

Cheltenham Borough Council
Cabinet – 28th July 2020
The Burrows Pavilion
(Authority to Dispose of Open Space)

Accountable member	Cabinet Member for Finance, Councillor Rowena Hay
Accountable officer	Head of Property and Asset Management, Dominic Stead
Ward(s) affected	Leckhampton
Key/Significant Decision	No
Executive summary	<p>A collaboration between Leckhampton Rovers and the Council to facilitate an improved playing surface and better value for money. The following suite of documents are being considered to facilitate this.</p> <p><u>Lease</u></p> <p>Leckhampton Rovers Football Club seeks permission to lease The Burrows Pavilion and changing rooms from the council on a 21 year lease. By leasing the pavilion, it will become their home base and from where they can hold further community events.</p> <p><u>Licence and Additional Document (AD)</u></p> <p>An arrangement has been negotiated to include the use of the playing fields with permission from the Council (a Licence). A further document is proposed (the AD) to outline how the playing fields will be improved, managed and maintained.</p> <p><u>Funding</u></p> <p>Leckhampton Rovers are keen to bring funding to the table, improve the playing surfaces and help with the ongoing maintenance of the playing field. A lease is important to the club as it enables them to try and secure funding from other organisations as well as the Football Association.</p> <p>The proposed approach is intended to benefit all parties and users but at the same time protect the Council's position. The proposal has the backing from Balcarras School, Leckhampton Primary School and the Gloucestershire Football Association.</p>
Recommendations	<p>That Cabinet RESOLVES</p> <ol style="list-style-type: none"> 1. to dispose by way of lease for a term of 21 years the pavilion outlined in red on the attached plan, Appendix 2, to Leckhampton Rovers Football at a market rent. 2. To enter into a Licence (a permission to use) with Leckhampton Rovers for the playing field, shown edged red on the attached

plan.

3. To enter into a document that outlines an understanding between the Council and third parties in respect of improvements and ongoing maintenance of the playing field.
4. To enter into such documents as the Borough Solicitor deems necessary or desirable to reflect the terms negotiated, including any grant agreements with third party funders

Financial implications

In terms of the new lease, the financial impact is low due to the fact that the rental for the Pavilion will replace the lost playing field income. This income is likely to increase due to this agreement however. Although the playing field income will be lost, this will be recovered through the Pavilion lease. Therefore with potential S106 contributions and potential funding from the Football Foundation into the playing fields, the income from this is likely to increase and general use is likely to increase as well. In terms of the financial return, the numbers are fairly low and likely to be a £1,000 increase to the current income received.

Contact officer: Andrew Knott, Andrew.knott@publicagroup.uk, 01242 264121

<p>Legal implications</p>	<p>The Council has a statutory duty to obtain best consideration when disposing of a lease for more than 7 years: this would include a duty to obtain best consideration upon future rent reviews.</p> <p>Whilst a lease is the grant of an interest in land, the grant of a licence is a mere personal right and does not grant the licensee the privileges and powers that a tenant enjoys. Care will have to be taken to ensure that the provisions contained in the licence, taken together with any additional documents, do not amount to the grant of a tenancy or a contract for services</p> <p>Additional Documents will be carefully reviewed by One Legal to ensure that they fall within the Council's powers and do not imply rights which are not intended to be granted. It is the intention that the Additional Documents are not to be legally binding. The Licence would need to contain appropriate termination provisions to allow the Council to bring the occupation to the field to an end if the arrangements were not working.</p> <p>The risk of a "living document" (the Additional Document referred to in paragraph 3.3) is that it is not kept up to date, particularly in respect of responsible personnel where a number of third parties are involved.</p> <p>It is advised that the Council is the employer under the works and professional contracts because it is the owner of the Pavilion and field. The Council's contract rules must be followed when procuring these works and professional services.</p> <p>An early draft of the Additional Document refers to the potential for any shortfall from the S106 monies to be met by the Football Foundation. A copy of the proposed terms of the grant must be reviewed as soon as possible and before committing expenditure. The relevant S106 agreements must also be checked to ensure that the proposed use of the sums is permitted. Contact officer: One Legal , legalservices@tewkesbury.gov.uk, 01242 272691</p>
<p>HR implications (including learning and organisational development)</p>	<p>IN/A</p> <p>Contact officer: , @cheltenham.gov.uk, 01242</p>
<p>Key risks</p>	<p>The football club could disband during the lease term. At lease end the premises may not be returned to the Borough in an appropriate condition.</p> <p>The football Club could disband mid-season leaving other clubs unable to book or play.</p>
<p>Corporate and community plan Implications</p>	<p>The application by Leckhampton Rovers Football Club contributes to the Council's corporate objectives of: '<i>Being able to lead a healthy lifestyle and the enjoyment of a strong sense of community</i>'.</p>
<p>Environmental and climate change implications</p>	<p>None</p>
<p>Property/Asset Implications</p>	<p>As outlined in this report.</p> <p>Contact officer: Dominic.Stead@cheltenham.gov.uk</p>

