

# Cheltenham Borough Council

Cabinet – 20<sup>th</sup> December 2022

## Construction & Lease of Storage Unit at Burrows Playing Field

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**Accountable member:**

Councillor Peter Jeffries, Deputy Leader of the Council and Cabinet Member Finance, Assets and Regeneration

**Accountable officer:**

Gemma Bell, Director of Finance & Assets (Deputy Section 151 Officer)

**Accountable scrutiny committee:**

n/a

**Ward(s) affected:**

Leckhampton

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**Key/Significant Decision:**

No

**Executive summary:**

In February 2022, Leckhampton Rovers Football Club (the Club), were granted a lease of Burrows Pavilion, a Licence to use the playing pitches at Burrows Playing Field and entered in to a Service Agreement with the Council for the ongoing maintenance of the pitches. In order to fulfil the terms of the Service Agreement, a number of large mowers and ancillary equipment is required. The equipment is large, expensive and require appropriate storage so as not to deteriorate, attract vandalism or be a risk to other users of the park.

The Club have obtained planning permission for an external storage unit which will house the maintenance equipment along with other heavy duty training equipment and have begun fundraising to meet the construction costs. Following advice and discussion, it was decided that a CBC recommended procurement route for the delivery of the unit should be used. An Invitation to Tender has been prepared and published. Permission is sought to award a contract to the successful party of the ITT, subject to sufficient funding and Cabinet approval.

On completion, the Club would be granted a further lease to occupy the unit which would run alongside their other agreements. Burrows Playing Field is Public Open Space, and since 2014 has also been protected by an Agreement between the Council and Fields in Trust. In order to grant a new lease, consent pursuant to subject to S.123 (2) (A) of the Local Government Act 1972 must be obtained which requires the proposals to be advertised for 2 consecutive weeks in the Public Notices section of a local

newspaper.

The unit is purpose built for the club in order to support their obligations under the service contract. The invitation to tender will determine what finances are needed for its construction and therefore any shortfall in funding already achieved. A caveat attached to the ITT states that a contract will not be awarded until such time as appropriate levels of funding have been secured. The reasons for obtaining consent at this stage are that the cost of works will likely exceed the small works threshold and to subsequently prevent any unnecessary delays in awarding the contract, once the required level has been reached.

This report is prepared in order to support the recommendations as follows:

**Recommendations:**

- 1. To award a contract to the preferred bidder of the Invitation to Tender, using the recommended CBC Procurement route – subject to adequate funding being in place to cover all costs associated with the build;**
  - 2. To authorise the placing of a Public Notice pursuant of Section 123(2A) of the Local Government Act 1972 in respect of the granting of a new lease of the completed unit;**
  - 3. Should no objections or representations be received in response to the advertisement, to authorise the Head of Property to prepare and grant a new lease of the storage unit to Leckhampton Rovers Football Club for a peppercorn rent, to run co-terminously with their existing lease and licence.**
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## **1. Implications**

### **1.1. Financial implications**

The latest budget monitoring report highlights a pressure of £2.8m on the general fund budget in 2022/23 which further supports the basis for commercial strategies and maximising the financial benefit our assets and services are delivering for the town.

By entering into the service agreement, the club take responsibility for the maintenance of the open space (this was previously the responsibility of the green spaces team) this reduces the burden on that revenue budget and frees up resource whilst also providing facilities for residents and visitors to the park.

**Signed off by:** Andrew Taylor, Finance Business Partner, [andrew.taylor@cheltenham.gov.uk](mailto:andrew.taylor@cheltenham.gov.uk)

### **1.2. Legal implications**

Under Section 123 of the Local Government Act 1972, the Authority has an obligation to secure best consideration reasonably obtainable when disposing of a property by way of a lease for more than 7 years. This obligation can be waived with the consent of the Secretary of State, who has given a General Consent to such disposals where, in the reasonable opinion of the Local Authority, this disposal is for social, economic or environmental benefit of the inhabitants of the Authority's area or any of them.

Section 123 (2A) also provides that before disposal of public open space by way of lease, the

Authority must first advertise such proposed disposal in a local newspaper for 2 consecutive weeks, and consider any objections.

The Council's Constitution requires that the decision to dispose of public open space (including leasehold disposals) rests with Cabinet.

To that end, the recommendations have been made to satisfy the following criteria:

- Delegate to the Director of Finance & Assets, in consultation with the Deputy Leader and Cabinet Member for Finance & Assets, the marketing and disposal of the property represents best consideration and upon such other terms as are deemed appropriate or desirable to protect the council's interests; and
- To enter into such documents as the Director of One Legal deems necessary or desirable to reflect the terms negotiated by the Director of Finance & Assets.

