

<b>Bath &amp; North East Somerset Council</b>	
MEETING	<b>Alice Park Trust Sub Committee</b>
MEETING	<b>23 December 2019</b>
TITLE:	<b>Approval of Lease Terms for the Tennis Courts and ancillary land</b>
WARD:	<b>Lambridge</b>
<b>AN OPEN PUBLIC ITEM</b>	
<p><b>List of attachments to this report:</b></p> <p><b>Appendix 1 Advice of Independent solicitors appointed on behalf of the Trust</b></p> <p><b>Appendix 2 Advice of Independent surveyors appointed on behalf of the Trust</b></p> <p><b>Appendix 3 Draft Lease</b></p> <p><b>Appendix 4 Draft Assignment of Lease</b></p> <p><b>Appendix 5 Application to the Charity Commission for an order consenting to the grant of a lease</b></p>	

## **1 THE ISSUE**

1.1 To commence the refurbishment of the tennis courts the Trust must enter into a lease, with a nominee, appointed by the Council, who will then assign the lease to the Council.

1.2 This report outlines the process for the granting of the lease and the reasons why a nominee is required

## **2 RECOMMENDATION**

**The Sub-Committee is asked, subject to approval by the Charity Commission and subject to the Council securing grant funding from the Lawn Tennis Association & Sport England to;**

**2.1 Approve the terms of the draft lease on the basis that these are the best terms that can reasonably be obtained.**

**2.2 Approve the grant of the lease (Appendix 3) to the nominee and consent to the simultaneous assignment of the lease to the Council in its corporate capacity.**

**2.3 Authorise the clerk to submit the application (Appendix 5) for Charity Commission consent to the lease on behalf of the Trust.**

### **3 THE REPORT**

3.1 The Council as sole corporate trustee of the Alice Park charity cannot grant a lease directly to the Council in its corporate capacity. The advice of the Independent solicitors (Appendix 1) appointed on behalf of the Trust outlines the process for the lawful grant of a lease from the Official Custodian for charities, through a nominee and ultimately to the Council in its corporate capacity.

3.2 The Council, through the Monitoring Officer, proposes to appoint the Deputy Monitoring Officer, by an officer delegated decision, to act as the nominee and to direct the nominee to simultaneously effect an assignment of the lease to the Council in its corporate capacity.

3.3 Members of the sub-committee acting in its capacity as the sole corporate charitable trustee must act in the best interest of the charity in the grant of the lease to the Council. Because the Council is a Connected Person, the approval of the Charity Commission is required before the grant can take effect. To assist the sub-committee in its determination of whether the terms of the proposed transaction are the best that can reasonably be obtained for the charity a valuation and advice has been obtained from independent surveyors (Appendix 2).

3.4 The sub-committee has previously approved the heads of terms for the grant of a lease of the tennis courts which have now been embodied into the draft lease by the independent solicitors and these have been agreed with the Council's solicitors (Appendix 3). The sub-committee is requested to approve the draft lease and authorise its execution once approval to the transaction has been given by the Charity Commission.

3.5 Upon the grant and assignment of a lease to it the Council intends to procure an operator to sublet this site together with 2 Council owned park tennis court sites on a profit share arrangement. There is no guarantee that the Council will secure an operator or that an operator will enter into a profit share arrangement with the Council. Even if it is possible to secure an operator on a profit share arrangement there is no guarantee that this site will generate a profit. If however, the site does generate a profit the Council will arrange to pass through to the Trustees any payments received for this site under any profit share arrangement with its operator.

### **4 STATUTORY CONSIDERATIONS**

4.1 The Council is sole corporate trustee of the Alice Park Trust. The Alice Park Trust's Sub-Committee's terms of reference are to undertake the operational management functions in respect of the Alice Park site and its resources, in accordance with Trust's objects and the duties it owes pursuant to the Charities legislation

- 4.2 Members in their capacity as sole corporate trustee must administer the Trust in good faith, abiding strictly to the objects of the Trust and administering the Trust for the benefit of the public which may at times conflict with the interests of the Council.
- 4.3 The Council in its corporate capacity is, pursuant to section 118 Charities Act 2011 treated as a Connected Person and the legislation requires that a transaction to a Connected Person requires an order of the Charity Commission. The legislation also provides a number of statutory safeguards to ensure objectivity and transparency in regard to the transaction. In particular the members must, before entering into a lease of the land—
- 4.3.1 obtain and consider a written report on the proposed disposition from a qualified surveyor instructed by the trustees and acting exclusively for the charity,
  - 4.3.2 advertise the proposed disposition for such period and in such manner as is advised in the surveyor's report (unless it advises that it would not be in the best interests of the charity to advertise the proposed disposition), and
  - 4.3.3 decide that they are satisfied, having considered the surveyor's report, that the terms on which the disposition is proposed to be made are the best that can reasonably be obtained for the charity.
- 4.4 Members must consider the Independent surveyors report and satisfy themselves that the requirements in 4.3.1 have been met.

## **5 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)**

- 5.1 The Council will, subject to receipt of grants from the Lawn Tennis Association and Sport England, refurbish, manage, insure and create a sinking fund to maintain the site during the lease term. The grant of the lease to the Council will relieve the Trust of maintaining and operating the tennis courts during the term of the lease while ensuring delivery on the objects of the charity

## **6 RISK MANAGEMENT**

- 6.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

## **7 CLIMATE CHANGE**

- 7.1 There are no climate change implications arising directly from this report

## **8 CONSULTATION**

- 8.1 The Monitoring officer and S.151 officer have been consulted on the contents of this report.

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<b>Background papers</b>	Alice Park Trust sub-committee report dated 4 September 2019
<b>Please contact the report author if you need to access this report in an alternative format</b>	