

**27 March 2015**

**Asset and Enterprise Committee**

**Courage Playing Fields - Shenfield Cricket Club**

**Report of:** *Adrian J Tidbury, Estates and Valuation Surveyor*

**Wards Affected:** *Shenfield*

**This report is:** *Public*

**1. Executive Summary**

- 1.1 This report considers the Courage Playing Fields and the deed of covenant as it relates to the Shenfield Cricket Club (SCC). The Management Agreement recommended, and summarised at paragraphs 4.3 – 4.5 is not a disposal of land but contains terms considered reasonable for the next 60 years.

**2. Recommendation(s)**

- 2.1 **That delegated authority be granted to the Strategic Asset Manager to negotiate and enter into a management agreement with the Shenfield Cricket Club for the use of the Cricket field as summarised in this report.**
- 2.2 **That delegated authority be granted to the Strategic Asset Manager to negotiate and enter into a lease 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 and as summarised in paragraph 4.7 of this report.**
- 2.3 **That the Business and Town Centres Committee be recommended to add the Courage Playing Fields Car Park to the Council's Off Street Parking Places Order and publish a statutory consultation to include provisions which will achieve the recommendations set out in paragraphs 4.10 to 4.12 of this report.**
- 2.4 **That delegated authority be granted to the Strategic Asset Manager to take legal action to protect the Council's interests in the Courage Playing Fields if the Club do not agree to these terms.**

### **3. Introduction and Background**

- 3.1 The Council received a letter from the agent to Mr E R Courage dated 26th January 1949 detailing the heads of agreement regarding the conveyance of the Courage Playing Fields to the Brentwood Urban District Council.
- 3.2 The Courage Playing Fields passed to the Council by deed of gift 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 Council has title to this land under registration No EX762070
- 3.5 The Council covenanted to:
- erect and maintain a fence around the well(s), reservoir and windmill pump;
  - allow the SCC to have use of the cricket ground situate upon the property for so long as SCC 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 SCC; and
  - will keep the hedges along T boundaries on good order and condition, properly trimmed and the ditches properly cleaned.
- 3.6 On 2nd August 1972, Planning permission was granted for an extension to the cricket pavilion for use as an equipment store by SCC only.
- 3.7 The Council received a letter of complaint from the adjacent Opticians dated 9th April 1996 that SCC had erected a barrier and increased the charges for parking in the car park.
- 3.8 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.

- 3.9 On 24th May 1996 the Council wrote to SCC informing SCC that the land is owned by the Council and that whilst the deed grants the right for the Club to use cricket ground, there were no express rights to develop and therefore they may require the Council's prior consent. The Council wrote seeking clarification to either indicate under what rights they had erected the gates/fences and were charging car parking fees on council land, or to remove all structures, gates, fences from Council land and restore to its previous condition and cease charging for car parking. SCC called to say the fences and gates were only temporary and that SCC does not charge a fee, but seeks a donation.
- 3.10 In 1996 the Council searched its planning records back to 1983 and found no reference to any restrictions on the use of the car park or planning permission for its construction. However, BRE/450/69 set the width of a driveway leading to a car park at 16 feet wide with the permitted development begun on or before 23rd September 1974.
- 3.11 The Council wrote to SCC on 20th June 1996 requesting a meeting with SCC regarding entering into a lease with the Council.
- 3.12 The 18th November Parks and Recreation Committee authorised the drafting of a lease to SCC. In response, SCC's legal advisers advised SCC not to enter into a lease.
- 3.13 In the letter dated 21st December 2005 SCC advised the adjacent vets that it had withdrawn permission for the use of the car park and that wheel clamping was now being used. There are signs currently present attached to the pavilion with the text "**Private car park authorised users only, wheel clamps in use**"
- 3.14 Additional complaints have been received since that time involving legal challenges regarding ownership of the car park and rights of access
- 3.15 Officers of the Council have met with SCC on a number of occasions regarding in particular the siting of the new practise nets which resulted in the recent planning approval.
- 3.16 Whilst planning approval has been granted for the new practise nets the Council as the Landlord has not yet given its approval to SCC to permit the works to take place on its land.

#### **4. Issue, Options and Analysis of Options**

4.1 Members will be aware that the relationship between SCC and its neighbours has not been ideal for many years, with little understanding the adjacent residents are not generally aware of the basis on which SCC have the use of the cricket field, the buildings on the land or even the adjacent car park and upon what basis SCC is able to use these facilities.

4.2 The Council proposes to deal with SCC's use of the site in three ways:

- The provision of a Management Agreement fulfilling the aspirations of both the letter dated 26th January 1949 from the agents acting for Mr E R Courage and the deeds of Covenant pertaining to the cricket field.
- A medium term lease of 7 years dealing with the pavilion, score box and practise nets.
- the car park is added to the Council's Off Street Parking Order with restrictions on parking for no longer than 4 hours and no return within four hours, with parking between 9 am to 6pm Monday to Friday.

