

## **CABINET**

<b>DATE</b>	5 <sup>th</sup> August 2020
<b>REPORT OF</b>	Councillor John Fenty – Portfolio Holder for Regeneration, Skills and Housing
<b>RESPONSIBLE OFFICER</b>	Sharon Wroot – Director of Resources and Governance
<b>SUBJECT</b>	DISPOSAL OF PROPERTY AT LESS THAN BEST CONSIDERATION – Lease disposal of Immingham Playing Fields, Lydford Road, Immingham, DN40 1HA
<b>STATUS</b>	Open
<b>FORWARD PLAN REF NO.</b>	CB 08/20/03

### **CONTRIBUTION TO OUR AIMS**

The disposal of the Playing Fields and ancillary Pavilion (the “Site”) by way of a 125 year; full, repairing and insuring lease will enable Immingham Town Council (the “ITC”) to take over the management, maintenance and use of the playing pitches and vacant building.

The intention is to encourage use, manage and operate the site in support of local interest from Clubs and sports use and as set out in the latest Playing Pitch Strategy for North East Lincolnshire. Providing a lease for the above term at a peppercorn rent is based on the submission of a detailed Business Case proposal setting out the economic, environmental and social return on investment; the benefits of which far outweigh the monetary value that would be requested in rent over the term.

The lease disposal supports the Council’s outcome of ‘Stronger Economy’ by enabling the ITC to lease the site and premises for a sufficient period and by granting the rent at a peppercorn, ensures the proposal remains sustainable for the longer term. There would be no continued financial constraint placed on the Council in the management of this asset which will meet our determination to be an efficient and effective Council.

The lease will also contribute directly towards the Council’s aim of supporting the development of ‘Stronger Communities’ by empowering the ITC to take on localised ownership, shaping their own future, providing support and opportunities for residents and visitors of the Borough. By enabling this lease, the Council will take reasonable steps to ensure that any term is viable for tenants and does not put local communities at financial risk.

### **EXECUTIVE SUMMARY**

This report seeks authority to dispose, by way of a 125 year; full, repairing, and insuring lease, of the subject site; namely Immingham Playing Fields. The purpose of this report is to gain agreement to the Business Case proposal from the ITC, which will provide a social return on investment; far outweighing monetary equivalent to otherwise proposed rent as part of the Council’s approach to Community Asset Transfers (CAT). Approval to the proposal will allow the granting of a lease of the

site over the stated term at a peppercorn rent (£1 per annum, if demanded).

The lease proposal is preferred due to the resource required in managing use of the site. The lease would allow the Council to retain an element of control as Landlord but it is proposed the ITC will invest in the pavilion facilities, upgrading the changing rooms and toilet facilities, to encourage and support the use of the playing pitches.

## **RECOMMENDATIONS**

It is recommended that Cabinet:

1. Approves the principle of a full, repairing, and insuring lease of the subject site for a term of 125 years at a peppercorn rent (£1 per annum if demanded) to Immingham Town Council (the "ITC").
2. Delegates to the Director of Resources and Governance in consultation with the Portfolio Holder for Regeneration, Skills and Housing authority to settle all heads of terms and ensure that all necessary actions are carried out to complete the lease disposal.
3. Authorises the Chief Legal and Monitoring Officer to complete and execute all requisite legal documentation in relation to the matters outlined above.

## **REASONS FOR DECISION**

A proposal has been received from the Immingham Town Council (ITC) which has been considered as part of the Council's approach to Community Asset Transfers (CAT). The proposal has been agreed in principle which could result in the transfer of the subject site to the ITC by virtue of a 125-year full, repairing, and insuring lease. The lease would enable the asset to transfer to the ITC on the basis that their proposal is sustainable and viable over the term, including the obligations to manage and operate the site as playing pitches with ancillary pavilion facilities, as outlined through a detailed Business Case and to continue to contribute to the Borough's Playing Pitch Strategy.

