

14 March 2016

Community and Health Committee

Courage Playing Fields - Shenfield Cricket Club

Report of: *Chris Leslie, Finance Director*

Wards Affected: *Shenfield*

This report is: *Public – Appendix C is confidential*

1. Executive Summary

- 1.1 This report considers the recent negotiations between the Council and the Club since the report to the Asset and Enterprise Committee held on 27th March 2015

2. Recommendation(s)

2.1 To note the negotiations undertaken to date

2.2 For Members to decide whether to concur with the provision of the letter which confirms the present known situation and sets out and seeks the Club's approval of the informal proposals between the Council and the Club in lieu of the provision of a lease for the buildings and a Management Agreement for the cricket field.

2.3 Subject to the letter being agreed between the parties, for Members to grant consent for the conversion of the existing grass run up area to a permeable playing surface and to refurbish the two existing cricket nets in their existing position, to the specification approved as part of the Planning Permission 14/00836/FUL(attached as Appendix A), provided that the Club are responsible for all costs associated therewith and to be financially responsible for any damage caused to the Courage Playing Fields in respect thereof.

2.4 For Members to decide whether to agree that the informal proposal that the Club continue with existing arrangements for the Club to control and manage the car park (subject to any further Council Committee decisions in relation to the reasonable charges the Club may charge in relation to the use of the car park for parking purposes), retain the income therefrom and be responsible to keep

the car park in a clean and tidy condition and be responsible for the repairs and maintenance thereof, provided that the car park is available to all users of the Courage Playing Fields on reasonable terms proposed by the Club and approved by the Council from time to time.

- 2.5 For Members to agree to delegate authority to Finance Director S151 Officer to take action against the Club if they fail to undertake remedial works to storage containers, including making good and maintaining the structure and condition of the containers, including decorating the containers to the reasonable satisfaction of the Council within the next 8 weeks.**
- 2.6 For Members to agree that the Club will continue to have use of the pavilion and be able to use it for its proper purposes, including social events, upon such reasonable terms as the Council may from time to time agree with the Club.**
- 2.7 For Members to agree that the Club pay the Council an annual sum of one thousand pounds each year as Mesne Profits, such sum subject to review by the Finance Director S151 Officer, every 5 years.**

3. Introduction and Background

- 3.1 Members will be aware that this matter was last considered by the Council's Asset and Enterprise Committee held on 27th March 2015
- 3.2 Members will be aware of the unanimously agreed recommendations at that meeting:

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

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 planning permission 14/00836/FUL and as summarised in para 4.7 of this report

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.

That delegated authority be granted 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.

- 3.3 Details of the background to the Council's ownership of the Courage Playing Fields and the covenant between the Courage Family and the Council to *:"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"* are contained in that report. The Council are the freeholders and custodians of this public open space.
- 3.4 Since that report was made to the Committee, officers have also sought Counsel's opinion and allowed the Club to submit their evidence to Counsel and that independent legal opinion was shared with the Leader, Deputy Leader and Ward Members on 27th July 2015 and is attached as Appendix B to this report.
- 3.5 Within that opinion it was noted that the deeds of gift which conveyed the land from the Courage family (Donors) to the Council that the Council covenanted with the Donors, amongst other things, to allow the Shenfield Cricket Club to have the use of the cricket ground situate upon the Courage Playing Fields as long as the Club remain in existence and upon such reasonable terms as might from time to time be agreed between the Council and the Club
- 3.6 Counsel further 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.
- 3.7 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.

- 3.8 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.
- 3.9 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.
- 3.10 In addition to the first deed of gift dated 27th February 1950, a second deed of gift made on 5th October 1951 the Brentwood Urban District Council covenanted with the Donors that they would not permit any sale of alcoholic refreshment on the Courage Playing Fields. Whilst the Club have been made aware of this covenant they have been asked by the Council to seek a letter of waiver from the Courage family which has now been provided.
- 3.11 Counsel concludes that it is plainly sensible for the arrangements signalled in the report for the meeting of 27th March 2015 to be made and that the Borough Council are in a position to vindicate their rights if such or similar arrangements are not made.

4. Issue, Options and Analysis of Options

- 4.1 Since the opinion of Counsel was sought, officers and Members have discussed the way forward at a meeting held on 29th July 2015 following receipt of Counsels opinion. As a result of that meeting, it was decided that a letter setting out the current position be produced and that the parties agree a way forward to regularise the current issues on the Courage Playing Fields as the Club refused to enter into negotiations to conclude a lease and management agreement.
- 4.2 Members will be aware that there are differences regarding the granting of a lease for the occupation of land and the Council proposed a letter setting out the current position between the parties in relation to the Council land and the use of part of it by the Club.. A lease would have set out the rights, obligations and liabilities of each party and would have been registrable with the land registry, whereas a letter reflects the current position between the parties and shows the intention of the parties to regularise the current issues on the Council's land and use of the land by the Club.
- 4.3 A lease is a binding agreement between the parties and the use of the property with the owner receiving rent and being able to regulate the permitted use of the property and the granting of rights, obligations/covenants and liabilities of each party to such an agreement. A

letter of agreement does not have the same gravitas as a formal legal document. Of course, in future years there may not be the will to honour the contents of the letter and the Council could potentially face similar issues in the future. However, the Club are not obligated to enter into a lease and/or management agreement, but the Council are able to regulate the use of its land and are able to agree reasonable terms with the Club going forward.

