

CABINET

DATE	9 th December 2020
REPORT OF	Councillor John Fenty – Portfolio Holder for Regeneration, Skills and Housing
RESPONSIBLE OFFICER	Sharon Wroot – Director of Resources and Governance
SUBJECT	DISPOSAL OF PROPERTY AT LESS THAN BEST CONSIDERATION – Lease disposal of Kent Street MUGA, 41 Kent Street, Grimsby, DN32 7DJ
STATUS	Open
FORWARD PLAN REF NO.	CB 12/20/07

CONTRIBUTION TO OUR AIMS

The disposal of Kent Street Multi Use Games Area (MUGA) and Skate Park (the “Site”) by way of a 99-year, full, repairing, and insuring lease will enable Corinthians Complex Community Interest Company (CIC) (the “Group”) to take over the management, maintenance and use of the site and its facilities.

Providing a lease for the above term at a peppercorn rent is based on the submission of a detailed Business Case proposal setting out the social and economic return on investment; the benefits of which outweigh the monetary value that would be requested in rent over the term.

The Group intend to utilise the site to secure a permanent playing venue for Grimsby Futsal Leagues; a league that has for over twenty years provided Futsal in Grimsby with some players aspiring to play for England; as well as expand to other compatible sports and wellbeing activities.

The site is currently unused and in need of investment. By enabling the Group to transform the Site and attract wellbeing participation, by formulating a sustainable sporting community, the regeneration of this area of Freeman Street will be complimented and more opportunities for socialising will be created.

The lease disposal supports the Council’s outcome of ‘Stronger Communities’ by enabling the investment into a sustainable sports facility for the people of North East Lincolnshire. The Group have engaged with local community groups to encourage as many people as possible to get involved in the range of activities that will be provided. By enabling the lease for a sufficient period at a peppercorn rent ensures the proposal is sustainable for the longer term, contributing to the Council’s outcome of ‘Stronger Economy’. There would be no continued financial constraint on the Council in terms of managing the asset which will meet our determination to be an efficient and effective Council.

EXECUTIVE SUMMARY

This report seeks authority to dispose, by way of a 99 year; full, repairing, and insuring lease, of the subject site; namely Kent Street MUGA. The purpose of this

report is to gain agreement to the Business Case proposal from the Group, which will provide a social return on investment; far outweighing monetary equivalent to otherwise proposed rent as part of the Council's approach to Community Asset Transfers (CAT). Approval to the proposal will allow the granting of a lease of the Site over the stated term at a peppercorn rent (£1 per annum, if demanded).

The lease proposal is preferred due to the resource required in managing use of the Site and would allow the Council to retain an element of control as Landlord, however, it is proposed the Group will invest in the facilities, re-surfacing the courts, providing equipment to facilitate sporting activities and creating a vehicle entrance/exit off Kent Street which will provide compliant access to three (3), floodlit, all-weather surface multi sports courts and Pavilion that will maximise their availability for use.

RECOMMENDATIONS

It is recommended that Cabinet:

1. Approves the principle of a full, repairing, and insuring lease of the subject Site for a term of 99 years at a peppercorn rent (£1 per annum if demanded) to Corinthians Complex Community Interest Company (CIC).
2. Delegates to the Director of Resources and Governance, in consultation with the Portfolio Holder for Regeneration, Skills and Housing, authority to settle all terms and ensure that all necessary actions are carried out to complete the lease disposal.
3. Authorises the Chief Legal and Monitoring Officer to complete and execute all requisite legal documentation in relation to the matters outlined above.

REASONS FOR DECISION

A proposal has been received from Corinthians Complex CIC which has been considered as part of the Council's approach to Community Asset Transfers (CAT). The proposal has been agreed in principle which could result in the transfer of the subject site to Corinthians Complex CIC by virtue of a 99-year full, repairing, and insuring lease. The lease would enable the asset to transfer to the Group on the basis that their proposal is sustainable and viable over the term, as outlined through a detailed Business Case.