### **1. BACKGROUND AND ISSUES**

- 1.1 The Council is the freehold owner of Immingham Playing Fields; for the purposes of this report, the Site is shown edged blue red showing the extent of the asset to be leased to the Immingham Town Council (ITC) as per the attached plan at Appendix One.
- 1.2 The Site is currently mostly vacant and whilst subject to a license for access and use of the changing rooms/ toilets and storage from a football team, this use has ceased and moved to another site in the locality. The pavilion building is not in a good state of repair or used to the full extent of its potential.
- 1.3 The Council has an agreed Community Asset Transfer (CAT) approach to consider proposals where certain organisations and groups demonstrate they contribute significant social, economic or environmental benefits to the community - benefits which can be taken in lieu of the monetary value being proposed in rent. The CAT approach

allows proposals to be considered through an agreed governance process, including in principle support at key milestones, resulting in a formal Cabinet approval.

- 1.4 The proposal, by way of a detailed Business Case was received from the ITC and was considered at a Stage 3 CAT meeting and recommended to decision makers for in principle support.
- 1.5 When considering proposals such as these, the Council must demonstrate the social return on investment reflects, as a minimum, the loss of any potential rent, and reasons that a rent element could impact negatively on the sustainability which may result in the management of a site becoming unsustainable. The Council has been satisfied that the proposal to approve a 'less than best' transaction is based on sufficient social and economic benefit, which is stated as part of the submitted Business Case. The figures provided, whilst requiring necessary factors to be taken account of, clearly far outweigh the monetary value that could be requested in rent and supports wider community benefits which are a direct contribution to the Council's outcomes of 'Stronger Economy' and 'Stronger Communities'.
- 1.6 The proposal to set the level of rent at a peppercorn would ensure the use and management of the Site remains sustainable, with the monetary value being realised through social benefit. The obligations for repair and maintenance of all aspects of the Site will be that of the ITC, as would all future investment opportunities.
- 1.7 The Council must also consider the strategic reasons in holding assets that are unable to be resourced fully to meet full operational use. The Council's freehold interest in the Site is necessary to ensure the continued use supports playing pitch provision within the Borough. Therefore, to dispose of the freehold of the Site would remove this control and is therefore not considered beneficial. The proposed lease will see the Site being brought back into full use by the Community, as this has not seen effective use in recent years by the Council or its Partners and would benefit from the proposal from the ITC.

## **2. PROPOSAL**

- 2.1 A proposal received from the ITC sets out their objectives to take over the maintenance of the site at the current level and enhance the Site over a number of years (subject to needs and grants) at the same time continuing to undertake general maintenance and provide free, open pitch for the community.
- 2.2 Once a lease has been granted, the ITC will have full autonomy to explore further related activities with known Groups in the local area and develop a partnership approach to an enhancement for sporting provision, encouraging league football if feasible, whilst retaining a Site that is community lead.

- 2.3 In future, the ITC aim to explore the potential development of a Multi-Use Games Area or 3G pitch and explore other sports other than football and rugby.
- 2.4 For the areas that are outside of formal pitch provision, subject to agreement, the ITC intend to explore the option to develop the existing wooded area to encourage other activities and use of the site.
- 2.5 The Business Case evidences this need using local market research. The 'Social Return on Investment' analysis provided indicates a host of wider benefits this proposal would bring to the Borough.
- 2.6 The lease will be granted on a full, repairing, and insuring obligation as well as responsibility for the operational costs of the building. This would result in a saving to the Council on average of £6k per annum.
- 2.7 The ITC have already secured funding, directed at maintaining the condition of the Site in its current form with the intention to seek other funding to develop the Site over the coming years with additional resources potentially being factored in to future precepts or through sourcing additional funding through external grants.
- 2.8 It is clear to see from the Business Case that the ITC are keen to develop and manage the Site and the ITC demonstrates the sustainability and viability required in the longer term to manage and further invest in the Site. The Business Case is well articulated and shows the ITC have an established operating model and have the necessary approvals to progress the proposal, being very active in continuing their integrated and engaged community ethos and involvement in the local area.
- 2.9 The proposal and social return on investment provides sufficient assurance of the viability of the proposal in respect to the financial standing of the ITC and that they have the necessary resources in place required in managing this type of site.

