



OFFICER DECISION RECORD

This form should be used to record Executive decisions taken by Officers

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|--|--|----------------|-------------------------------|
| Decision Ref. No: | | | |
| Service Area: | Parks | Date: | 6 th February 2020 |
| Contact Name: | Michael Rowland | Tel No: | 01202 451632 |
| E-mail: | Michael.rowland@bcpcouncil.gov.uk | | |
| Subject: | Fernheath Pavilion grant funding from the Football Foundation | | |
| Decision taken: 1. To approve the Council's entry into a Land Registry restriction on its freehold land at Fernheath, as shown edged in yellow on the attached plan, in favour of the Football Foundation, binding the land for 21 years from commencement of the grant agreement | | | |
| Reasons for the decision: Fernheath Community Sports Association and BCP have been approved for a grant from the Football Foundation to replacement the pavilion at the Fernheath site to provide improved sports facilities. The condition of this grant requires the pavilion and associated football pitches to remain in football use for 21 years. The Football Foundation will not release any funding for the development until a restriction is entered on the Council's Land Registry title, requiring the Foundation's consent to any disposal. | | | |
| Background: Fernheath Community Sports Association have a long-standing relationship with the Council. The Council supports their application to the Football Foundation for grant funding to replace the pavilion. We are in the process of granting a new lease for a period of 25 years to allow for implementation of the grant. Planning permission has already been granted for the replacement pavilion (7-2017-37-CF). The lease terms, management agreement and the implementation of the restrictions in relation to the grant for redevelopment of the pavilion were approved through a Cabinet Member Decision on 5 th March 2019. However, that decision record did not include approval for the football pitches associated with the pavilion to be covered by the 21-year restriction on disposal. This ODR seeks to gain approval for the 21-year restriction to be entered into in respect of the land currently associated with the football use. While a 21-year restriction on land is considered onerous, the funding from the grant will only be made available if the Council are willing to ensure the premises are used for community football use into the future. Without the grant, there is no funding available for the replacement of the pavilion, which has come to the end of its useful life. The Council does not have the internal funding to replace this facility. It is unlikely that the Council would be successful in applying for a grant to replace the pavilion, and any grants are likely to come with onerous conditions. Without the pavilion, the site cannot be effectively be used for organised sporting events and the community would lose a much used asset. | | | |

Consultations undertaken:

Consultation was undertaken as part of the original Cabinet Member Decision. In addition the disposal of public open space notice did not result in any representations from members of the public.

Finance and Resourcing Implications:

The lease and management agreement to Fernheath Community Sports Association will be for nil income to the Council, and the Council will be responsible for procuring and entering into the building contracts. However, the Sports Association will pick up the costs associated with the replacement of the pavilion (through the Football Foundation grant and other funding sources) and will bear the costs of ongoing maintenance and management of the pavilion and sports pitches by means of a 25-year Lease and coterminous Management Agreement.

While the restriction on the land for 21 years has a potential financial impact (by severely limiting the Council's power of disposal), the land lies within 400m of a SSSI Heathland, which restricts uses and redevelopment of the site, most notably restricting residential development. In addition, the land is designated as open space in the Local Plan, therefore the redevelopment of the site in the near future for considerable financial gain is unlikely.

Once built, the building remains the property of the Council, subject to a 25-year Lease to the Sports Association which will be charged to the Football Foundation, and so gives it a long term asset on the site at no cost. However this is reliant on the restriction being in place during the grant period.

Therefore the financial impact of restricting disposal of the land for 21 years is considered low.

Name: Adam Richens

Date: 09th March 2020

Signature:

Redacted

**Legal Implications:**

Attempts have been made, without success, to persuade the Football Foundation to compromise its requirements for the restriction. As it stands, the Football Foundation's consent will be required for any disposal (by freehold, leasehold or grant of rights over the land) which is registrable at the Land Registry. The following risks need to be set out:

- There is no requirement that consent be given reasonably, or at all. The Council has no remedy if consent is withheld or delayed.
- There is no guarantee that the Football Foundation will be in existence for the full 21-year period (consent must be given by the Foundation or its lawyers). This may give rise to problems securing removal of the restriction at the end of the grant period.
- There will be no release of the restriction within the 21-year period, even if the grant funding has been repaid in full and/or suitable alternative facilities are provided, and whether or not the Lease is still in place.

- The restriction period may be extended beyond 21 years if the Council is in breach of the grant agreement.
- The restriction is additional to the onerous repayment provisions in the grant agreement, and the use restrictions in the grant agreement and the Lease.

It is clear however that the grant funding will only be released if the restriction is entered into on the above terms. The grant terms as a whole impose onerous sanctions for any other development of the site.

Name: Tanya Coulter

Date: 13.03.20

Signature:

Redacted

Risk Assessment:

A risk assessment was completed as part of the previous Cabinet Member Decision. The outcome was that the project is medium risk. While the addition of the land within the 21-year use restriction increases the project risk, the risk does not increase above a medium level.

Name: Sam Munnings, Estates Operations Manager

Date: 5th March 2020

Signature:

Redacted

Impact Assessments:

An Equalities Impact Needs Assessment and the Environmental Impact Checklist were completed as part of the previous Cabinet Member Decision. Both resulted in neutral or positive outcomes. The 21-year restriction on the land use does not change the outcome of the assessments undertaken at that time.

Information for/ not for publication

For Information

Background Papers


Business Case submitted to EGB in March 2018

Environmental Assessment dated March 2019

Equality Impact Needs Assessment dated March 2019

Risk Assessment originally dated March 2019 and updated 6th February 2020

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| Any declaration of interest by the Officer responsible for the decision | | Nature of Interest | |
| No | | | |
| Any conflict of interest declared by a Cabinet Member who is consulted by the | Name of Cabinet Member | Nature of interest | Details of any dispensation granted by the |

| | | | |
|---|--|--|--------------------|
| Officer taking the decision | | | Monitoring Officer |
| No | | | |
| Decision taken by: Graham Farrant <div> Signature: Redacted  </div> <div> Date of Decision: 16/03/20 </div> <div> Date Decision Effective: </div> | | | |

Note: A record of this decision should be kept by the Service Area within which the decision falls.