1. BACKGROUND AND ISSUES

The Council is the freehold owner of Kent Street MUGA; which for the purposes of this report, is the Site shown edged red as per the attached plan at Appendix One and is the extent of the asset to be leased to Corinthians Complex CIC.

The Site is currently mostly vacant and is not in a good state of repair or used to the full extent of its potential.

The Council has an agreed Community Asset Transfer (CAT) approach to consider proposals where certain organisations and groups demonstrate they contribute significant social, economic or environmental benefits to the community - benefits which can be taken in lieu of the monetary value being proposed in rent. The CAT

approach allows proposals to be considered through an agreed governance process, including in principle support at key milestones, resulting in formal Cabinet approval.

The proposal, by way of a detailed Business Case was received from Corinthians Complex CIC and was considered by officers at a CAT meeting and recommended to decision makers for in principle support.

When considering proposals such as these, the Council must demonstrate the social return on investment reflects, as a minimum, the loss of any potential rent, and reasons that a rent element could impact negatively on the sustainability which may result in the management of a site becoming unsustainable. The Council has been satisfied that the proposal to approve a 'less than best' transaction is based on sufficient social and economic benefit, which is stated as part of the submitted Business Case. The Business Case far outweighs the monetary value that could be requested in rent and supports wider community benefits which are a direct contribution to the Council's outcomes of 'Stronger Economy' and 'Stronger Communities'.

The proposal to set the level of rent at a peppercorn would ensure the use and management of the Site remains sustainable, with the monetary value being realised through social benefit. The obligations for repair and maintenance of all aspects of the Site will be that of Corinthians Complex CIC, as would all future investment opportunities.

The Council must also consider the strategic reasons in holding assets that are unable to be resourced fully to meet full operational use. The proposed lease will see the Site being brought back into full use by the Community, as this has not seen effective use in recent years by the Council or its Partners and would benefit from the proposal from Corinthians Complex CIC.

2. PROPOSAL

A proposal received from Corinthians Complex CIC (the "Group") sets out their objectives to lease the Site and take over the maintenance and opportunity to enhance the facility, subject to external grant funding. Corinthians will thus improve and undertake general maintenance and provide sporting opportunities to the community.

Once a lease has been granted, Corinthians Complex CIC will have full autonomy to concentrate on the sustainable provision of futsal before exploring further related activities, encouraging futsal for a wider age range, futsal for girls, limited netball, and walking football, as well as stakeholder and third party use of the facilities.

In year one, Corinthians Complex CIC aim to concentrate purely on the provision of futsal (Grimsby Futsal League's current activities).

In years two and three, the Group aim to introduce new futsal leagues for under 9 males, under 10 and 12 females, limited netball, walking football, stakeholder and third party use, and to explore the expansion of other avenues by linking up with community groups, local schools and health practices, introducing multi sports

competitions.

Although Corinthians Complex CIC is a newly formed company, the primary objectives and operations are well established, with regards to the Grimsby Futsal Leagues, which will transfer to this venue.

The lease will be granted on full, repairing, and insuring terms. This would result in a saving to the Council on average of £2,988 per annum in maintenance costs.

Corinthians Complex CIC have engaged with a funder and commenced submitting a bid for external grant funding, however an agreement for lease is paramount to the application. The agreement for lease will allow the CIC to seek funding and upon successful granting of the funding the formal 99-year lease will complete.

Subject to grant funding, the Group will invest in the facilities, re-surfacing the courts, providing equipment to facilitate sporting activities and creating a vehicular entrance/ exit off Kent Street which will provide access to three (3), floodlit, all-weather surface multi sports courts and Pavilion that will maximise their availability for use.

The lease will not include the skate park structures which will be subject to demolition, or relocation, to provide a new vehicular access to the Site, as the MUGA is currently only accessible via a pedestrian footpath, which is not compliant when operating under Health and Safety grounds.

Corinthians Complex CIC sought interest from local organisations involved in skate park activities and none could acquire the precast concrete type structures. However, other local community projects will be explored further and if possible, the structures relocated.

