

REPORT TO: CHARITIES COMMITTEE **DATE:** 16 MARCH 2016
HEADING: TEVERSAL COMMUNITY CENTRE AND RECREATION GROUND
(CHARITY NUMBER 522310) - UPDATE
**PORTFOLIO
HOLDER:** N/A
KEY DECISION: NO **SUBJECT TO CALL-IN:** NO

1. PURPOSE OF REPORT

To provide members with an up to date position in respect of the Teversal Community Centre and Recreation Ground (Charity Number 522310).

For the Committee to make recommendations to the Council.

2. RECOMMENDATION(S)

The Committee is asked to consider the following and make recommendations to the Council as appropriate:

1. To confirm that the rental levels are reasonable having been externally validate;
2. To consider the request by the Football Club to offer a rental discount over 5 years as set out above;
3. To consider the request by the Football Club for the Council to upgrade the kitchen facilities;
4. To consider the requests from the Bowls Club and Cricket Club for a 30 year term with a 12 months break clause;
5. To consider the Visitor Centre's request for a 7 year term with a 12 months break clause;
6. To approve the removal of the guarantor clauses in all the leases;
7. To confirm that the Clubs are responsible for the legionella testing;
8. To confirm that the Council is responsible for sourcing the Buildings Insurance and recharging the costs to the Clubs;
9. To confirm that the works should be undertaken to remove the car park lighting from the supply to the Visitors Centre and authorise the costs of doing so;
10. To confirm that the clubs are responsible for all the maintenance of the area and buildings leased to them;
11. Consider giving approval for:
 - a) Notts AAA's Summer League Race on Tuesday, 12 April 2016;
 - b) Booth Decorators Summer League Race on Wednesday, 3 August 2016

3. REASONS FOR RECOMMENDATION(S)

To comply with the Scheme (Constitution) of the Teversal Community Centre and Recreation Ground, the Council's Constitution and charities legislation overall.

The Trustee must act in the best interests of the long term future of the Trust and seek to generate income to sustain the charity.

4. ALTERNATIVE OPTIONS CONSIDERED (with reasons why not adopted)

The Constitution of the Teversal Community Centre and Recreation Ground, the Council's Constitution and charities legislation must be complied with.

5. BACKGROUND

Previous Decisions of Committee and Council

Members will recall that the Council at its meeting on 10 December 2015 considered the recommendations of the Charities Committee held on 19 November 2015 (Min. Ref. CC.8) and:

“RESOLVED that

- (a) the clubs be required to provide a written undertaking by 15th January, 2016 that they are committed to entering into the leases on the terms offered subject to the necessary legal processes and approvals being obtained;*
- (b) in the event that the clubs provide such an undertaking, the Deputy Chief Executive and the Assistant Chief Executive be instructed to:*
 - (i) finalise lease terms with the clubs;*
 - (ii) seek the consent of CISWO to enter into the individual leases;*
 - (iii) publish notices pursuant to S121 of the Charities Act 2011;*
 - (iv) if no representations are received pursuant to S121 of the Charities Act 2011, to seek Charities Commission consent to enter into the leases;*
 - (v) if Charity Commission consent is obtained, complete the leases;*
- (c) it be noted that if representations pursuant to the notice published under S121 of the Charities Act 2011 are received, a further report be submitted to Council for it to consider the representations and decide what action to take;*
- (d) in the event that all the clubs, or individual clubs, do not provide a written undertaking by 15th January, 2016, approval be given to:-*
 - (i) seek interest from other similar sporting/recreational clubs/organisations with a view to offering leases and serve notice to quit on the club(s) giving a reasonable notice period of 3-6 months; and/or*
 - (ii) market the whole site for another charity or not for profit organisation to manage; with the proviso that should options (d)(i) and (d)(ii) fail to secure any clubs or organisations to lease the site and there being no prospect of the Trust generating income in the future, approval be given to commence proceedings to wind-up the Trust with a further detailed report to Council for consideration as appropriate.” (Min. Ref. C.62 refers).*

Updated Position

Temporary Facilities for the Cricket Club

Temporary changing facilities continue to be provided to the Cricket Club for the upcoming cricket season. A new licence will be put in place in time for the new season.

Financial Position

The Trust's Accounts for the financial year 2014/15 report a retained deficit of £104k. This is a debt owed to the Council, which has had no option but to fund various works to the site in the absence of any funding from the Trust.

In 2015/16 this debt has been added to by a further £20k. This includes expenses incurred by the Council, as Trustee, for Electrical Repairs (£7k), Legionella monitoring (£3k), Legal Fees for the independent legal advice (£2k), Water charges (£3k), the costs of the Asset Management team (£3k), General Repairs (£1k) plus some smaller expenses.

