

CABINET

DATE	8th September 2021
REPORT OF	Councillor Stan Shreeve – Deputy Leader and Portfolio Holder for Finance, Resources and Assets
RESPONSIBLE OFFICER	Sharon Wroot – Executive Director of Environment, Economy and Resources
SUBJECT	DISPOSAL OF PROPERTY AT LESS THAN BEST CONSIDERATION – Lease disposal of BMX Trails, Taylors Avenue, Cleethorpes
STATUS	Open
FORWARD PLAN REF NO.	CB 08/21/06

CONTRIBUTION TO OUR AIMS

The disposal of the BMX/ Skate Trails at Taylors Avenue, Cleethorpes (the “Site”) by way of a 125-year, full, repairing, and insuring lease will enable GY95 (formerly Giving Young People Opportunities (GYPO)) (the “Group”) to take over the management, maintenance and use of the facilities within the Site.

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 continue to utilise the Site for its current purpose, for the provision of BMX mud trails and the provision of coaching and guidance for all skill levels as well as a level of initial investment in securing the site and thereafter improvements to the facilities offered.

The lease disposal supports the Council’s outcome of ‘Stronger Communities’ by creating an environment for likeminded people (children, young people, and families) to develop relationships and feel safe, welcomed, and supported by other users. The Group provide guidance, advice, coaching, and volunteering opportunities and work with other agencies and partners to promote healthy lifestyles and community cohesion. The disposal supports the Council’s health and wellbeing agendas whilst enabling the sustainability of a strong community and diverting young people away from anti-social behaviours.

EXECUTIVE SUMMARY

This report seeks authority to dispose, by way of a 125-year full, repairing, and insuring lease, of the subject Site, namely the BMX Trails at Taylors Avenue, Cleethorpes. 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 as the surrounding land is within Council ownership, this allowing the Council to retain an element of control as Landlord.

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 125 years at a peppercorn rent (£1 per annum if demanded) to GY95.
2. Delegates to the Director of Executive Director of Environment, Economy and Resources, in consultation with the Deputy Leader and Portfolio Holder for, Finance, Resources and Assets authority to settle all terms and ensure that all necessary actions are carried out to complete the lease disposal.
3. Authorises the Assistant Director of Law, Governance and Assets (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 the Group which has been considered as part of the Council's approach to Community Asset Transfers (CAT). The proposal, by way of a full Business Case, has been agreed in principle which could result in the transfer of the Site by virtue of a 125-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.

1. BACKGROUND AND ISSUES

- 1.1. The Council is the freehold owner of the Site which is home to the BMX/ Skate Trails at Taylors Avenue, Cleethorpes, 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 the Group.
- 1.2. The Site has been in use for its current purpose for over 25 years and during that time managed by GYPO. In celebration of turning 25 years old, the Group have rebranded to align to their core values and heritage as GY95 and changed from a Charity to a Community Interest Organisation (CIO), providing the opportunity to access funding to continue with the provision detailed within the Business Case; which principally is to provide youth support, coaching, guidance, and provision for BMX participants.
- 1.3. 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.
- 1.4. The proposal, by way of a detailed Business Case was received from the Group and was considered by Panel members at a CAT meeting and recommended to decision makers for in principle support.

- 1.5. 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 received 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'.
- 1.6. 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 the Group, as would all future investment opportunities.
- 1.7. 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 continue to be utilised by the Community.

2. PROPOSAL

- 2.1. A proposal received from GY95 (the "Group") sets out their objectives to lease the Site and take over the maintenance.
- 2.2. Once a lease has been granted, the Group will have full autonomy to concentrate on the sustainable provision of the BMX/ Skate Trails and coaching and volunteering opportunities.
- 2.3. Currently a number of volunteers contribute to the management of the Site and the Group hope to continue to build on the success of volunteer recruitment and retention. The Group have worked closely with the National Citizenship Service and Youth Offending Service to facilitate young people undertaking community work. Users of the facility are encouraged to share responsibility for the sustainability of the Site by getting involved with maintenance, upkeep, digging, building, and keeping the Site safe and tidy.
- 2.4. The Group have held many successful fundraising events and have connections with local businesses, artists, and bands, who get involved to showcase talents and attract BMX riders from all over the country and further. The Group wish to continue with the provision of these events in the near future.
- 2.5. The lease will be granted on full, repairing, and insuring terms. This would maintain the current position dating back many years whereby the Council does not incur any maintenance costs for the Site.
- 2.6. The lease will not include land registered and defined as the King George V Playing Fields as this is under Covenant/Trust to the Council by the Charity Commission and Fields In Trust. An easement/ right of access over the shared track from Taylors Avenue will be included in the lease, and a percentage of any maintenance costs will be shared with the Group.
- 2.7. The Group has delivered these facilities to the local community and have been successfully operating the facility for over 25 years. A sustainable cashflow throughout the duration of the time managing the Site has been evidenced by

the Group. Aspirations to improve the Site, such as to add fencing and CCTV, will be dependent on the results of consultation and subject to Planning and the success of external funding opportunities.

