

18th September 2017

Community, Health & Housing Committee

Courage Playing Fields

Report of: *Adrian J Tidbury - Estates and Valuation Surveyor Portfolio Development*

Wards Affected: *Shenfield*

This report is: *Public*

1. Executive Summary

- 1.1 This report considers the future arrangements for the Shenfield Cricket Club in its occupation of the Courage Playing Fields in conjunction with the past and recent negotiations.
- 1.2 This report also sets out an approach for the use of the Courage Playing Fields by the Shenfield Cricket Club consistent with other sports clubs use of the Councils public open spaces with particular respect to income generation from the Councils land holding.

2. Recommendation(s)

- 2.1 That Members note that the decisions below will supercede and amend the earlier decisions of the 27th March 2015 Asset and Enterprise Committee (Appendix A) and the 14th March 2016 Community and Health Committee (Appendix B).
- 2.2 That the recommendations contained in the Health & Safety Report, as set out in Appendix D, be implemented without delay and prior to the 2018 cricket season.
- 2.3 That a report be made to the January 2018 Policy, Projects and Resources Committee recommending that the Courage Playing fields car park be included in the Brentwood Borough Council Off Street Parking Places Order under reasonable restrictions that accommodates the use of the Cricket Ground by the Club and any existing agreements made between the Club and any existing users.

- 2.4 That a consultation exercise is undertaken with the adjacent affected residents on the proposal that the Club transfer its use of the adjacent cricket ground in response to the Health and Safety Report, to the land 'part 776' as set out on Appendix E enabling the Club to have greater use of the field for its new initiatives.
- 2.5 The new signage by erected at the car park indicating the Courage Playing Fields are a public open space in the ownership of the Council, consistent with similar open spaces within the Borough.
- 2.6 That a report be made to January 2018 Policy, Projects and Resources Committee asking Members to consider the provision of a management agreement with the Shenfield Cricket Club for the use of the Cricket field as summarised in this report.
- 2.7 That a report be made to the January 2018 Policy, Projects and Resources Committee asking Members to consider the provision of a license with the Shenfield Cricket Club in respect of the land used, for the provision of the pavilion, Score Box and the practise nets as approved under 14/00836/FUL.
- 2.8 That Officers review the condition of the car park and make a report to the January 2018 Policy, Projects and Resources Committee.

3. Introduction and Background

- 3.1 Members will be aware that this matter has been considered in the past by the 27th March 2015 Asset and Enterprise Committee (Appendix A) and the 14th March 2016 Community and Health Committee (Appendix B). Significant background information is contained within these reports.
- 3.2 The land was conveyed to the Council by the Courage family by two deeds of Gift (Appendix E) dated 27th February 1950 pursuant to section 268 of the Local Government Act 1933, to hold and administer the property for the purposes of Public Open Space, recreation grounds and playing fields.
- 3.3 A second deed of gift dated 5th October 1951 dealt with a smaller piece of land adjacent to the St Mary's School.

- 3.4 The 27th February 1950 makes one reference to the Shenfield Cricket Club (Appendix E– page 2, item 2).

“Allow the Shenfield Cricket Club to have use of the cricket ground situate upon the property for so long as the Shenfield Cricket Club remains in existence and upon such reasonable terms as have been and as may from time to time be agreed between the Council and the Shenfield Cricket Club”

- 3.5 The Council has title to this land under registration No EX762070 and are therefore the freeholders and custodian of this public open space inclusive of the cricket ground.
- 3.6 On 31st March 1993, the Leisure Recreation and Arts Committee considered a request from SCC to develop an additional cricket facility on the fields. At the 7th July 1996 meeting of the Committee it resolved to approve the request provided it did not interfere with the use of the field by the St Mary's School and subject to consultation with local residents. At the 26th September meeting of the Committee it stipulated that the additional pitch could only be used once per weekend.
- 3.7 Since the 1950 Deeds of Gift (Appendix E) the Club have developed the site with the pavilion and car park in approx. 1967, There is no evidence available indicating the Council's consent to these developments. The latest development was for the practise nets in 2016.
- 3.8 The 27th March 2015 Assets and Enterprise Committee (Appendix A) resolved to instruct officers to enter into a management agreement with the Club for the management of the cricket ground, to enter into a lease for the use of the pavilion, score box and practise nets and to include the car park into the Council's Off-Street Parking Places Order to be managed in future by the Council.
- 3.9 The Club were reticent to agree to these proposals as they were in 1996 when asked to enter into a similar lease arrangement.
- 3.10 In 2015 officers sought legal opinion on the occupation of the Club on the Courage Playing Fields. This independent legal opinion was shared with the Leader, Deputy Leader and Ward Members on 27th July 2015 and is attached as Appendix C to this report.