The land is protected by way of the Deed of Dedication dated 3rd March 2014 made between (1) Cheltenham Borough Council and (2) National Playing Fields Association (now Fields in Trust). This means that consent is required from Fields in Trust to any disposal of the land and any change of use from playing fields. Consent has been obtained from Fields in Trust to the proposed lease and placement of the container. There is a restriction on the freehold title that requires a certificate from Fields in Trust that the provisions of clause 4 of the above agreement have been complied with before the lease can be registered at the Land Registry. This will need to be obtained upon completion of the lease, but should not be problematic given that the relevant consent has been obtained.

Once the Tender evaluations have been carried out by the Council's Evaluation team, the Council will be better placed to assess the financing of any construction contract that may be entered into. The Council should not commit itself to any legally binding contract until it is in funds.

The form of construction contract and associated documents are already included as part of the Tender process in a form put together by construction consultants, based on Council instructions and on terms and conditions approved by One Legal

One Legal will carry out the process for the entering into the formal construction contract with the approved Tenderer if it is instructed to do so.

**Signed off by:** One Legal, [legalservices@onelegal.org](mailto:legalservices@onelegal.org)

### **1.3. HR implications**

None arising from the report recommendations

### **1.4. Environmental and climate change implications**

The Council has declared a Climate Emergency and is committed to becoming net zero by 2030.

As such, any alterations or construction must be made in consideration of their environmental impact and the Council will provide guidance and support where necessary to achieve this.

**Signed off by:** Laura Tapping, Climate Emergency Programme Officer,

[laura.tapping@cheltenham.gov.uk](mailto:laura.tapping@cheltenham.gov.uk)

## 1.5. Property/asset implications

The latest budget monitoring report highlights a pressure of £2.4m on the general fund budget in 2022/23 which further supports the principals in the asset management strategy to maximise the financial benefit our assets are delivering for the town. The tender of the contract and subsequent lease of the land for the storage building to Leckhampton Rovers is deemed to be the mechanism in which the Council can generate maximum benefit from the asset, in line with the approved asset challenge process.

**Signed off by:** Gemma Bell, Director of Finance and Assets (Deputy Section 151 Officer),

[gemma.bell@cheltenham.gov.uk](mailto:gemma.bell@cheltenham.gov.uk)

## 1.6. Corporate policy framework implications

In granting a new lease to facilitate the Service Agreement the Council are demonstrating that they are adopting an agile approach to asset management which forms part of a wider objective to address the funding gap faced by the Council in the wake of Covid-19.

**Signed off by:** Richard Gibson, Head of Communities, Wellbeing & Partnerships,

[richard.gibson@cheltenham.gov.uk](mailto:richard.gibson@cheltenham.gov.uk)

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## 2. Performance management – monitoring and review

- 2.1. The contract will be awarded following a successful tender process, caveated by appropriate levels of funding being in place to cover the project and all necessary consents being obtained. The successful applicant must have demonstrated that they meet the requirements both financially and in terms of sustainability to deliver the project.
- 2.2. The lease will be drafted in such a manner that allows for the Council, as landlord, to check that the tenant is meeting the terms and conditions of both the lease and the Service Agreement, and will rely on the usual remedies in law to ensure that these are complied with.