3. CONSTITUTIONAL REQUIREMENTS

3.1. 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 qualified Chartered Surveyor has provided a valuation report which contains the following key information.

Unrestricted Value (i.e. market value as a capital sum)	£50,000 (Fifty Thousand Pounds)
Less Restricted Value (i.e. market value subject to proposed lease)	£0 (Nil)
Equals Discount (i.e. total amount of undervalue)	£50,000 (Fifty Thousand 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 value of the proposed lease in non-monetary terms cannot be quantified. Nevertheless, a transfer to the Group supports the Council’s outcomes of a ‘stronger economy’ and ‘stronger communities’. It provides the Group with a platform from which to continue to deliver its own objectives. The proposed lease includes all the maintenance cost associated with the Site to the Group thus ensuring no change in the financial position to the Council.

The Group’s commitment to provide a local community amenity will continue to 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 CAT 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.

The Group have successfully managed the site for over 25 years and are dependent upon a 'Less Than Best' Lease agreement to continue with their provision to the local Community. The Group will be dependent upon successful funding bids in order to implement any changes/improvements to the site, initially such as fencing and CCTV.

(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 Group 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

A summary of the Headline terms are below:

- 125-year lease, with effect from the date of completion
- £1.00 per annum rent (peppercorn) if demanded
- Tenant responsible for all repairs within the Site demise
- Tenant responsible for insuring any 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.

SUBSIDY CONTROL 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. From 1st January 2021 the State Aid rules have been replaced by the Subsidy Control Rules for subsidies granted in the UK. The Council now has to ensure the nature and amount of the undervalue, as a subsidy, complies with the obligations in the UK-EU Trade and Co-operation Agreement (“the TCA”). That requires the application of the follow tests:

Does the proposal meet the four-limb definition of a Subsidy under the TCA?
Where 1 or more of the criteria appears not to be met, then it is unlikely to constitute a Subsidy:

Is there financial assistance arising from resources of the parties?	Yes
Does the financial assistance confer an economic advantage on one or more economic actors?	Yes
Is it selective, favoring certain economic actors over others?	Yes
Has it or could it have an effect on trade or investment between the UK and the EU?	No

4. RISKS AND OPPORTUNITIES

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

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

4.3. 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 its current operational use. The long lease will allow the Group continuation of the BMX/ Skate Trails provision and would allow for potential external funding to be obtained, allowing for further investment and improvements. The Site usage continues to require no financial commitment from the Council.

5. OTHER OPTIONS CONSIDERED

5.1. To do nothing could see the Group not receive future funding opportunities to improve the Site for the benefit of the BMX/ Skate community and could impact on the viability of the Site. As a result, at worst, the Site use could cease with the Site being transferred back to the Council, including all associated costs of decommissioning, and managing the land.

5.2. The freehold disposal of the Site has not been considered at this time. This is in respect of the Council's surrounding land ownership interests and mitigating risk in the event the Group are unable to continue with maintaining the Site. In such circumstances where 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 or decommission and managing the land 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 the Group. The lease agreement will primarily enable continued use of the Site but will allow future investment opportunities for enhancement as well as a continued 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

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

7.2. The repair and maintenance cost of the Site will be financed through resources obtained by the Group. Any future investment will be subject to the Group's own resources and access to external grant funding.

7.3. On an ongoing basis the proposal will require no capital and revenue expenditure to be provided from the Council. 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

There are no ongoing financial implications to the Council and the long-term leasing out of the site will help achieve improved facilities for the benefit of the community.

11. LEGAL IMPLICATIONS

- 11.1 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.
- 11.2 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).
- 11.3 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.
- 11.4 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 Executive Director of Environment, Economy and Resources that in granting this disposal the monetary loss is outweighed by the positive social, economic and environmental benefits of the proposal.
- 11.5 The Scheme of Delegation in the Constitution provides for the Executive Director of Environment, Economy and Resources 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.
- 11.6 In terms of subsidy control, it is clear from the analysis set out earlier in this report that the proposal fails to fully satisfy the four-limb definition of a subsidy under the UK-EU Trade and Co-operation Agreement. Further, the proposal would fall within de minimis contained in the UK-EU Trade and Co-operation Agreement. This recognises that small amounts of subsidy, less than €380,000.00 over a

rolling 3-year period, are unlikely to distort competition.
11.7 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 Haverstoe Ward.

14. BACKGROUND PAPERS

There are no background papers to this report.

15. CONTACT OFFICER

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COUNCILLOR STAN SHREEVE
DEPUTY LEADER AND PORTFOLIO HOLDER FOR FINANCE,
RESOURCES AND ASSETS

APPENDIX ONE - SITE LOCATION PLAN