### 3. CONSTITUTIONAL REQUIREMENTS

- 3.1 The Constitution includes a Protocol on Disposal of Land for Less than Best Consideration ("the Protocol") which contains eight specific procedural requirements that must be addressed and included in any report seeking authority to dispose at less than market value or market rent as follows:

(i) A valuation report, undertaken by a Chartered Surveyor (Valuer), setting out the restricted and unrestricted values of the property	
The Council's partner in the provision of estates and valuation services, ENGIE Services Limited, has provided a valuation report from a qualified Chartered Surveyor which contains the following key information.	
Unrestricted Value (i.e.	£95,000

market value as a capital sum)	(NINETY-FIVE THOUSAND POUNDS)
Less Restricted Value (i.e. market value subject to proposed lease)	£20 (TWENTY POUNDS)
Equals Discount (i.e. total amount of undervalue)	£ 94,480 (NINETY-FOUR THOUSAND FOUR HUNDRED AND EIGHTY POUNDS)

The above figures are based on the current market value and the market value under the terms of the proposed transaction and is the amount that will not be received by the Council if it is approved.

(ii) An assessment with supporting evidence of the capital value to the Council of those benefits of the proposal which are capable of monetary assessment together with an assessment with supporting evidence of the value of non-monetary benefits (i.e. social, economic and environmental benefits)

The Site would predominantly remain underutilised with associated running costs and lack of directed capital investment. The value of the proposed asset transfer in non-monetary terms cannot be quantified. Nevertheless, a transfer to the ITC supports the Council's outcomes of a 'stronger economy' and 'stronger communities'. It provides the ITC with a further platform from which to deliver its own objectives. The proposed transfer passes the Site's maintenance costs to the ITC thus representing a saving to the Council.

The ITC's commitment to provide a local amenity will improve community spirit and health and well-being, reduce social exclusion, help to tackle anti-social behaviour, and boost local prosperity. The ITC's outcomes of these objectives include the following:

- *Engaging – make sure you have a say in projects*
- *Including – the hard to reach and the vulnerable*
- *Enabling – make sure you can get access to services*
- *Delivering – services for the community*
- *Partnering – look to work with others to benefit the area*
- *Listening – let the community have a voice*
- *Learning – be open to new things*
- *Innovating – be prepared to try new things*
- *Environmentally aware – make positive impacts on the environment*

All these outcomes affect peoples' lives and cannot be directly quantified. Notwithstanding there is a significant cost to the Borough in dealing with the issues and any opportunity to reduce the numbers of those affected must be embraced.

(iii) Confirmation that the disposal will contribute positively to the Council's priorities.

The Community Asset Transfer will contribute positively to enabling active management and use of the playing pitches at the Site in support of the

Council's objectives including 'Sustainable Communities', 'Feel Safe and Are Safe' and 'Health and Wellbeing'.

(iv) A statement that the benefits that the Borough will derive from the proposed disposal cannot be achieved unless the lease takes place at an undervalue rent and confirming that no reasonable alternative means of funding are available to the purchaser.

The ITC are a constituted Parish Council which will make little surplus on operating cost. Any surplus which will be achieved will go towards furthering the objectives of the ITC. It relies on funding via various sources. Without funding, the benefits the ITC achieves for the Borough could not be fulfilled.

(v) In cases where the proposed disposal is to an identified person/organisation without a tender process, this should be subject to consideration of a robust business case and an analysis of the financial standing of the organisation/person.

A full Business Case was received and considered. The proposed tenant is of sound grounding and can provide the use requested by Cabinet to benefit both the ward and the wider community.

(vi) Details of the proposed terms of the transaction which will ensure that the disposal will contribute to the achievement or improvement of the social, economic, and environmental wellbeing of the area.

*NOTE: In considering the application of the wellbeing criteria under the General Disposal Consent, the Council must have regard to the Community Strategy and reasonably consider the extent, if any, to which the proposed disposal supports the aims and objectives in the Strategy*

Heads of terms to be finalised but based around the following:

- 125-year lease, contracted out
- £1.00 per annum rent
- Use to be for sports provision via playing pitches with ancillary pavilion facilities accommodating toilets and changing rooms
- Tenant responsible for full repairing and insuring
- Tenant responsible for insuring building, contents, fixtures, and fittings
- Utilities to be procured by tenant
- Absolute bar on assignment and sub-letting
- Each party to bear its own professional fees in preparing the legal documentation

(vii) A statement from the Monitoring Officer on whether it is considered that the disposal is capable of falling within the terms of the General Disposal Consent.