## 3. Background

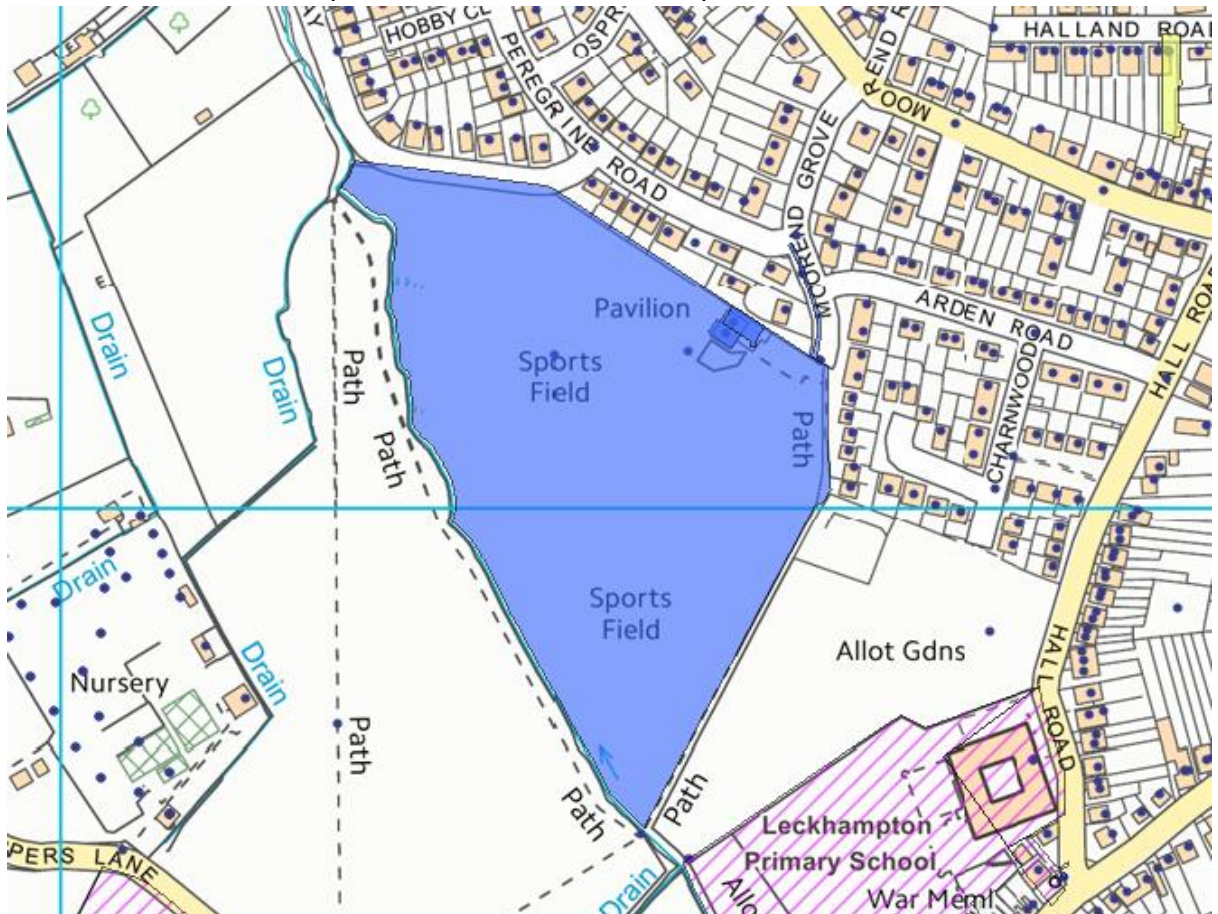
- 3.1. Leckhampton Rovers Football Club was formed in 1996 to provide football facilities to children in the local area. As demand for youth football escalated, the club grew considerably and today hosts 26 youth teams in the Cheltenham Youth League, with over 500 players registered.
- 3.2. The Club is a registered as a charitable incorporated organisation with the Charities Commission, registration number 1182944
- 3.3. Burrows Pavilion was identified as a potential home for the expanding club however existing facilities at the site were inadequate for the many types of football being offered. In order to support the ambitions of the Club, improve the long term viability of the site and meet the

needs of the wider community, an extensive refurbishment of the Burrows Pavilion was undertaken by CBC and the Club using S106 receipts and funding from the Football Foundation which the Club were instrumental in securing.

- 3.4. On completion of the works, in February 2022, CBC granted a lease 21 year lease to Leckhampton Rovers FC (the Club), giving them occupation of the newly refurbished pavilion at Burrows playing field.
- 3.5. In addition to the lease, the Council also granted a licence for use of a playing field, and the club further entered in to a Service Agreement which contractually bound them into the maintenance and upkeep of the pitches
- 3.6. As part of the initial project, the surrounding playing fields were also assessed by the Institute of Groundsman who provided a full works specification to level the site and provide improved playing areas for football, cricket and wider recreational use. The works recommended are being undertaken in 2 phases, over a period of 2 years and includes:
  - Clearance and preparation of the site
  - Topsoil strip
  - Installation of appropriate drainage
  - Topsoil replacement
  - Seeding and growing new grass coverage
  - Remarking of playing pitches
- 3.7. The Club also entered into a Service agreement which contracts them to the ongoing maintenance of the pitches.
- 3.8. To allow them to fulfil the obligations of the Service Agreement, a number of mowers are required on site to maintain the pitches. The mowers are large and expensive and require appropriate storage so as not to deteriorate, attract vandalism or be a risk to other users of the park. Having access to equipment on site will be cost effective for the club and allow for regular maintenance without the need to bring additional machinery to site which would be onerous and potentially problematic, reliant on external bookings, availability, and having additional costs.
- 3.9. In February 2022, the Club were granted planning permission (21/02675/FUL), to build the proposed storage unit on site.
- 3.10. The dimensions of the unit are (m): H- 2965, W 8.500 D 5.500 and it is located between an area of trees, outside of the playing pitch run-off area behind an existing footpath. The Club is considering a modest variation to the size of the unit and are in consultation with Planning about this.
- 3.11. Objections were raised at the time of the application concerning the height of the unit. These have been addressed and resolved.
- 3.12. The location of the storage unit is shown edged red on the plan below.