The Council as Trustee cannot subsidise the Trust indefinitely because it is aiming to balance its budget, and it has no budget for this activity. It has made £626k of savings to reduce its overall budget in 2016/17, and is seeking ongoing savings targets of £670k per year until 2021/22.

If the organisations which currently enjoy free use of this site agree to leases, then there is the possibility that the Trust's deficit of £124k might be reduced in the future, albeit by relatively small amounts.

Most of the expense items above would become the responsibility of the leaseholders, once the leases are agreed.

Progress with Leases

The Clubs were required to provide written confirmation to the Council by 15 January 2016 that they were committed to entering into a lease with the Council.

An Advisory Committee meeting was held on 7 January 2016 to discuss the Council's recommendations.

Councillor Griffiths and Robert Mitchell, CEO, have both visited the site and met with representatives of the clubs. Matthew Kirk, Estates Manager, has met with or spoken to all the clubs separately to continue with lease negotiations.

All the clubs provided a written response within the timeframe set. Each club raised questions or asked if they could negotiate elements of the existing heads of terms to better suit their circumstances. A summary of the position is set out below.

1. Football Club

The Football Club has confirmed it is committed to working towards the signing of the lease. The Football Club have raised some further issues:

- Whilst the Club do not dispute the rental amount and consider it to be a fair amount, they would like to negotiate a discount period. They state that their income from last year would not cover the annual rent of £2,500. To give the Club time to obtain funding, they have requested a sliding discount:

Year 1 – 100% discount

Year 2 – 75% discount

Year 3 – 50% discount

Year 4 – 25% discount

Year 5 – Full rent payable

- Personal liabilities and guarantor arrangements appear to be an issue. If the Council was able to remove this clause this issue would be removed.
- They have requested that the kitchen area in their building is repaired and upgraded by the Trust prior to entering in to the lease.

2. Bowls Club

The Bowls Club has said it will consider entering into the lease but has raised some issues:

- The rent level – the Clubs says it is unable to pay.

- The 30 year term – they would accept a 30 year lease if there is a rolling 12 months break clause, but would also accept a shorter term, again with the rolling 12 month break clause.
- Personal liabilities and guarantor arrangements appear to be an issue. If the Council was able to remove this clause this would resolve the issue.
- Legionella testing – the Club was unclear why this was needed and the costs.
- Responsibility for buildings insurance.

3. Cricket Club

The Cricket Club signed a licence for the last season on the same lease terms as proposed for the lease (except the term). The licence terminated in December 2015 and a new licence will be required to be entered into for the next season.

- Would prefer a shorter term than 30 years but they would accept a 30 year term if there is a rolling 12 months break clause.
- Personal liabilities and guarantor arrangements appear to be an issue. If the Council was able to remove this clause this would resolve this issue.
- Responsibility for buildings insurance
- Legionella testing - the Club was unclear why this was needed and the costs.

4. Visitors Centre

They have confirmed they are agreeable to entering into a lease but have some issues to raise:

- Personal liability and guarantor issues
- Lease term – they would like a shorter lease terms of 7 years with a rolling 12 months break clause so that they do not have to register the lease with the Land Registry.
- Responsibility for buildings insurance
- Legionella testing - the Club was unclear why this was needed and the costs.
- Car park and its lighting
- Clarification on the extent of their liability for maintenance

The outstanding issues are considered individually below:

Rental Level

This has been externally validated by an independent surveyor in accordance with Section 117 of the Charities Act 2011. It is anticipated that the final reports will be available for approval at Council in April 2016. As such, it is suggested that the Committee should not vary the rental levels from those previously agreed.

Rental Discount – Football Club

Approval has previously been given to provide for a one year discount. To offer a rental discount over a longer period will impact upon the Trust income and any deficit reductions.

Kitchen Upgrade – Football Club

This has been requested by the Football Club previously. The Trust has declined to carry out the work as there are no funds to pay for such works and in light of the fact that the Football Club is likely to apply for grant funding to update its facilities or build new ones, then this would seem to be a waste of scarce resources for short term gain.

30 year term with a 12 months break clause – Bowls Club and Cricket Club

The introduction of a 12 months break clause is likely to mean that external grant funders will not give funding for capital improvements, so this may have a long term negative impact. However, as it is the responsibility of the clubs to choose if they wish to apply for future grant funding or have the comfort of knowing they can terminate their lease with 12 months notice, then it is their decision if they wish to have a break clause.