- 3.11 Counsel confirmed that it is plain from the terms of the two deeds of Gift that the Cricket Club as such secured no interest in the land or any particular rights over it.
- 3.12 Furthermore, any buildings on the land at the time of the deeds of gift would have transferred with the land (as part of it) to the then Urban District Council and similarly, any buildings constructed on the land subsequent to the transfer of the land to the Council under the deeds of gift, assuming that they are not chattels, would have become part of the realty i.e. part of the land. Therefore, the pavilion which the Club erected outside of the cricket field and upon the Courage Playing Fields is the Council's building.
- 3.13 In addition, Counsel is of the opinion that there is nothing in any document seen suggestive of a tenancy having been created between the Brentwood Borough Council and the Cricket Club.
- 3.14 It can therefore be concluded that the Cricket Club have no other rights over the land than to play the game of cricket on the cricket field.
- 3.15 Within the report to the 14th March 2016 Community and Health Committee (Appendix B), members were appraised of the differences between the provision of a lease as a legal agreement between the Club and the Council, registerable with the Land Registry, and a letter of agreement relying on the integrity of both parties to honour the contents of the letter. Members of that committee resolved to pursue an agreement through the provision of a letter.
- 3.16 At the Community Panel of the Council on 20 September 2006, Members resolved that officers conclude an agreement with the Club, to enable the Club to issue licences to non-members of the Club using the car parking area and/or access to properties in the adjacent vicinity, to regulate the car park with regard to access, enforcement, car park charges and related matters. The Club submitted a schedule of suggested charges to that Committee which was then approved. There appears to be no formal legal agreement between the Council and the Club in respect of this arrangement, albeit the Council have entered into licence agreements with the Club and third parties, however, it appears the Club have entered into other licence agreements/arrangements without the Council being party to these further agreements.

- 3.17 A letter was drafted that set out the present known situation, the Council's informal proposals and sought the Clubs approval to those proposals. There were a number of actions required by the Club before a formal letter would be submitted and signed; the list of car park licenses would be updated and appended to the letter, the payment of Mesne profits of £1000 each April, receipt of the Clubs current constitution and audited accounts. Invoices for this amount were submitted to the Club in April 2016 and April 2017, both remain unpaid.
- 3.18 The Club's communication with the minutes of their meeting dated 8th March 2016 agreed to the latest terms contained in the letter. However, the current list of licenses for the car park, payment of Mesne Profits, constitution and audited accounts remain outstanding and therefore no formal letter of agreement has been completed to date.
- 3.19 Whilst the 14th March 2016 Community and Health Committee (Appendix B) approved the draft letter the above matters remain outstanding.

4. Issue, Options and Analysis of Options

- 4.1 The Club have now requested that the Council permit the Club to use the 'Park pitch' for an initiative promoted by the English Cricket Board. The occupation would be for about 8 1-hour sessions of 'softball cricket'.
- 4.2 Members and officers met with the Club in July 2017 to discuss the issues and options around this new venture and to reconsider how the now historical issues relating to the Clubs occupation of the land and the income generated by the car park and retained by the Club could be resolved.
- 4.3 The local Ward Members have raised concerns over the safety of cricket on the Park Field adjacent to the children's play area. In response, officers have undertaken a Health and Safety review of the playing of cricket on the Courage Playing Fields, that report is in Appendix D.

- 4.4 In discussions with the club, it was suggested, subject to Members approval, that the Club give up the use of the Park Field adjacent to the Children's Play area and establish a new cricket square on the Flying Field which would enable the Club to make greater use of the facility and considerably reduce the risk of cricket balls colliding with individuals in the play area and walking towards Hall Lane on the public right of way at the same time.
- 4.5 The Council's legal advisors have raised concern over the provision of a letter of agreement rather than a license to occupy the land. A lease for the occupation of the land is not appropriate for an amenity space as it enables exclusive occupancy which is inconsistent with the deeds of gift where the Council administer the property for the purposes of Public Open Space, recreation grounds and playing fields. A license will enable the Club to use the land, not exclusively, for the purpose set out in the 27th February 1950 Deed of Gift (Appendix E– page 2, item 2).