4.3 **Management Agreement** - The Management Agreement covers the terms of the deed of gift dated 27th February 1950 and of 5th October 1951 and the use of the fields regulated in accordance with the Open Spaces Byelaws of 1983 to which byelaws 13, 14 and 18 apply. It deals with the cricket field only and not the provision of the pavilion, score box, practise nets or car park.

4.4 The agreement sets out the obligations of SCC with respect to the management of the land under the agreement. The salient points are:

- For 60 years or until SCC is dissolved whichever shall occur first.
- To allow access to the cricket ground at all times
- Maintain insurance of the cricket ground
- Maintain, repair, light and clean the cricket ground
- Not assign, underlet or charge any part of the cricket ground

4.5 The Agreement requires insurance to the ground and also covering personal injury or death arising out of or in the course of the use of the ground.

- 4.6 **Lease** - The proposed lease covers SCC's use of the Pavilion, Score box and the practise nets and reflects the fact that they have been provided by SCC. However, they are situated on land in the ownership of the Council and outside the benefits provided by the deeds of covenants.
- 4.7 Officers consider that a medium term lease would be an appropriate Agreement between SCC and the Council and the salient points are:
- Nil rental reflecting the clubs provision of the buildings
  - Tenant responsible for buildings and public liability
  - Permitted use as a cricket club with occasional events consistent with the aims and objectives of SCC
  - SCC to be responsible for the maintenance and repair of the building
  - No service charges to be required
  - SCC to be permitted use of the car park during evening matches after 6 pm and at weeks ends.
- 4.8 **Car Park** - The Council is aware that the use of the car park has been a contentious matter for some time. There are a number of agreements in place to which the Council have been party to concerning charges for parking although the Council receives no income from these agreements. There are notices on site attached to the pavilion suggesting that parking is enforced by SCC with the use of wheel clamping.
- 4.9 Officers propose that the car park be administered in the future through the Council's existing Off Street Parking Places Order and enforced in the same way as the Council's existing mainstream car parks.
- 4.10 The car park would be restricted to 4 hours limited waiting and no return within four hours and on a Monday to Friday 8am to 6pm basis thereby permitting SCC to use the car park, parking space permitting.
- 4.11 The existing agreements between SCC, the Council and car park users be terminated and replaced by the standard contract parking that the Council uses in its current public car parks.
- 4.12 The Ward member has requested that two disabled parking bays be marked within the car park and these could be provided following resurfacing of the car park surface the cost of this work is estimate to be £25,000 and need to be the subject of a future Capital project request.

- 4.13 Officers have now written to SCC providing the basis upon which their use of the Courage Fields will be based and that the Councils approval for the works to the practise nets will be provided on the successful completion of the lease and management agreement.
- 4.14 The provision of the management Agreement and of the proposed lease with the use of the car park will enable all users of this public open space to be clear on the defined use and responsibilities for SCC and of those responsibilities remaining with the Council, consistent with the aspirations set out by the Courage family when the deed of gift was put in place.

## **5. Consultation**

- 5.1 No formal consultation has been undertaken although officers and Ward Members have had meetings with both representatives of SCC and also representatives of the adjacent residents to find an acceptable resolution to all parties concerned.

## **6. References to Corporate Plan**

- 6.1 To work with the local community and voluntary organisations to develop the priorities for community development, raise awareness of activities and promote opportunities for residents,
- 6.2 To increase Community and Voluntary sector activity, initiatives and projects.

## **7. Implications**

### **Financial Implications**

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- 7.1 The Council would be responsible for the repairs and maintenance costs of the parking area and the enforcement of parking restrictions. It is anticipated that this will be offset by the additional income generated by the car park.

### **Legal Implications**

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- 7.2 The Council has wide powers of land management subject to the relevant statutory provisions and any covenants affecting the land. In this instance the playing fields are public open space and the car park is an ancillary use. While the Shenfield Cricket Club has obtained planning permission it has declined the offer of a lease. The Council may authorise these works under Section 2 Local Authorities (Land) Act 1963 in the proper course of management.
- 7.3 Under the Road Traffic Regulation Act 1984 the Council may provide off-street parking places and may regulate how such off-street parking places are regulated. It may also impose charges for the use of such off-street parking places. The Council is fully entitled to require an off street car park in its ownership to be so regulated. The 1984 Act has a statutory consultation procedure.
8. **Background Papers** (include their location and identify whether any are exempt or protected by copyright)

### **9. Appendices to this report**

Appendix A - Plan

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