It is clear to see from the Business Case that Corinthians Complex CIC are keen to develop and manage the Site, ensuring the sustainability of an established community. The Business Case is well articulated and shows Corinthians have an established plan for investing and using the facilities at Kent Street MUGA.

3. CONSTITUTIONAL REQUIREMENTS

The Constitution includes a Protocol on Disposal of Land for Less than Best Consideration (“the Protocol”) which contains eight specific procedural requirements that must be addressed and included in any report seeking authority to dispose at less than market value or market rent as follows:

(i) A valuation report, undertaken by a Chartered Surveyor (Valuer), setting out the restricted and unrestricted values of the property

The Council’s partner, ENGIE Services Limited, has provided a valuation report from a qualified Chartered Surveyor which contains the following key information.
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Unrestricted Value (i.e. market value as a capital sum)

£95,000 (NINETY-FIVE THOUSAND POUNDS)

Less Restricted Value (i.e. market value subject to proposed lease):

£50 (FIFTY POUNDS)

Equals Discount (i.e. total amount of undervalue):

£ 94,950 (NINETY-FOUR THOUSAND NINE HUNDRED AND FIFTY POUNDS)

The above figures are based on the current market value and the market value under the terms of the proposed transaction and is the amount that will not be received by the Council if the proposal is approved.

(ii) An assessment with supporting evidence of the capital value to the Council of those benefits of the proposal which are capable of monetary assessment together with an assessment with supporting evidence of the value of non-monetary benefits (i.e. social, economic and environmental benefits)

The Site would predominantly remain underutilised with associated running costs and lack of directed capital investment should the proposal not progress. The value of the proposed asset transfer in non-monetary terms cannot be quantified. Nevertheless, a transfer to Corinthians Complex CIC supports the Council's outcomes of a 'stronger economy' and 'stronger communities'. It provides Corinthians with a platform from which to deliver its own objectives. The proposed transfer passes the Site's maintenance costs to Corinthians thus representing a saving to the Council.

Corinthian's commitment to provide a local community amenity will improve community spirit and health and well-being, reduce social exclusion, help to tackle anti-social behaviour, and boost local prosperity.

These outcomes affect peoples' lives and cannot be directly quantified. Notwithstanding there is a significant cost to the Borough in dealing with the issues and any opportunity to reduce the numbers of those affected must be embraced.

(iii) Confirmation that the disposal will contribute positively to the Council's priorities.

The Community Asset Transfer will contribute positively to enabling active management and use of the site in support of the Council's objectives including 'Sustainable Communities', 'Feel Safe and Are Safe' and 'Health and Wellbeing'.

(iv) A statement that the benefits that the Borough will derive from the proposed disposal cannot be achieved unless the lease takes place at an undervalue rent and confirming that no reasonable alternative means of funding are available to the purchaser.

Corinthians Complex CIC's proposal is reliant on external funding opportunities. Without funding, the benefits Corinthians achieves for the Borough are at risk of not being fulfilled.

(v) In cases where the proposed disposal is to an identified person/organisation without a tender process, this should be subject to consideration of a robust business case and an analysis of the financial standing of the organisation/person.

A full Business Case was received and considered. The proposed tenant is of sound grounding and can provide the use to benefit both the ward and the wider community.

(vi) Details of the proposed terms of the transaction which will ensure that the disposal will contribute to the achievement or improvement of the social, economic, and environmental wellbeing of the area.

NOTE: In considering the application of the wellbeing criteria under the General Disposal Consent, the Council must have regard to the Community Strategy and reasonably consider the extent, if any, to which the proposed disposal supports the aims and objectives in the Strategy

Heads of terms are agreed, a summary of the Headline terms are below:

- 99-year lease, with effect from the date of completion
- £1.00 per annum rent if demanded
- Tenant responsible for all repairs within the Site demise
- Tenant responsible for insuring building, contents, fixtures, and fittings
- Utilities to be procured by tenant. (If the tenant cannot seek suitable insurance to satisfy NELC then NELC will insure against the basic perils and then recharge this cost back to the tenant. This provides a level of comfort to NELC.)
- Each party to bear its own professional fees in preparing the legal documentation

(vii) A statement from the Monitoring Officer on whether it is considered that the disposal is capable of falling within the terms of the General Disposal Consent.

