsible for full repairs and insurance of building and car park.
- Annual ground rent of £500 (equating to circa £1,429 per acre or £0.03 per square foot).
- Security of tenure under Landlord and Tenant Act 1954, Part II.
- HBC intends for the leased property to be hired by other community groups when not in use by the Club.

The development

- Single storey building.
- Sited facing Cadwell Lane to form an attractive view from road.
- Toilets and kitchen positioned close to location of services and inspection chamber.
- Building orientated to use south/south-west facing roof for solar panels. These would not be visible from road.
- Incorporate other energy saving measures.
- Surface car park located behind building.
- Vehicle entrance off current parking layby in Cadwell Lane, with lockable gate.
- Boundary line of leased area 5 metres (16 feet 5 inches) behind football pitch.
- Boundary to be planted or fenced.

Full details (including building floor area) are to be clarified and no agreements have been made to date between NHDC and HBC. Planning permission, Highway authority consent and other important matters will need to be investigated and addressed by HBC before a lease is granted. The outcome of these matters may influence the development details, the lease terms, the timing of events, and may even influence whether or not the lease proceeds.

- 8.3 HBC intends for the facility to be hired by other community groups when not in use by the Club. Based on HBC's expression of interest and status as a CIO, HBC is considered to constitute an "eligible organisation" as defined by the CAT policy to be considered for acquiring a leasehold interest.
- 8.4 HBC informs they have been seeking a permanent home for over 10 years, having examined a range of locations, ownerships and tenure. They seek a long-term self-contained arrangement rather than a temporary hire. In 2020, HBC explored leasing NHDC-owned land adjacent to St John's Community Centre in Hitchin to build a club house and car park but later withdrew this interest. The Senior Estates Surveyor enquired with the tenant of St John's Community Centre as to whether they would be willing to sub-let or assign part of the Centre to HBC. Unfortunately this option was not available. NHDC's Senior Estates Surveyor also enquired with HBC whether vacant retail premises are an option for a facility, particularly given the current supply of empty units. HBC replied that owners of such units would require commercial rents at a level outside HBC's capability as a CIO. They also informed the retail premises viewed do not offer the correct amount of sufficiently convenient car parking.

- 8.5 NHDC officers do not consider the land at Cadwell Lane that HBC proposes to lease meets the definition of “surplus” or “under-used” property in NHDC’s Asset Disposal policy. Therefore a ground rule of the CAT policy is not met. This would not necessarily preclude a leasehold transfer under the policy if it can be demonstrated the transfer could be used to achieve wider regeneration objectives or community ownership in a wider scheme. However, no such wider scheme is known of to date.
- 8.6 No other expressions of interest under the CAT policy have been submitted for the land at Cadwell Lane. Further, the land is not under contract to be used or acquired by an alternative organisation, and has not previously been agreed for disposal by Cabinet.
- 8.7 Appendices C - G comprise information provided by HBC, including their expression of interest under the CAT policy.
- 8.8 Potential benefits to HBC, Hitchin and wider community from the proposed leasehold transfer include:
- HBC secures a permanent facility to continue and reinforce its charitable objects for the benefit of HBC’s members, Hitchin and the wider community.
 - Establishes a modern setting from which HBC can expand membership and their reach within the community. This promotes wider interaction, builds connections and friendships and allows more people to engage in mentally stimulating activity in the form of bridge. Such activity will help combat health and social issues of isolation, loneliness and dementia.
 - Creates a stable and conducive facility for people to improve mathematical and behavioural skills.
 - HBC’s wide reach in terms of membership and visitors helps draw footfall into Hitchin, supporting local businesses.
- 8.9 Potential benefits to NHDC from the proposed leasehold transfer include:
- Helps avert expenditure by NHDC on hiring private accommodation. NHDC will seek to reserve a right in the lease to free use of part or all of the property for its own occasional purposes, such as polling station use. This is a request of NHDC’s Returning Officer who informs that the Cabinet Office are giving less funds, and the charges for some venues are becoming excessive.
 - HBC’s willingness to adopt energy efficient measures in the design of the facility reinforces NHDC’s commitments and aims of its Climate Change Strategy. The lease will seek to secure as many green measures as practicable.
 - Modest long-dated ground rent income stream for NHDC from an asset currently generating no income. NHDC will seek to include 5-yearly indexed upwards-only rent reviews in the lease to ensure the rent keeps pace with inflation.
 - Helps generate and maintain business rates income by drawing footfall to the area and supporting the longevity of local businesses.