See Section 10 of this Report "Legal Implications"

(viii) A statement from the Section 151 Officer in relation to the financial implications of the proposal, particularly in respect of the impact on resources for capital spending as set out in the Medium-Term Financial Plan.

*There must demonstrable evidence that the outcome of any undervalue disposal will be equally beneficial to a disposal at market value*

See Section 9 of this Report “Financial Implications”

- 3.2 **ESTATES PROGRAMME BOARD** - The Protocol also requires that any proposal to dispose at less than best consideration should, in the first instance, be referred to the Board for consideration of a business case and options appraisal.
- 3.3 **STATE AID RULES** - The Protocol further requires that the Council ensures that the nature and amount of any undervalue complies with the European Commission’s State Aid Rules and does not create a state aided subsidy for a commercial organisation. That requires the application of the follow tests:

3.3.1 Is the value of the benefit below the threshold set by the De Minimis Aid Regulations?	
Yes	
3.3.2 Do the General Block Exemption Regulations apply to the proposal?	
No	
3.3.3 Does the proposal meet any of the following 5 State Aid criteria? <i>Where 1 or more of the criteria appears not to be met, then it is unlikely to constitute State Aid:</i>	
Is the measure granted by the state or through state resources?	Yes
Does it confer an advantage to an undertaking?	Yes
Is it selective, favoring certain undertakings?	Yes
Does it distort, or have the potential to distort, competition?	Yes
Is the activity tradable between member states?	No

#### 4. RISKS AND OPPORTUNITIES

The risk to the Council in progressing with a lease to the ITC is considered minimal. In the scenario of a lease, should the proposals no longer be viable, the option to relinquish the premise back to the Council and ultimately seek alternative opportunities would be pursued which would mitigate against the Council incurring any future operational cost.

Future risks remain with the ITC in respect to the operational costs of maintenance etc. and the obligation of repair and maintaining a building to an acceptable standard to ensure ongoing use.

There are no identifiable environmental sustainability implications because of the proposal, as it is the intention that the condition of the Site will be maintained and improved based on an operational use. The long lease will allow the ITC to expand and continue to occupy the Site and would allow for potential external funding to be obtained, allowing for investment and further improvements. The continued use will be a positive reflection to the street scene within an established and well used area within this part of the Borough and will reduce the financial commitments of the Council.

## **5. OTHER OPTIONS CONSIDERED**

5.1 To do nothing would see the Site continue to be under-utilised and would not enable the ITC to take a more proactive role in managing the Site and seeking to improve it. The condition of the building would continue to deteriorate attracting Anti-Social Behaviour and all the repair and maintenance obligations and cost would rest with the Council. This would result in a negative impact to the community. The ITC have presented a robust Business Case which demonstrates extensive social return on investment which requires a longer-term lease in support of the proposal and will result in a full use of the Site. It is not considered a viable option to improve the maintenance activities or fully manage the Site as is currently and the Council risk unnecessary and negative publicity as well as potentially being wholly liable for the Site, together with all future associated expenditure including any missed opportunity of investment into or expansion of the potential use and activities.

5.2 The freehold disposal of the site has not been considered at this time. A leasehold arrangement is more relevant given the use needs to continue for sport provision and as such ensures the Council retains an element of control. This is also in respect of mitigating risk in maintaining the Site and in the event the proposal is no longer viable, which impacts on the on-going use of the Site, the Council could take action to seek alternative use of the site and prevent any unauthorised uses, which a freehold disposal would remove.

## **6. REPUTATION AND COMMUNICATIONS CONSIDERATIONS**

There are positive reputational implications for the Council resulting from the decision to support a lease to the ITC. The lease agreement will primarily enable continued use of the Site but will allow future investment opportunities for enhancement as well as a localised management offer for the benefit and use by the local community. The Council's communications service has been briefed of the proposal and will issue any information requirements in respect to this proposal.