See Section 11 of this Report "Legal Implications"

(viii) A statement from the Section 151 Officer in relation to the financial implications of the proposal, particularly in respect of the impact on resources for capital spending as set out in the Medium-Term Financial Plan.

There must be demonstrable evidence that the outcome of any undervalue disposal will be equally beneficial to a disposal at market value

See Section 10 of this Report "Financial Implications"

ESTATES PROGRAMME BOARD - The Protocol also requires that any proposal to dispose at less than best consideration should, in the first instance, be referred to the Board for consideration of a business case and options appraisal.

STATE AID RULES - The Protocol further requires that the Council ensures that the nature and amount of any undervalue complies with the European Commission's State Aid Rules and does not create a state aided subsidy for a commercial organisation. That requires the application of the follow tests:

3.1.1 Is the value of the benefit below the threshold set by the De Minimis Aid Regulations?	
Yes	
3.1.2 Do the General Block Exemption Regulations apply to the proposal?	
No	
3.1.3 Does the proposal meet any of the following 5 State Aid criteria? <i>Where 1 or more of the criteria appears not to be met, then it is unlikely to constitute State Aid:</i>	
Is the measure granted by the state or through state resources?	Yes
Does it confer an advantage to an undertaking?	Yes
Is it selective, favoring certain undertakings?	Yes
Does it distort, or have the potential to distort, competition?	Yes
Is the activity tradable between member states?	No

4. RISKS AND OPPORTUNITIES

The risk to the Council in progressing with a lease to Corinthians Complex CIC is considered minimal. In the scenario of a lease, should the proposals no longer be viable, the option to relinquish the premise back to the Council and ultimately seek alternative opportunities would be pursued which would mitigate against the Council incurring any future holding costs.

Future risks remain with Corinthians Complex CIC in respect to the operational costs of maintenance etc. and the obligation of repair and maintaining the facilities to an acceptable standard to ensure ongoing use.

There are no identifiable environmental sustainability implications because of the proposal, as it is the intention that the condition of the Site will be maintained and improved based on an operational use. The long lease will allow Corinthians Complex CIC to enable the continuation of the Grimsby Futsal League and would allow for potential external funding to be obtained, allowing for further investment and improvements. The site usage will be a positive reflection to the street scene and will reduce the financial commitments of the Council.

5. OTHER OPTIONS CONSIDERED

To do nothing would see the Site continue to be under-utilised and would not enable Corinthians Complex CIC to take a more proactive role in the Community through managing the Site and seeking to improve it. The condition would continue to deteriorate attracting anti-social behaviour and all the repair and maintenance obligations and cost would rest with the Council. This would result in a negative impact to the community. Corinthians Complex CIC have presented a robust Business Case which demonstrates extensive social return on investment which requires a longer-term lease in support of the proposal and will result in a full use of the Site. It is not considered a viable option to improve the maintenance activities

or fully manage the Site as is currently and the Council risk unnecessary and negative publicity as well as potentially being wholly liable for the Site, together with all future associated expenditure including any missed opportunity of investment into or expansion of the potential use and activities.

The freehold disposal of the Site has not been considered at this time. This is in respect of mitigating risk in maintaining the Site and in the event the proposal is no longer viable, which impacts on the on-going use of the Site, the Council could take action to seek alternative use of the Site and prevent any unauthorised uses, which a freehold disposal would remove.

6. REPUTATION AND COMMUNICATIONS CONSIDERATIONS

There are positive reputational implications for the Council resulting from the decision to support a lease to Corinthians Complex CIC. The lease agreement will primarily enable use of the Site but will allow future investment opportunities for enhancement as well as a localised management offer for the benefit and use by the local community. The Council's communications service has been briefed of the proposal and will issue any information requirements in respect to this proposal.