- Contributes towards NHDC's priorities, in particular to build thriving and resilient communities.

8.10 Potential risks to NHDC, Hitchin and wider community from the proposed leasehold transfer include:

- Loss of part of the public recreation ground and green space. Circa 8.5% of the ground would be leased out to HBC and developed with a club house and car park.

Although the lease will require the tenant to allow use of the proposed building and car park by other community groups when not used by the tenant, it is considered this does not fully mitigate the loss of the land for public use or the loss of the environmental, social and community benefits stemming from the land. Appendix H provides further insight on this risk in the form of a report by NHDC's Place directorate.

- The out-of-town location and limited public transport provision for the proposed site will necessitate travel to and from the club house predominantly by private vehicles. This is likely to have a negative carbon impact and not support NHDC's Climate Change Strategy.
- Cannibalise proportion of demand from NHDC's community centres in Hitchin. This increases the risk of tenants of those centres surrendering their leases or exercising break options, saddling NHDC with vacant buildings, holding costs and property management responsibilities. It will be difficult to secure new tenants willing to continue running the buildings as community centres.
- Sub-optimum use of property resources. NHDC's pavilions at Swinburne Recreation Ground and Ransoms Recreation Ground may become surplus in the near future, as indicated by NHDC's report at Appendix H. It would appear a better use of land resources to consider leasing one of those buildings to HBC to repurpose or redevelop for a club house should these buildings become surplus, subject to Planning and all other relevant consents. Using existing buildings would obviate the need to build the new club house at Cadwell Lane thus saving on associated resources and embodied carbon. The buildings at Swinburne and Ransoms may need to be marketed for letting first. A letting to HBC cannot be guaranteed.
- The facility is not hired out to other community groups when not in use by the Club, or only for impractically short periods of time. NHDC will seek to incorporate a clause in the lease requiring the tenant to abide by a service level agreement or management agreement appended to the lease. This will require all reasonable endeavours to be made by the tenant to allow other community groups use of all or part of the facility for community purposes. A suitable minimum period of time for which hiring out should take place, and the time periods during which this should happen, would be included in the agreement.
- Lease granted but no development commences, or development commences but left incomplete. NHDC will seek to reduce this risk by incorporating a covenant in the lease obliging the tenant to construct the club house and car park ready for occupation and use within 12 months of commencement of the contractual term. A long stop date of 18 months may be included to allow for Planning delays. An

alternative is to incorporate a landlord break clause after 12 or 18 months operational by NHDC if the land remains undeveloped by this time. A landlord break clause, however, is likely to make it more difficult for the tenant to secure external funding for the development should they require such funding.

- Alterations are undertaken to the constructed building or car park that are unsuitable or detrimental to NHDC's adjoining land or to nearby owners and occupiers. NHDC will seek to include a clause in the lease requiring the tenant to obtain the consent of the landlord and other relevant parties prior to undertaking alterations and to reverse alterations that have not been granted consent.
- The tenant persistently fails to abide by the lease, for example fails to keep the property in good repair. This risk will be reduced by including forfeiture provision in the lease to assist NHDC in taking back possession of the property in the event of such a scenario.
- The tenant uses the property for commercial activities commanding a higher rent than the rent proposed. NHDC will seek to reduce this risk by only permitting change of use subject to landlord's prior consent. However, confining the use may restrict the rent achievable at reviews. An alternative is to permit change of use subject to landlord's consent and stipulating such consent is not to be unreasonably withheld. This will support a higher rent at reviews, although the Landlord and Tenant Act 1927 states that a proviso will be deemed to apply (unless structural alterations are involved) that a landlord (who is minded to grant consent) cannot demand a premium or increase in rent for providing its consent to the new use. All the landlord can recover are its costs and a reasonable sum to cover any reduction in value in the premises or any adjacent premises it owns. These provisions cannot be excluded. The user clause will need careful drafting to promote use by a range of community groups.
- The lease is assigned or under-let to a profit motivated tenant. NHDC will seek to reduce this risk by prohibiting assignment and under-letting, except to other Trustees or an incorporated association for the time being of the tenant. Alternatively, NHDC will seek to include in the lease a clause entitling NHDC to review the rent to the market rental value of the whole property (building, car park and land) should NHDC grant consent to assign or under-let the property to an individual or organisation that is not a Trustee or incorporated association of the tenant. The rent will be reviewed on the date of notice from tenant requesting consent to assign or under-let, and every 5 years thereafter, to market rental value.
- The property is relinquished to NHDC, for example upon the tenant becoming unable to continue operating and surrendering the lease. NHDC will then incur the holding costs of an empty building or be expected to continue the operation. It is likely to prove difficult to find a new tenant willing to take over the operation. If NHDC runs the facility itself, it will incur direct running costs, including labour costs.
- Once the land is leased out, NHDC will forgo utility and not realise capital value from the site until expiry of the contractual term or any statutory continuation of the term. The only opportunities NHDC will have to gain earlier possession are:

- The lease incorporates tenant, landlord or mutual break clauses and the landlord or tenant exercises them.
- The lease contains forfeiture provision and is forfeited by NHDC as landlord.
- The tenant surrenders the lease.

Having said that, there is not presently considered to be significant capital value in the land.

- 8.11 Should Cabinet provide its decision in principle to grant a leasehold interest to HBC, officers will explore with HBC the feasibility of the proposed leasehold transfer and request a business case. Comprehensive lease heads of terms will be negotiated with HBC. Further, HBC will be expected to clarify issues such as Planning permission, Highway authority consent and so on and update NHDC officers. The outcome will be reported to a future Cabinet meeting seeking final approval to proceed with the leasehold transfer.
- 8.12 Alternatively, should Cabinet agree to place the matter into abeyance, officers will request HBC obtains pre-application advice from the Planning and Highway authorities on the proposed development. This with a view to reporting back to Cabinet at a later date seeking either:
- (i) A decision in principle to grant a leasehold interest in land at Cadwell Lane to HBC; or
 - (ii) To reject the proposal to grant a leasehold interest in the land to HBC with reason(s).
- 8.13 If the proposal is rejected at the later Cabinet meeting, or indeed at this Cabinet meeting, offices propose to continue discussions with HBC to consider alternative solutions. Such solutions may include:
- Suggest HBC to approach existing community groups of NHDC community buildings to make enquiries about sharing facilities, including the bowling pavilion at Bancroft Recreation Ground.
 - Discuss the possible option of HBC seeking a leasehold interest via the CAT policy in the pavilions at Swinburne Recreation Ground and Ransoms Recreation Ground if these buildings become vacant.
 - Suggest HBC to identify alternative venues in Hitchin outside NHDC's ownership that they may wish to hire.

9. LEGAL IMPLICATIONS

- 9.1 Cabinet in exercising its functions has power to consider or receive presentations from members of the public, community groups and outside bodies on matters relating to the District.
- 9.2 NHDC's Community Asset Transfer policy and NHDC's Asset Disposal policy are applicable to this case.

- 9.3 A sale or a lease of land of more than seven years is regarded as a disposal. The Contract Procurement Rules (Land Transactions) state that “no property or land owned or leased by the Council shall be disposed of to a third party until it has been established that no other directorates of the Council have a need for the property or land, and that the current service area confirms no other requirement for the site.”
- 9.4 Section 123 of the Local Government Act 1972 General Disposal Consent (England) 2003 allows a Council to dispose of land in any manner it wishes provided that the consideration is the best that can be reasonably obtained unless the Secretary of State consents to the disposal for less than best value for the following reasons:
- (i) The promotion or improvement of economic well-being.
 - (ii) The promotion or improvement of social well-being.
 - (iii) The promotion or improvement of environmental well-being.
- 9.5 A public notice under Section 123 Local Government Act 1972 was placed in two consecutive editions of the local newspaper advertising the proposed disposal of the land. No comments or objections were received by the deadline.
- 9.6 All disposals need to comply with the European Commission's State aid rules. The European Commission's Communication on State aid elements in sales of land and buildings by public authorities (97/C 209/03) provides general guidance on this issue. When disposing of land at less than best consideration authorities are providing a subsidy to the owner, developer and/or the occupier of the land and property, depending on the nature of the disposal. Where this occurs authorities must ensure that the nature and amount of subsidy complies with the State aid rules, particularly if there is no element of competition in the sale process.