1. Background

Leckhampton Rovers Football Club was formed in 1996 to provide football facilities for 20 boys and girls who wanted to kick a ball around. Since 1996 the demand for youth football in the area has escalated to the extent that the Club now has 26 youth teams, aged 9 to 18, in the Cheltenham Youth League, with a total of 572 registered players. They continue to register more teams each year and expect the number of teams at all levels to increase in the future. They have also recently started girls' football and in the future hope to offer ladies and disabled football along with Walking Football for the over 50s. They also run a Saturday morning Academy throughout the year regularly attended by 100+ boys and girls aged 4 to 8.

In 2009, they identified a need to form a men's team due to the progression through the Under 16s, together with demand for football from students at the University of Gloucestershire. This demand continued and they now have a successful adult team in The Cheltenham League with 30 registered players who play at the University's The Folley, Swindon Road ground. They also have a Veterans team who compete in the Gloucestershire Football Association Veterans.

The Club is now registered as a charitable incorporated organisation, registered with the Charities Commission registration number 1182944.

2. The Burrows Pavilion forms part of the Council's Public Open Space, and the decision to grant a lease on Public Open Space must first be advertised for 2 consecutive weeks as a 'Disposal of Open Space' pursuant to Section 123 2A of the Local Government Act 1972 in the Public Notice section of a local newspaper and any comments raised are to be considered before any final decision can be made whether to dispose of the Open Space.
 - 2.1 The advertisement was placed in the Gloucestershire Echo 11th and 18th June 2019 and it has been confirmed by One Legal that no representations were made.
 - 2.2 The property is a QEII field and therefore subject to restrictions imposed by Fields in Trust. An application for approval of the proposed lease of the pavilion was made to the Fields in Trust and was approved on the 20th June 2019.

3. Reasons for recommendations

- 3.1 Granting the lease on full repairing terms will reduce the amount of officer time spent physically managing the asset to carry out minor and major repairs and maintenance such as re-fixing gutters and graffiti caused by petty vandalism. This will be a saving to the Council.
- 3.2 Granting a lease will generate a rental income for the council and save the authority the cost of providing utilities. It will provide the club with a home and the ability to secure funding and grants towards the facilities and improvements to the pavilion and playing surfaces.
- 3.3 Granting the Licence will allow Leckhampton Rovers to be involved in the quality of the playing surface, share the costs of ongoing maintenance and management and help manage and promote the social, physical and ongoing use of the playing fields. This contributes to our Corporate Strategy, the Playing Field Strategy and reduces the Council's costs. It shares the burdens of management and maintenance with the users, who will benefit from an improved provision. A Licence leaves the control with the Council and prevents anyone or any group from being excluded.

3.4 The football club will be required (at no cost to the Council) to take bookings from other clubs and members of the public should they wish to book a pitch, saving the council resource time. Bookings will be in line with the Council's booking policies and charges. Any money lost is compensated by the rental income generated by letting the pavilion. The arrangements covering bookings, management responsibilities, charging, and maintenance will form part of the AD. It is proposed that an initial draft is approved, but that this is an organic document that is a record of understanding between the parties and users. This means if representatives or staff changes occur, there is an ongoing record of what has been agreed and can be adhered to. Changes to the AD are mutually agreed. The ultimate remedy, if no agreement can be reached in relation to the AD, or if relationships breakdown, is that the Licence can be revoked by the Council returning full control of the playing fields back to the Council.

4. Alternative options considered

4.1 Lease of the whole playing field. Could potentially lead to the feeling of ownership by the Club of the playing surface, which may lead to exclusion of people and groups. It was less likely to obtain approval via the S123 route and from Fields in Trust. A Licence allows the Council to unite with the users to the ultimate benefit of all parties involved and all playing field users.