“Allow the Shenfield Cricket Club to have use of the cricket ground situate upon the property for so long as the Shenfield Cricket Club remains in existence and upon such reasonable terms as have been and as may from time to time be agreed between the Council and the Shenfield Cricket Club”

- 4.6 This license to occupy would not include the car park or any income generated from it. As indicated above, the Club have no agreement with the Council to enter into financial arrangements with any individual for any part of the Courage Playing Fields and the Deed of Gift makes no reference to the club's ability to generate income from the use of the land. It is therefore proposed, consistent with the decision of the 27th March 2015 Assets and Enterprise Committee (Appendix A) and also Counsels opinion, to include the car park into the Council's Off-Street Parking Places Order and to be managed along with all other town centre car parks in a consistent manner with the other public car parks and open spaces in the Borough.
- 4.7 In order, not to disadvantage the Club in the use of the car park, restrictions would be placed for day time week day parking only enabling evenings and weekends to be unrestricted thus not affecting the use of the car park by the club for its events and matches. A suitable restriction would be Monday to Friday, 9am to 6pm, no waiting longer than 4 hours and no return within 4 hours.

- 4.8 The car park has a significant number of available parking spaces unused during the working day and these spaces should be allocated to permit holders at a premium consistent with the town centre tariff.
- 4.9 The existing agreements between SCC, the Council and car park users be terminated and replaced by season ticket parking that the Council uses in its current public car parks.
- 4.10 It has been noted that the car park has recently been resurfaced by the Club although no consent or request has been made or received by the Council.
- 4.11 Members will be aware that on entrance to the car park, the signage displayed by the Club is gives no indication of the Council ownership of the property but is suggestive that ownership is with the Shenfield Cricket Club. In addition, signage regarding wheel-clamp enforcement of the car park is also indicated by the Club again suggestive of ownership.

5. Reasons for Recommendation

- 5.1 To ensure that the Council's Assets are managed in accordance with good estate practise through the preparation of a 'License to Occupy' and a 'Management Agreement' consistent with the advice provided through Counsels opinion.
- 5.2 To regularise the operation and management of the Car Park consistent with other car parks operated by the Council.

6. Consultation

- 6.1 No formal consultation has been undertaken

7. References to Corporate Plan

- 7.1 Value for Money, policies that invest in key services to create opportunity for all, provide better value for Brentwood taxpayers and enhance the Borough's infrastructure whilst modernising and transforming Brentwood Borough Council.

- 7.2 Economic Development - Consider how Council assets can be utilised to promote sustainable development in the Borough.
- 7.3 The Council is committed to make Brentwood a Borough where people feel safe, healthy and supported.

8. Implications

Financial Implications

Name & Title: John Chance, Finance Director and Section 151 Officer

Tel & Email: 01277 312542/john.chance@brentwood.gov.uk

- 8.1 There are a number of financial considerations subsumed within this report. The finances relating to the car park are of great interest to the council. Whilst a report is due back to the Policy, Projects and Resources Committee in January 2018, it should be noted that the Council currently receives no income in respect of the car park. As the car park is legally owned by the Council, this situation needs rectification.
- 8.2 Regarding the cricket clubs obligation to pay the Council 'Mesne' profits each year, I note that payment is overdue for the past two years and would urge settlement urgently. As this agreement has been in place for many years, the cricket club ought to honour it.
- 8.3 Finally, as the historic agreement also requires transparency on the clubs constitution and annual audited accounts, these documents ought to be shared with the Council.

Legal Implications

Name & Title: Surinder Atkar, Planning Solicitor

Tel & Email: 01277 312500/surinder.atkar@brentwood.gov.uk

- 8.4 As the relevant land is owned by the Council it may be appropriated by the Council to various uses, to recreation and open space. The Cricket Club has no particular rights over the land and use of it by them depends on the agreement of the Council. The Council is entitled to grant a license subject to a management agreement regulating the use of the land.

- 8.5 The Road Traffic Regulation Act 1984 empowers the Council to provide off-street parking places and to regulate them. Charges may be imposed for such parking.

Other Implications (where significant) – i.e. Health and Safety, Asset Management, Equality and Diversity, Risk Management, Section 17 – Crime & Disorder, Sustainability, ICT.

- 8.5 Health and Safety – See Appendix D.

9. Background Papers (include their location and identify whether any are exempt or protected by copyright)

- 9.1 Minute 556 27th March 2015 Asset and Enterprise Committee
9.2 Minute 406 14th March 2016 Community and Health Committee
9.3 Counsels opinion dated 20th July 2015

10. Appendices to this report

- Appendix A - 27th March 2015 Asset and Enterprise Committee Report
- Appendix B - 14th March 2016 Community and Health Committee Report
- Appendix C - Legal opinion on the occupation of the Club on the Courage Playing Fields
- Appendix D - Health and Safety Report
- Appendix E - Courage Deed of Gift

Report Author Contact Details:

Name: Adrian J Tidbury - Estates and Valuation Surveyor Portfolio Development
Telephone: 01277 312678
E-mail: adrian.tidbury@brentwood.gov.uk