

CABINET

DATE	15 th June 2022
REPORT OF	Councillor Stephen Harness - 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 – Leasehold disposal of Butt Lane Playing Fields, Laceby.
STATUS	Open
FORWARD PLAN REF NO.	CB 06/22/03

CONTRIBUTION TO OUR AIMS

The disposal of Butt Lane Playing Fields, Laceby (the “Site”), by way of a leasehold disposal, will enable The Laceby Community Collective (the “Group”) to take over the management, maintenance and use of the Site to fulfil their Charitable aims and objectives.

Providing a leasehold disposal at less than best (market) value is based on the submission of a detailed Business Case proposal setting out the social, economic and environmental (community) return on investment; the benefits of which outweigh the monetary value that would be requested if the Site were to be leased at market value.

The disposal supports the Council’s outcome of ‘Stronger Communities’ by enabling the continuation of the current provision, as well as proposed investment in to the Pavilion and wider facilities as proposed by the Group. There would be no continued financial constraint on the Council in terms of managing the Site which will meet our determination to be an efficient and effective Council.

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 Butt Lane Playing Fields, Laceby. 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).

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 The Laceby Community Collective;
2. delegates authority to the Executive Director of Environment, Economy and Resources in consultation with the Portfolio Holder for Finance, Resources and Assets the responsibility to ensure that all necessary actions are carried out in order to complete and approve the detailed terms of the disposal;
3. delegates to the Assistant Director Law, Governance and Assets (Monitoring Officer) authorisation to complete all requisite legal documentation in relation to the matters outlined above;
4. notes that until disposal is ultimately achieved, the Council continues its commitment to maintaining the site.

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 includes a Pavilion, Play Area, Tennis Courts, Former Bowling Green and Football and Cricket pitches, which for the purposes of this report, is shown outlined red as per the attached plan at Appendix One and is the extent of the Site to be leased.
- 1.2 A Community Asset Transfer (CAT) would lead to localised ownership and management of a public asset which would lead to an enhancement of the area and would promote the Site for increased use by the local community and residents.
- 1.3 The Council has an agreed 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, has been 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.

- 1.6 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'.
- 1.7 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.
- 1.8 The Council must 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 further utilised by the Community. The football pitches are included in the Borough's Playing Pitch Strategy (PPS) and therefore will be protected for continued use to be hired at rate that would be accessible to the Community.
- 1.9 Ward Councillors will be engaged as part of the disposal process.

2 PROPOSAL

- 2.1 A proposal received from the Group sets out their objectives to lease the Site and take over the maintenance as well as making fundamental improvements to the Pavilion and ancillary facilities on the Site.
- 2.2 Should the proposal be agreed, and a lease has been granted, the Group will have full autonomy to concentrate on improving the sustainable provision of leisure and recreational use of the Site, and to enhance the biodiversity of the area and make investment in the security of the Site to deter anti-social behaviour.
- 2.3 Currently the Site is under-utilised and in parts has become untidy and subject to anti-social behaviour such as fly-tipping. The Pavilion needs refurbishment and the Group have ambitious plans to invest, improve and maintain the building as a valuable resource to the community. The Group's proposal to enhance the Site and improve on the current provision for the benefit of the community and residents should be considered on merit of the social benefits to be realised.
- 2.4 In the first year the Group propose refurbishment of the Pavilion which would be developed in conjunction with the Community needs, residents, and specialists. This would be in line with any conditions set by the Council, including advice from Ecology, Trees and Woodlands, Planning and Environment/ Grounds Maintenance Officers as necessary.
- 2.5 Further investment by the Group to assist in security and to reduce anti-social behaviours, including installation of gates and fencing could be considered at entrances. Any proposed changes as part of the lease would need to be agreed in advance with the Council as Landlord.

- 2.6 The Group have held engagement sessions with the Community in respect to having more activities and use of the site, with feedback from those who are eager to see the area better managed and security improved.
- 2.7 The proposal lease would be granted on a full, repairing, and insuring basis across the 125-year term. This would maintain the current position whereby the Council would not incur any ongoing maintenance costs for the Site.
- 2.8 The proposed lease would protect the Football pitches and consent would be required prior to the Group implementing any future proposals to the Site.

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)	£180,000 (One Hundred and Eighty Thousand Pounds)
Less Restricted Value (i.e. market value subject to proposed lease)	£0 (Nil)
Equals Discount (i.e. total amount of undervalue)	£180,000 (One Hundred and Eighty 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 the opportunity to improve a key asset to the community and to take over management and maintenance of the Site. The proposed lease includes all of the maintenance costs associated with the Site being transferred to the Group, thus ensuring no change in the financial position of the Council.