5. How this initiative contributes to the corporate plan

5.1 The application by Leckhampton Rovers Football Club contributes to the Council's corporate objectives of: 'Being able to lead a healthy lifestyle and the enjoyment of a strong sense of community'.

6. Consultation and feedback

6.1 Ward Councillors have been advised to the proposal and no objections have been received.

6.2 Letters of support have been received from Balcarras School, Leckhampton Primary School, Cheltenham Youth League and the Gloucestershire Football Association, see appendix 3.

7. Performance management –monitoring and review

7.1 Property & Asset Management in consultation with the Borough Solicitor will execute the lease.

Report author	Contact officer: simon.hodges@cheltenham.gov.uk, 01242-264349
----------------------	--

Appendices	<ol style="list-style-type: none">1. Risk Assessment2. Heads of Terms Lease3. Lease Plan4. Heads of Terms Licence5. Licence Plan6. Memorandum of Understanding/ Another Document
-------------------	---

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-5	Likelihood 1-6	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
	At lease end the premises may not be returned to the Borough in the appropriate condition.	Dominic Stead	16/07/19	2	2	4	Accept	Appropriate warranties to be put in place to ensure the Council is not exposed to cost-risk.	01.04.21	Abigail Marshall	
	Licence may be interpreted as a tenancy if the terms are too onerous upon the occupier	Dominic Stead	22.6.20	3	2	6	Reduce	Ensure the terms of the licence and any additional documents do not elevate the licence to the status of a tenancy	01.04.21	Abigail Marshall	
	Additional Documents may not be kept up to date, particularly in terms of third party responsible personnel	Dominic Stead and Adam Reynolds	22.6.20	3	4	12	Reduce	By frequent contact with the third parties through the term of the Additional Documents	01.04.21	Abigail Marshall	
	Additional funding is not received or is not available on acceptable terms meaning that the Council would need to fund the shortfall or the works would need to be scaled down or cancelled	Dominic Stead and Adam Reynolds	22.6.20	4	2	8	Reduce	Ensure that the grant from the Football Foundation received or at least the grant agreement is completed before entering into the construction contracts.	01.04.21	Abigail Marshall	
Explanatory notes											

Impact – an assessment of the impact if the risk occurs on a scale of 1-5 (1 being least impact and 5 being major or critical)

Likelihood – how likely is it that the risk will occur on a scale of 1-6

(1 being almost impossible, 2 is very low, 3 is low, 4 significant, 5 high and 6 a very high probability)

Control - Either: Reduce / Accept / Transfer to 3rd party / Close

Guidance

Types of risks could include the following:

- Potential reputation risks from the decision in terms of bad publicity, impact on the community or on partners;
- Financial risks associated with the decision;
- Political risks that the decision might not have cross-party support;
- Environmental risks associated with the decision;
- Potential adverse equality impacts from the decision;
- Capacity risks in terms of the ability of the organisation to ensure the effective delivery of the decision
- Legal risks arising from the decision

Remember to highlight risks which may impact on the strategy and actions which are being followed to deliver the objectives, so that members can identify the need to review objectives, options and decisions on a timely basis should these risks arise.

Risk ref

If the risk is already recorded, note either the corporate risk register or TEN reference

Risk Description

Please use “If xx happens then xx will be the consequence” (cause and effect). For example “If the council’s business continuity planning does not deliver effective responses to the predicted flu pandemic then council services will be significantly impacted.”

Risk owner

Please identify the lead officer who has identified the risk and will be responsible for it.

Risk score

Impact on a scale from 1 to 5 multiplied by likelihood on a scale from 1 to 6. Please see risk [scorecard](#) for more information on how to score a risk

Control

Either: Reduce / Accept / Transfer to 3rd party / Close

Action

There are usually things the council can do to reduce either the likelihood or impact of the risk. Controls may already be in place, such as budget monitoring or new controls or actions may also be needed.

Responsible officer

Please identify the lead officer who will be responsible for the action to control the risk.

For further guidance, please refer to the [risk management policy](#)

Transferred to risk register

Please ensure that the risk is transferred to a live risk register. This could be a team, divisional or corporate risk register depending on the nature of the risk and what level of objective it is impacting on