

Summary Sheet

Name of Committee and Date of Committee Meeting

Cabinet and Commissioners' Decision Making Meeting – 19 February 2018

Report Title

Renewal of agreement with Rotherham Rugby Club Ltd, known as Rotherham Phoenix Rugby Club

Is this a Key Decision and has it been included on the Forward Plan?

No, but it has been included on the Forward Plan

Strategic Director Approving Submission of the Report

Damien Wilson, Strategic Director of Regeneration & Environment

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Ward(s) Affected

Boston Castle

Executive Summary

The Rotherham Rugby Club Ltd (the Club) aims to improve the drainage and surface of 3 rugby pitches on Herringthorpe Playing Fields with the help of funding from Sport England (the funder). The pitches are currently leased by the Club from the Council through an Asset Transfer Lease (the lease) for a yearly rent of £1 (if demanded), which runs until 2038. The lease is for land only; there are no other Council assets on the site (see Appendix A and B).

In order to protect their proposed investment, the funder requires a minimum 25 year lease with no break clause during that period. This will make necessary the Club's surrender of their current lease agreement and the creation of a new 25 year Asset Transfer Lease, which would come to an end in 2042. The Club has requested that the Council assists them in overcoming this funding obstacle.

Recommendations

1. That approval be given to the surrender of the existing Asset Transfer Lease and the grant of a new 25 year Asset Transfer Lease with Rotherham Rugby Club Ltd without any break clauses.
2. That the Assistant Director of Planning, Regeneration and Transport be authorised to negotiate the terms of the lease; and the Assistant Director Legal Services be authorised to complete the necessary documentation.
3. That the Assistant Director of Culture Sport and Tourism be authorised to negotiate a new Service Level Agreement to monitor activities relating to sports development, community engagement and equalities.

List of Appendices Included

Appendix A: Site Location to show Rotherham Rugby Club Ltd lease area

Appendix B: Site Plan to show Rotherham Rugby Club Ltd lease area

Appendix C: Phoenix Rugby Club Community Activity

Background Papers

None

Consideration by any other Council Committee, Scrutiny or Advisory Panel

No

Council Approval Required

No

Exempt from the Press and Public

No

Renewal of agreement with Rotherham Rugby Club Ltd, known as Rotherham Phoenix Rugby Club

1. Recommendations

- 1.1 That approval be given to the surrender of the existing Asset Transfer Lease and the grant of a new 25 year Asset Transfer Lease with Rotherham Rugby Club Ltd without any break clauses.
- 1.2 That the Assistant Director of Planning, Regeneration and Transport be authorised to negotiate the terms of the lease; and the Assistant Director Legal Services be authorised to complete the necessary documentation
- 1.3 That the Assistant Director of Culture Sport and Tourism be authorised to negotiate a new Service Level Agreement to monitor activities relating to sports development, community engagement and equalities.

2. Background

- 2.1 In 2013 Cabinet agreed to lease an area of land at Herringthorpe Playing Fields to the Rotherham Rugby Club Ltd for use by their amateur teams (junior and adult) for training, competitive matches and community development purposes. The lease is for land only at a yearly rent of £1 (if demanded); there are no other Council assets on the site. The Club's requirements were for a secure site that could accommodate 3 full size rugby pitches. The Council also approved a proposal from the Rugby Club to fence off the leased area and to install floodlighting, work that has now been completed.
- 2.2 Through a Service Level Agreement with the Council, the Club is required to make the facility available to local schools and other amateur clubs, and to work with the Council's Sports Development Team (Active Rotherham) to organise and promote wider sport and physical activity opportunities. Following consultation with residents in 2012, the lease does not allow the facility to be used by the Rotherham Titans, in order to prioritise community usage.
- 2.3 The Club is an amateur club providing training and playing opportunities for adults and young people of a wide range of ages and abilities. There are over 100 adult members and officials; the Mini/Junior section has almost 300 boys and girls taking part from 7 to 17 years old; there are a large number of volunteers. The Club has also facilitated wider community access to the site, which includes a number of Rotherham Primary and Secondary schools (see Appendix C).
- 2.4 The Club has already made improvements to the site mainly through external funding (approximately £300,000 for fencing and floodlights). In addition to this they have invested in grass reinforcing between the highway and the leased area to help reduce mud being taken on the footway between the playing fields and the Titans' ground.