7 year term with a 12 months break clause – Visitors Centre

A short lease terms and the introduction of a 12 months break clause is likely to mean that external grant funders will not give funding for capital improvements, so this may have a long term negative impact. However, as previously stated, it is the responsibility of the clubs to choose if they wish to apply for future grant funding or have the comfort of knowing they can terminate their lease with 12 months notice, so then it is their decision if they wish to have a break clause.

Guarantor Issue

The guarantor clause was designed to allow the Council to require a personal guarantee for the rental payments from an outgoing tenant should the current clubs choose to assign their lease to another party. This can be removed with limited risk to the Council, as it is unlikely the assignment would be to a solely commercial organisation.

Legionella Testing

The heads of terms required the clubs to carry out (and be responsible for the costs of) their own legionella testing. It is a legal requirement to carry out such testing. It is recommended that the heads of terms are not changed and that the clubs remain responsible as they are in charge of the day to day operation and management of the buildings.

Buildings Insurance

The heads of terms state the Council insures the buildings and recharges the tenants the annual cost to do this. The Cricket Club have asked if they can insure their buildings to try to get the cheapest rate, and the Visitors Centre state they already insure for the replacement of the building.

It is a requirement that the Council insures the buildings, to provide certainty that the buildings are fully insured and, should a building be damaged or destroyed, there will be adequate cover to rebuild the facility. However, should the clubs insist that they insure the buildings, the alternative would be that the club will be required to provide documentary evidence that the buildings are adequately insured, whilst being liable for any shortfall in a subsequent claim.

Car park and its lighting – Visitors Centre

This issue can be resolved by carrying out works to remove the car park lighting from the Visitors Centre supply. The costs of this work are approximately £3,000.

Clarification on the Extent of their Liability for Maintenance – Visitors Centre

The Visitors Centre currently undertakes their own maintenance, and will continue to do so under the new lease. The Visitors Centre is aware their position on this matter will not change.

Forthcoming Events

The Charities Committee is asked to consider giving approval for the following events to take place on the site:

- 1. Name of Event:** Notts AAA's Summer League Race
Date of Event: Tuesday, 12 April 2016
Event Venue: Teversal Trails (and facilities at Teversal Trust site including Visitor Centre, Football Club, Car Park and field for overflow parking).
Event Time: 7.15pm – 8.15pm
Event Details: Trail races for members of the local athletic and running clubs
Estimated Number of Attendees: 300
Car Parking: Main car park at Trust site and in large field next to visitor centre off Copsywood Close
- 2. Name of Event:** Booth Decorators Summer League Race
Date of Event: Wednesday, 3 August 2016
Event Venue: Teversal Trails (and facilities at Teversal Trust site including Visitor Centre, Football Club, Car Park and field for overflow parking)
Event Time: 7.15pm – 8.15pm
Event Details: Trail races for members of the local athletic and running clubs
Estimated Number of Attendees: 300
Car Parking: Main car-park at Trust site and in large field next to visitor centre off Copsywood Close

These events have been held for a number of years at the site and the organisers are experienced in delivering the events. They have appointed marshalls for along the running route and St. John's Ambulance to provide first aid cover. They have completed an ADC event application form and provided a copy of the required supporting information including a route plan, risk assessment and public liability insurance. ADC Lead Environment Officers have arranged to meet with the organisers prior to the event to finalise the details.

The organiser has spoken to the Visitor Centre and Football Club regarding use of their venues and also informed the Cricket Club so that they are aware of the events. Nottinghamshire County Council and Derbyshire County Council have also been informed regarding permission to use parts of the Trail which falls under their responsibility.

Recommendations:

The Committee is asked to consider the following and make recommendations to the Council as appropriate:

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6. IMPLICATIONS

Corporate Plan:

Enable thriving, prosperous and self-sufficient communities where people shape their own futures.

Ensure the best use of our assets.

Legal:

The legal and constitutional issues are detailed in the report.

Financial:

See "Financial Position" above.

In addition to the deficit, the Council has invested from its capital programme in the costs of the demolition of the former Grange building, and the temporary changing rooms for the Cricket Club, which will be able to be re-used elsewhere in the future.

Health and Well-Being / Environmental Management and Sustainability:

The overall purpose of the trust potentially benefits the health and well-being of residents of the District.

Human Resources:

There are no human resource issues identified in the report.

Diversity/Equality:

There are no diversity or equality issues identified in the report.

Community Safety:

There are no community safety issues identified in the report.

Other Implications:

None.

BACKGROUND PAPERS

None

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