7. FINANCIAL CONSIDERATIONS

The proposal outlined within the report supports the Council's key outcome of 'stronger communities', by enabling Corinthians Complex CIC and the community to use and enhance the site.

The repair and maintenance cost of the Site will be financed through resources obtained by Corinthians Complex CIC. Any future investment will be subject to Corinthian's own resources and access to external grant funding which will remove the financial commitment from the Council.

On an ongoing basis the proposal will require no capital and revenue expenditure to be provided from the Council and result in ongoing annual revenue savings average of £2,988. This is consistent with the Council's policy to contribute to improved value for money and supports the financial objective and our determination to be an efficient and effective Council.

8. CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS

The recommendations outlined within this report have been considered so far as their impact of the proposal on climate change and the environment. In reference to the Council's environmental policy, the proposal supports the Council's environmental priorities:

- By recognising and realising the economic and social benefits of a high-quality environment.
- By working towards a low carbon North East Lincolnshire that is prepared for, and resilient to, the impacts of climate change.

9. CONSULTATION WITH SCRUTINY

There has been no consultation with Scrutiny to date.

10. FINANCIAL IMPLICATIONS

As outlined above, there will be a small ongoing saving from the proposal. There will also be a transfer of responsibility for investing in the site and increased benefits to the community that outweighs any loss of rent.

11. LEGAL IMPLICATIONS

Local Government Act 1972, s123, provides that the Council may dispose of land in any manner it sees fit subject to the constraint that (except in the case of leases for less than 7 years) disposal must be for the best consideration reasonably obtainable.

The General Disposal Consent (England) 2003 provides a general consent removing the requirement for Local Authorities to seek specific approval from the Secretary of State for a wide range of disposals at less than best consideration. Authorities are granted consent in circumstances when the undervalue does not exceed £2m and where the disposing Authority considers that the disposal is likely to contribute to the achievement of the promotion or improvement of the economic, social or environmental wellbeing of the whole or any part of the area (the general power of wellbeing).

Constitutionally and as outlined in the above report the Protocol on Disposal of Land for Less than Best Consideration requires that the Council receives a statement from the Monitoring Officer on whether it is considered that the proposed lease is capable of falling within the terms of the General Disposal Consent (England) 2003.

Cabinet is advised that this proposed disposal is capable of falling within the terms of the consent for the following reasons:

- (a) the amount of undervalue would be below the £2m threshold
- (b) it is the professional opinion of the Director of Resources and Governance that in granting this disposal the monetary loss is outweighed by the positive social, economic and environmental benefits of the proposal.

The Scheme of Delegation in the Constitution provides for the Director of Resources and Governance to refer any proposed disposal at an undervalue to Cabinet in accordance with the Protocol on Disposal of Land at Less than Best Consideration, and maintain a register of all undervalue disposals. This report therefore complies with those provisions.

In terms of State Aid, it is clear from the analysis set out earlier in this report that, the proposal would fall within the De Minimis Regulation. This recognises that small amounts of aid (less than €200,000.00 over a rolling 3-year period) are unlikely to distort competition.

It is recognised and accepted that long term security of tenure can be advantageous to a provider and sometimes necessary to secure funding or render an investment capable of delivering a return.

12. HUMAN RESOURCES IMPLICATIONS

There are no direct HR implications

13. WARD IMPLICATIONS

This proposal directly impacts on the East Marsh Ward.

14. BACKGROUND PAPERS

There are no background papers to this report.