- 4.4 With the provision of a lease agreement, it would create certainty between the parties and any departures from such an agreement would be formally documented if agreed between the parties and action taken on the basis of more detailed terms of use. This would have been beneficial to both parties and other users of the Courage Playing Fields which were gifted to the Council for use by the public as public open space, playing fields and recreation ground.
- 4.5 Members therefore will be aware that the provision of a letter does not have the safeguards of a formal legal document and relies on the integrity of both parties to honour the contents of the letter and enforcement of the terms of the letter will be more difficult through the judicial system, however the Council is the freeholder of the land and it can take action in respect of its land, should the need arise.
- 4.6 Members therefore need to decide on the most beneficial method of managing the Courage Playing Fields, as there is a current impasse between the Council and the Club refusing to entering into any lease/management agreement and the Council wishing to regularise the current and future use of Council land by the Club. Members are asked to either follow the decision of the Asset and Enterprise Committee as detailed above and underpinned by Counsel's opinion or to follow the course of the letter of agreement shown in appendix 2 to move forward from the current impasse.
- 4.7 The Club are seeking the permission of the Council as Landowner to convert the existing grass run up area to hard surface and to refurbish the two existing cricket nets in their current position. The Club have been granted planning permission, application number 14/008366/FUL to do so, subject to the planning conditions contained therein shown in appendix 3.
- 4.8 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. The proposed letter seeks up-to-date information from the Club in this regard with an appendix to be added to the letter detailing the current arrangements.

- 4.9 The storage containers have been erected on the Courage Playing Fields to store items required by the Club. The containers are in a poor condition and in need of putting into repair and good decorative order. The Council require the Club, at its own expense to repair and decorate these containers. The Club, in the longer term, intend to replace these storage containers with a more permanent storage structure, which will be subject to planning permission/building control consent and the consent from the Council as landowner, as well as the Club funding such a future project.
- 4.10 Prior to the gift of the Courage Playing Fields to the Council, there was a pavilion erected within the cricket field. The current pavilion is located on the Courage Playing Fields, outside of the cricket field and was constructed by the Club in the 1960s. The pavilion has become part of the land owned by the Council. The use of the pavilion by the Club is attendant on the use of the cricket ground. The Council require the Club to comply with all obligations on the Council affecting the Courage Playing fields and to keep the Council properly indemnified. It is envisaged, subject to members agreement sought in this report, to agree to the Club continuing to have use of the pavilion upon such reasonable terms as the Council may from time to time agree with the Club, including social events.
- 4.11 Mesne Profits signify that while an occupier is not a tenant, the landlord remains entitled to compensation. An indicative amount of one thousand pounds per year and reflects a share of the profits made by the Club over parking income for the car park for example. Such profits would need to be reviewed on a regular basis and a five year review period is considered to be appropriate. Such a review would be subject to an independent valuation to determine changes in the market and income received by the Club.

5. Reasons for Recommendation

- 5.1 To satisfactorily regularise the use of the Courage Playing Fields by the Club.

6. Consultation

- 6.1 No public consultation has been carried out concerning this process

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

8. Implications

Financial Implications

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- 8.1 The Council is likely to receive £1,000 per year, Mesne Profits if the recommendations in the report are agreed. This will be reviewed every 5 years.

Legal Implications

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- 8.2 The Courage Playing Fields is owned by the Council. The land is appropriated, in the sense that Local Authorities appropriate their land for various uses, to recreation and open space. The Club have no particular rights over the land and their use of it depends on the agreement of the Council.
- 8.3 The Council has wide powers of land management, subject to the relevant statutory provisions and any covenants and byelaws affecting the land, The Courage Playing Fields are held by the Council as landowner and custodian of the public open space, recreation grounds and playing fields. The car park is an ancillary use to the site

8.4 The Club has declined the offer of a lease and management agreement relating to their use of part of the Courage Playing Fields and has obtained planning permission from the Local Planning Authority to refurbish their existing nets and convert the grass run up area to a (permeable) hard surface. The Club also require the consent of the Council as landowner to these proposals. The Council, in considering this request, has considered the current issues in relation to the use of part of its land by the Club, which remain unresolved. In an attempt to regularise the position, the Council has decided to set out, in a letter, the known history of the site and to address the current issues on Council land. The Council has set out its informal proposals to the Club and has sought the Club's approval of these proposals. The Club will need to formally resolve to endorse the matters set out in the letter and the Council's officer is reporting back to this Committee, seeking further instructions and formal authority on behalf of the Council in this regard.

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

8.5 None.

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

9.1 None.

10. Appendices to this report

- Appendix A - Planning Permission
- Appendix B – Counsel's Opinion
- Appendix C (Exempt) Draft Letter to Shenfield Cricket Club

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