3. Key Issues

- 3.1 Rotherham Rugby Club Ltd has secured a grant of £60,000 in order to install improved drainage to the pitches and improve the playing surface. This can only be accessed if the funder (Sport England) has the security of a 25 year lease without breaks. Cabinet agreement is required in order to achieve this.
- 3.2 There is clearly a need to improve the quality of the playing pitches and ensure that community sports teams are able to play and train throughout the year. In relation to the decision to approve the renewed lease, there are two significant issues:
- The Club's compliance with the existing lease and any concerns related to the management of the site and the activities of the Club.
 - The wider development plans for the Herringthorpe Leisure Site and how these may be affected by a revised agreement.
- 3.3 In consultation with the Cabinet Member for Culture and Neighbourhood Working and local Ward Members in February 2017, a number of issues relating to the Club's management and use of the site were raised. These included:
- a. Site management related to parking, littering and mud on pavements
 - b. Community engagement related to low usage of the site by local people compared to those from outside Rotherham;
 - c. Equalities related to low usage of the facilities by BME communities.
- 3.4 The response from officers to the concerns has been to monitor the conduct and activities of the club as follows:
- a. Site management: 16 site visits were carried over a 4 month period from August to November 2017. On each occasion inspection sheets were completed, identifying litter, grass, parking, bins, pavement condition and 'other' as acceptable or unacceptable. Where appropriate relevant comments were made.
 - There was evidence of low levels of litter on two occasions.
 - There was evidence of mud on paths around the site on four occasions but for two of these it was not possible to determine that the mud was directly related to the Club.
 - Green Spaces officers received one complaint of noise relating to music "bass" levels on site during an event.
 - The Council's Transportation Department confirmed that they had not received any complaints from the public with regard to parking issues at the site during the monitoring period.The Club also removed mud and litter promptly when they were made aware.

- b. Community Engagement - The Club have undertaken work to ascertain where their current members / players reside and this has shown that the majority are from Rotherham borough (92%). Of these, the main users are from postcode areas closest to the grounds: 22% from S60 (Central, Broom, Whiston, Treeton), 17.9% from S65 (Herringthorpe and Eastwood) and 21% from S66 (Maltby, Bramley and Wickersley).
 - c. Equalities - The Club have made special efforts to engage with local schools, including those with a high ethnic mix. These include Clifton Learning Partnership and St Bernard's. As a result they have reported an increase in the numbers of young people from BME sectors of the community. The Club recognise that this is an aspect of their work that they will need to continue to address proactively.
- 3.5 Officers have had regular contact with the Club's management and are confident that there is a commitment to continued active management of the site, to continued engagement with residents within the local community and to diversifying the ethnic profile of their users.
- 3.6 Nevertheless, these issues will continue to be monitored through a new Service Level Agreement.
- 3.7 The Council has previously developed plans to improve the whole of the Herringthorpe Leisure Site including the playing fields, although these are now out of date and it would require significant work and consultation to update them. The current lease agreement with the Club means that should the Council choose to progress plans for the site at some point in the future, it could either do this with the agreement of the Club and integrate their needs and activities into the plans or it could use the 15 year break clause (now 11 years away in 2028) to terminate the agreement and develop the site in a different way. If a new 25 year lease is approved, without any break clause then the Council would not be able to develop the leased site in any way without the agreement of the club and / or until the full 25 year term was reached in 2042. It is important to note that in either situation should the Council develop the site in a different way it is possible that the relevant external funders would seek compensation for their investment.

4. Options considered and recommended proposal

- 4.1 Option 1 - Do not grant Rotherham Rugby Club Ltd the requested lease and require them to continue in occupation on the existing agreement. Maintaining the existing lease with an initial break clause at 15 years enables the Council to terminate the lease at this point in the event that the land is required for other purposes. This option has been discounted, as without the required lease in place the grant funding will not be forthcoming and the benefits to both Rotherham Rugby Club Ltd and other users of the site will not be realised. Furthermore, refusal may also have a negative impact on the Council's relationship with Sport England.

- 4.2 Option 2 - Grant the requested 25 year lease without break options, along with an updated Service Level Agreement to monitor site management, community engagement and equalities. The agreement will also set out the monitoring, reporting and advocacy arrangements. This option is the recommended option, as it will allow the Rotherham Rugby Club Ltd to improve the three pitches on the playing fields to the benefit of the club and others who benefit through the Service Level Agreement. Any plans for the future development of Herringthorpe Leisure Site will require extensive consultation with a wide range of stakeholders and (based on existing usage levels) likely include the continuation of playing pitches for community sports. On that basis, the need for a termination of the lease and the subsequent repayment of grant investment is viewed as a very low risk.

5. Consultation

- 5.1 Consultation was undertaken with the Cabinet Member for Culture and Neighbourhoods and Local Ward Members in February and March 2017. As a result of this feedback, the Assistant Director for Culture, Sport and Tourism met with the Phoenix Club's management to discuss concerns raised and a monitoring plan was put in place.
- 5.2 Additional consultation to share the findings of the new monitoring arrangements and the proposed amendments to the Service Level Agreement took place in December 2017, with the findings informing the development of the new Service Level Agreement from April 2018.

6. Timetable and Accountability for Implementing this Decision

- 6.1 Once approval has been granted to recommendations 1.1, 1.2 and 1.3 above, negotiations to agree the terms of the lease will commence immediately. The intention is to have the new lease and Service Level Agreement in place by April 2018.
- 6.2 The Rotherham Rugby Club Ltd has indicated that this approval will enable the funding to be drawn down and works to be carried out before the offer of the grant runs out.