## **7. FINANCIAL CONSIDERATIONS**

7.1 The proposal outlined within the report supports the Council's key outcomes of a stronger community, by enabling the ITC and community, in support of the

Borough's playing pitch strategy, to use and enhance the Site; which will ensure a public owned Site is available to support a recognised demand.

- 7.2 The repair and maintenance cost of the Site will be financed through the ITC's own resources. Any future investment will be subject to the ITC's own resources and access to external grant funding which will remove the financial commitment from the Council.
- 7.3 On an ongoing basis the proposal will require no capital and revenue expenditure to be provided from the Council and result in an average annual revenue saving of £6k. This is consistent with the Council's policy to contribute to improved value for money and supports the financial objective and our determination to be an efficient and effective Council.

## **8. CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS**

- 8.1 The recommendations outlined within this report have been considered so far as their impact of the proposal on climate change and the environment. In reference to the Council's environmental policy, the proposal supports the Council's environmental priorities:

- By leading North East Lincolnshire towards consuming resources more efficiently, eliminating waste and supporting & developing the green economy & infrastructure.
- By recognising and realising the economic and social benefits of a high-quality environment.
- By working towards a low carbon North East Lincolnshire that is prepared for, and resilient to, the impacts of climate change.

## **9. CONSULTATION WITH SCRUTINY**

There has been no consultation with Scrutiny to date.

## **10. FINANCIAL IMPLICATIONS**

The recommendation to approve a long-term lease of the subject site will deliver financial savings to the Council as the repair and maintenance of the site will be the responsibility of ITC. Long term investment in the site, potentially supported through external grant, will transfer to ITC.

## **11. LEGAL IMPLICATIONS**

- 11.1 Local Government Act 1972, s123, provides that the Council may dispose of land in any manner it sees fit subject to the constraint that (except in the case of leases for less than 7 years) disposal must be for the best consideration reasonably obtainable.
- 11.2 The General Disposal Consent (England) 2003 provides a general consent removing the requirement for Local Authorities to seek specific approval from the Secretary of State for a wide range of disposals at less than best consideration. Authorities are granted consent in circumstances when the undervalue does not exceed £2m and where the disposing Authority considers that the disposal is

likely to contribute to the achievement of the promotion or improvement of the economic, social or environmental wellbeing of the whole or any part of the area (the general power of wellbeing).

- 11.3 Constitutionally and as outlined in the above report the Protocol on Disposal of Land for Less than Best Consideration requires that the Council receives a statement from the Monitoring Officer on whether it is considered that the proposed lease is capable of falling within the terms of the General Disposal Consent (England) 2003.
- 11.4 Cabinet is advised that this proposed disposal is capable of falling within the terms of the consent for the following reasons:
- (a) the amount of undervalue would be below the £2m threshold
  - (b) it is the professional opinion of the Director of Resources and Governance that in granting this disposal the monetary loss is outweighed by the positive social, economic, and environmental benefits of the proposal.
- 11.5 The Scheme of Delegation in the Constitution provides for the Director of Resources and Governance to refer any proposed disposal at an undervalue to Cabinet in accordance with the Protocol on Disposal of Land at Less than Best Consideration, and maintain a register of all undervalue disposals. This report therefore complies with those provisions.
- 11.6 In terms of State Aid, it is clear from the analysis set out earlier in this report that, the proposal would fall within the De Minimis Regulation. This recognises that small amounts of aid (less than €200,000.00 over a rolling 3-year period) are unlikely to distort competition.
- 11.7 It is recognised and accepted that long term security of tenure can be advantageous to a provider and sometimes necessary to secure funding or render an investment capable of delivering a return.

## **12. HUMAN RESOURCES IMPLICATIONS**

There are no direct HR implications.

## **13. WARD IMPLICATIONS**

This proposal directly impacts on the Immingham Ward.

## **14. BACKGROUND PAPERS**

There are no background papers to this report.

## **15. CONTACT OFFICERS**

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**COUNCILLOR JOHN FENTY**  
**PORTFOLIO HOLDER FOR REGENERATION, SKILLS AND HOUSING**

## APPENDIX ONE - SITE LOCATION PLAN