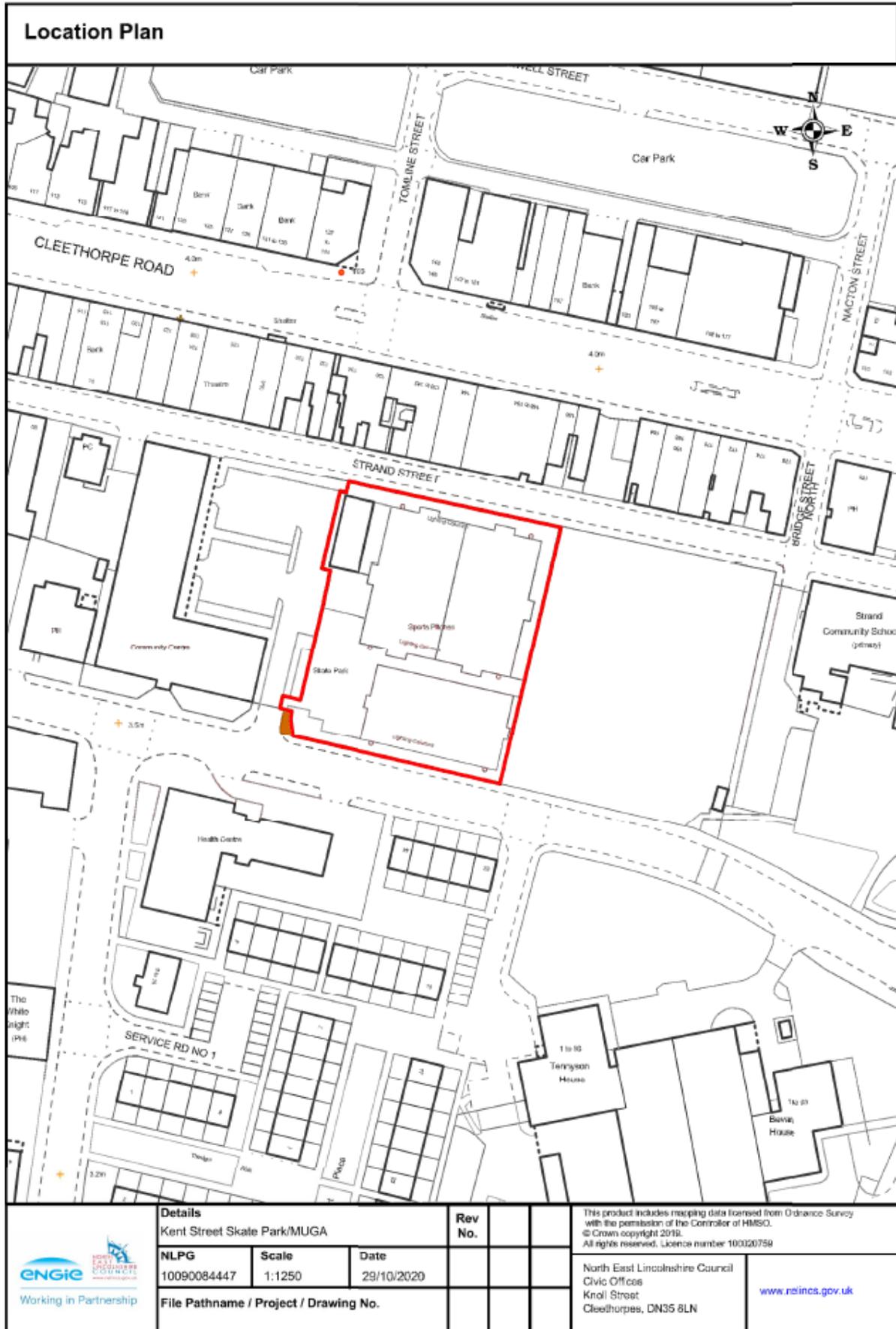
15. CONTACT OFFICERS

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COUNCILLOR JOHN FENTY
PORTFOLIO HOLDER FOR REGENERATION, SKILLS AND HOUSING

APPENDIX ONE - SITE LOCATION PLAN



Details			Rev No.	
Kent Street Skate Park/MUGA				
NLPG	Scale	Date		
10090084447	1:1250	29/10/2020		
File Pathname / Project / Drawing No.				

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