7. Finance and Procurement Implications

- 7.1 There are no financial implications to the Council directly arising from this report. Approval to issue a new Asset Transfer Lease, terminating in 2042, will remove any flexibility that the Council has over the site under the terms of the current Asset Transfer Lease, which has a break clause in 2028. However, this is considered to be outweighed by the investment that will be made in the facilities by the Club (with Sport England funding) and the wider community benefits that will ensue.

- 7.2 The Rotherham Rugby Club Ltd will pay the Council's Legal and Surveyor's fees for the surrender of the existing lease and the grant of the new lease agreement. It is anticipated that this will cover all costs incurred by the Council on the granting of the lease.
- 7.3 Under the terms of the existing agreement, the Club is responsible for all costs associated with the playing pitches, including the cost of grounds maintenance. This will continue in the proposed new lease agreement.

8. Legal Implications

- 8.1 Without any break clauses contained within the lease, the Council will be unable to terminate the agreement before the expiry of the fixed 25 year term, in the eventuality that it is ever required for wider community development directly (the asset or surrounding site itself) or indirectly (for the benefit of a capital receipt). The Council will only be able to terminate the lease if the club is in breach of its obligations under the terms of the agreement. Breaches will include not delivering on the planned investment, which is the main reason for establishing a new lease and failure to manage the site to a satisfactory standard. Legal will also ensure that the new lease is excluded from the security of tenure provisions of the Landlord and Tenant Act 1954 in order to mitigate this limitation to expiry of the new lease in 2043.
- 8.2 The Service Level Agreement is a legally binding agreement between the parties. The Council would be able to take action for any breach in keeping with the terms of the current, and any new, lease agreement.
- 8.3 The new lease will be on the same financial terms as the existing lease
- 8.4 It will be the Club's responsibility to provide the land back to the Council at the end of the lease in at least as good of condition as it was when the lease was granted including removing any fixtures or fittings.
- 8.5 There should be no claim by the proposed funders to the Council or the club after the 25 year lease term has ended.
- 8.6 If the Council were to take back the land under forfeiture of the lease or the Club themselves served notice on the Council to end the lease agreement before the 25 year expiry, the club would solely be responsible for any funding repayments that may exist.

9. Human Resource Implications

- 9.1 Not applicable

10. Implications for Children and Young People and Vulnerable Adults

- 10.1 The granting of the lease agreement without the inclusion of break-clauses will enable The Rotherham Rugby Club Ltd to secure grant funding to allow for drainage works to be undertaken to the site that will improve the facility for the benefit of children, young people and adults.
- 10.2 The new Service Level Agreement will also include a stronger focus on safeguarding as part of a wider commitment to strengthening policy and practice in this area and in particular, how the Council works with third parties.

11. Equalities and Human Rights Implications

- 11.1 Through the work already being undertaken by the Club and the new Service Level Agreement, membership will be monitored, along with their efforts to increase diversity in the take up of their activities in order to ensure engagement from under represented sectors of the community.

12. Implications for Partners and Other Directorates

- 12.1 Planning, Regeneration and Transport will be required to negotiate the terms of the lease and Legal Services will be required to complete the necessary documentation

13. Risks and Mitigation

- 13.1 If The Rotherham Rugby Club Ltd is not granted a 25 year lease without breaks they will be unable to draw down the necessary funding from Sport England. This could jeopardise the long term community aims and objectives of the group, and would also hinder their attempts to obtain funding from alternative sources. This could, in turn, have a negative impact on the Council's relationship with Sport England and other funders.
- 13.2 Granting of a new lease may attract complaints from some local residents. There is an opportunity to consider and address reasonable concerns as part of the consultation process related to the new Service Level Agreement.
- 13.3 Whilst the Club has worked hard to address the concerns raised by the Cabinet Member and Ward Members, once the new agreement is in place, the Club's performance could deteriorate. The development of a new Service Level Agreement, along with new monitoring arrangements which include consultation with residents, creates a formal mechanism to address ongoing issues. Should the Club not comply, then it would be possible for the Council to issue notice of termination.

13.4 The granting of the new lease agreement without a break clause may create a barrier to the wider development of the Herringthorpe Leisure Site. Any plans for the future development of Herringthorpe Leisure Site will require extensive consultation with a wide range of stakeholders and (based on existing usage levels) will likely include the continuation of playing pitches for community rugby and other field sports. On that basis, the need for a termination of the lease and the subsequent repayment of grant investment is viewed as a very low risk.

14. Accountable Officer(s)

Steve Hallsworth, Leisure, Tourism and Green Spaces Manager.
Damien Wilson, Strategic Director Regeneration and Environment

Approvals obtained on behalf of:-

| | Named Officer | Date |
|---|----------------------|-------------|
| Strategic Director of Finance & Customer Services | Judith Badger | 01.02.2018 |
| Assistant Director of Legal Services | Dermot Pearson | 01.02.2018 |
| Head of Procurement (if appropriate) | N/A | |
| Head of Human Resources (if appropriate) | N/A | |

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