3.13. The Council's ownership is as shown in blue on the plan below:



- 3.14. As the land the proposed unit is to be built on is in Council ownership, after consultation with One Legal it was determined that CBC were best placed to procure and deliver the storage unit, with post-occupancy arrangements put in place on completion. The refurbishment of the pavilion had followed this delivery method with a successful outcome.
- 3.15. To meet the costs, fundraising for the project has commenced and currently stands at £57,000 which includes a CBC contribution of £25,000
- 3.16. Until such time as a Tender is completed, the exact levels of funding required cannot be confirmed. With approval from CBC's Procurement team, an Invitation to Tender has been published for the project, with the explicit statement that a contract for the works will only be awarded subject to the following:
- That adequate funding to cover the costs of the project is in place (NB this will be confirmed by the outcome of the Invitation to Tender)
  - That all necessary consents from CBC, to include Cabinet approval, are obtained prior to the contract being awarded.
- 3.17. To date, the Club has already covered the cost of professional services required to develop the specification of works and have further committed to a funding contribution if required (value to be determined).
- 3.18. The playing fields form part of the Council's Open Space. Any decision to grant a disposal (lease) thereof must first be advertised for 2 consecutive weeks as a 'Disposal of Open Space' pursuant to Section 123(2)(A) of the Local Government Act 1972 in the Public Notices section of a local newspaper. All comments or representations are received in response to the Notice are to be considered and, where necessary, addressed or resolved, before any final decision is made.

#### **4. Reasons for recommendations**

- 4.1. After consultation with Procurement and Legal, it has been determined that CBC are best placed to deliver the storage agreement by way of a Design and Build contract;
- 4.2. The storage unit is required in order for the Club to fulfil the obligations of the Service Agreement they have entered into with the Council;
- 4.3. A peppercorn rent is deemed appropriate as there is no commercial element and therefore a market rent is not achievable;
- 4.4. Advertising pursuant to Section 123 (2)(A) is a legal obligation

#### **5. Alternative options considered**

- 5.1. It was considered for the Club to procure the works contractor however the burden that would be placed on the Club to fulfil all legal, procurement and quality requirements of the Council as landowner, plus the level of input and oversight of the arrangements by Council officers to manage these requirements were deemed too onerous for both parties.
- 5.2. Should the decision be taken not to pursue the recommendations, the Council would be required to take on the operating, maintenance, repairing obligations and on-going liability of the pitches which would place additional pressures on finance and resources, possibly leading

to the potential closure of the facilities unless a suitable alternative tenant, of sufficient covenant strength could be found.

## 6. Consultation and feedback

- 6.1. Adam Reynolds – Green Space Manager – consulted regarding the size and location of the storage unit and provided advice regarding maintenance requirements for the pitches. Supportive of the proposed unit for the purposes stated.
- 6.2. One Legal consulted on the procurement route and post occupancy arrangements.
- 6.3. Fields in Trust – permission sought and granted for proposed unit for the purposes stated.
- 6.4. CBC Planning – planning permission granted for proposed unit.

## 7. Key risks

7.1. The key risks can be summarised as follows:

- That the Club are unable to comply with the maintenance requirements of the Service Agreement and are subsequently in breach of their lease;
- That appropriate levels of funding are not secured meaning the responsibility and costs of pitch maintenance would revert to the Council until such time as an alternative delivery method can be established and procured;
- That the club is unable to provide the services to the public.

To mitigate these, the contract will not be awarded until such time as the required funding levels are in place and Procurement have completed their necessary evaluations.

Further risks to be considered are:

- Reputational damage to the Council if the services and facilities were no longer provided or deteriorate to a poor standard;
- At the end of the lease, the property may not be returned to the Council in an appropriate condition.

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### Report author:

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### Appendices:

- i. Risk Assessment
- ii. Planning Decision Notice

### Background information:

N/A