<p>The Group's commitment to provide a local community amenity will improve community spirit and health and well-being, help to tackle anti-social behaviour, and boost local prosperity.</p> <p>These outcomes affect peoples' lives and cannot be directly quantified. Notwithstanding there is a significant cost to the Borough in dealing with issues and any opportunity to reduce the numbers of those affected must be embraced.</p>
<p>(iii) Confirmation that the disposal will contribute positively to the Council's priorities.</p>
<p>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'.</p>
<p>(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.</p>
<p>The Group are dependent upon a 'Less Than Best' Lease agreement to enable them to take over the management and maintenance of the Site on behalf of the local Community.</p>
<p>(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.</p>
<p>A full Business Case has been received and considered. The Group is of sound grounding and can provide an enhanced asset to benefit both the residents and the wider community.</p>
<p>(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.</p> <p><i>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</i></p>
<p>A summary of the Headline terms are below:</p> <ul style="list-style-type: none"> • A 125-year lease term • Peppercorn rent (£1 if demanded) • Full, Repairing and Insuring by the tenant • Restricted to Community Uses throughout the term • Community Accessible Use to be provided in relation to the Football Pitches and Changing Rooms as this site is important in the provision of

sports facilities as set out in the North East Lincolnshire Playing Pitch Strategy.
(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 12 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. <i>There must be demonstrable evidence that the outcome of any undervalue disposal will be equally beneficial to a disposal at market value</i>
See Section 11 of this Report “Financial Implications”

3.2 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.

3.3 SUBSIDY CONTROL RULES The Subsidy Control Act 2022 became law at the end of April 2022 with the new regime expected to come into force in Autumn 2022. Until then, public authorities are required to continue to follow the existing rules on subsidy control (as set out in the UK-EU Trade and Cooperation Agreement (the TCA)). The Protocol requires that the Council continues to ensure that the nature and amount of any undervalue complies with the Subsidy Control 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 TCA. The application of the differing regimes is dependent upon the date of completion. At the moment the matter requires the application of the follow tests:

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

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	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 by the Council and ultimately seek alternative opportunities would be pursued which could 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 Site to an acceptable standard to ensure ongoing use.
- 4.3 There are potential positive 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 to continue with management of the Site and would allow for potential funding to be obtained, allowing for further investment and improvements.
- 4.4 The disposal will enable the Group to direct resources and funding towards ongoing management resulting in increased usage which will result in a positive reflection to the street scene within this part of the borough, reduce miss-use or antisocial behaviour and will ensure there is no future ongoing financial commitment to the Council.

5 OTHER OPTIONS CONSIDERED

- 5.1 To do nothing would see the Group not taking on responsibility of the Site and be unable to develop their proposals and seek future funding opportunities to improve the Site for the benefit of the residents and community. As a result, the Site use would continue to be managed as is, including all associated costs being that of the Council.
- 5.2 The freehold disposal of the Site has not been considered at this time. This is in respect of the Council's continued interest in the use of the land 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 an alternative use of the Site or to prevent any unauthorised uses of the Site 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 local residents and the 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 residents and 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 by 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 CHILDREN AND YOUNG PEOPLE IMPLICATIONS

The Site will continue to be used as it is now, with proposals to invest and enhance the Site and its facilities which will result in positive implications so far as Children and Young People.

9 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.

10 CONSULTATION WITH SCRUTINY

There has been no consultation with Scrutiny to date.

11 FINANCIAL IMPLICATIONS

- 11.1 The transfer of the site will generate a small revenue saving to the Council from passing on the responsibilities for utilities and maintenance.
- 11.2 It will also improve the potential to attract external grant funding and investment in the site.

12 LEGAL IMPLICATIONS

- 12.1 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.
- 12.2 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).
- 12.3 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.
- 12.4 Cabinet is advised that this proposed disposal is capable of falling within the terms of the consent for the following reasons:
- 12.4.1 the amount of undervalue would be below the £2m threshold
- 12.4.2 it is the professional opinion of the Executive Director for 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.
- 12.5 The Scheme of Delegation in the Constitution provides for the Executive Director for 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.
- 12.6 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.
- 12.7 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.

13 HUMAN RESOURCES IMPLICATIONS

There are no direct HR implications

14 WARD IMPLICATIONS

This proposal impacts on the Wolds Ward

15 BACKGROUND PAPERS

There are no background papers in respect of this proposal.

16 CONTACT OFFICERS

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COUNCILLOR STEPHEN HARNESS
PORTFOLIO HOLDER FOR FINANCE, RESOURCES AND ASSETS

APPENDIX ONE – SITE LOCATION PLAN