10. FINANCIAL IMPLICATIONS

- 10.1. If a lease is granted to HBC, their expression of interest proposes an annual rental income of £500 for NHDC. NHDC will seek to review the rent on an indexed upwards-only basis at 5-yearly intervals.
- 10.2. Leasing out the land will not generate material revenue savings for NHDC despite reducing the area of land at Cadwell Lane maintained by NHDC.
- 10.3 In the event the development on the leased land is left partially complete, there may be an expectation that NHDC either completes the build or demolishes it. Should protections in the lease fail to secure this work is undertaken by the tenant, NHDC will incur capital costs.
- 10.4. If the club house is relinquished to NHDC, NHDC will incur the holding costs of an empty building or be expected to continue the operation itself, incurring direct running costs such as labour costs.

11. RISK IMPLICATIONS

- 11.1. Although a leasehold transfer of the land at Cadwell Lane presents the potential risks outlined in Section 8 of this report, no leasehold transfer will take place unless a later Cabinet meeting approves the transfer. The present Cabinet is solely being asked to decide whether the expression of interest should be progressed to the next stage of the

CAT policy, put into abeyance or rejected. No material risks are considered to directly emanate from making the decisions sought from this Cabinet.

- 11.2. Please note the risks outlined in Section 8 are not, and should not be inferred to be, reflective of HBC. Having corresponded with HBC on numerous occasions and met several of their Trustees during the course of the last year, the author of this report has witnessed HBC's great level of dedication, professionalism and enthusiasm for providing a club house facility for bridge playing and learning. The author is of the firm opinion HBC will provide NHDC with a strong and reliable tenant covenant strength should they be granted a leasehold interest.

12. EQUALITIES IMPLICATIONS

- 12.1. In line with the Public Sector Equality Duty, public bodies must, in the exercise of their 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.
- 12.2. Appendix I provides an Equality Analysis.

13. SOCIAL VALUE IMPLICATIONS

- 13.1. The Social Value Act and "go local" requirements do not apply to this report.

14. ENVIRONMENTAL IMPLICATIONS

- 14.1 The proposed leasehold transfer involves part of the public recreation land at Cadwell Lane. Appendix H considers the environmental, social and economic benefits of green public open space, providing useful context for the case in hand and setting out the multi-faceted role of such public space, including:

- Importance to the environment, society and local economy;
- Supporting family life;
- Maintaining health and well-being;
- Improving social cohesion;
- Promoting local economic development, investment and tourism;
- Contribution to green infrastructure and complementing existing infrastructure.

The section within Appendix H entitled "History of the open space" focuses specifically on the recreation land at Cadwell Lane and the potential environmental and other impacts that apply to the decisions sought from Cabinet.

- 14.2 An Environmental Impact Assessment has been undertaken – refer to Appendix J. This report has been considered. Should a lease eventually be granted by NHDC to HBC, this will seek to secure adoption by tenant of as many environmentally friendly and green measures as reasonably practicable in the development. These to include measures that:
- Aim to minimise the embodied carbon of the development – for example approving the selection of construction materials or methods with lower whole life carbon footprints or which aid in carbon sequestration;

- Aim to minimise operational energy usage – for example ensuring adoption of renewable energy sources, passive environmental controls and good quality build standards to reduce reliance on more energy-intensive artificial means of moderating the internal temperature and humidity of the development; and
- Aim to harmonise the development within its adjoining environment – for example by requiring incorporation of green and natural landscaping and boundary treatments.

15. HUMAN RESOURCE IMPLICATIONS

15.1 There are no human resource implications.

16. APPENDICES

16.1 Appendix A - Site plan of NHDC's freehold recreation ground.

16.2 Appendix B - Site plan of HBC's proposed lease demise.

16.3 Appendix C - HBC's expression of interest.

16.4 Appendix D - Comments from HBC members on benefits of playing bridge.

16.5 Appendix E - HBC and its relationship with Hitchin, the local and wider community.

16.6 Appendix F - Membership breakdown of HBC.

16.7 Appendix G - HBC during Covid-19 lockdown.

16.8 Appendix H - NHDC's insight on Community Asset Transfer request by HBC.

16.9 Appendix I - Equality Analysis.

16.10 Appendix J - Environmental Impact Assessment.

17. CONTACT OFFICERS

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17.2 Andrew Mills, Service Manager Greenspace andrew.mills@north-herts.gov.uk; ext 4272.

18. BACKGROUND PAPERS

18.1 None.