
Subject: CHARITY OF FREDERICK FRANKLIN FOR A PUBLIC PARK (CHARITY NO. 1092171) - MARKE WOOD RECREATION GROUND: LEASE OF PAVILION

Meeting and Date: Cabinet – 3 February 2020

Report of: Roger Wragg, Head of Commercial Services

Portfolio Holder: Executive - Charity

Decision Type: Non-Key – Charity

Classification: Unrestricted – but Appendix 4 of the report is Restricted and NOT FOR PUBLICATION by reason that it contains information which is exempt by virtue of the provisions of Paragraph 3 (Information relating to the financial or business affairs of any particular person (including the authority holding that information)) of Part 1 of Schedule 12A of the Local Government Act 1972

Purpose of the report: To reach a decision as to whether a lease can be granted for the Marke Wood Pavilion.

Recommendation:

1. That the grant of a lease of the Marke Wood Pavilion to Cinque Ports Football Club for a term of 2 years be approved.
2. That the Strategic Director (Operations and Commercial) be authorised to agree the detailed terms for the lease.

1. Summary

Cabinet, acting as trustees for the Charity of Fredrick Franklin for a Public Park, is required to decide whether it is in the best interests of the charity to permit a lease of the Marke Wood pavilion to Cinque Ports Football Club (the Club) for a term of 2 years.

2. Introduction and Background

2.1 This report was initially brought forward to the Trustees in September 2019, however a decision was deferred following a large number of letters both against and in support of the proposal while Legal Services consulted the Charity Commission and subsequently replied to those who had raised issues.

2.2 A newly formed football club, the Cinque Ports Football Club, requires a “fixed” home ground to comply with League rules and to be accepted as holding official club status. The Club is currently in negotiation for a permanent home ground elsewhere, Kent County Council-owned land to the rear of Hamilton Road Cemetery, but the move could take a number of years to finalise.

2.3 The Club has applied to join the Kent County Football League from the 2019/2020 season and approached the Council to enquire about the possibility of leasing Marke Wood as a temporary home ground for two years. An agreement was reached that the Club could book the pitch for the home games in the standard manner and the Council would continue to maintain the area.

2.4 The pavilion in Marke Wood has been under-utilised in the last two years following changes in the local football league structure and the Club has requested a lease of part of the pavilion to secure its use throughout the football season for the next two years. The only on-line bookings received for the football pitches in the month of September 2019 have been made by the Club.

- 2.5 The Club have already, at their own expense, undertaken improvements/alterations to the building, including installing a shower to the referees' changing-room, replacing the external door and re-decorating the building throughout.
- 2.6 The pavilion is a single-storey brick and tile building, built around 1970 and refurbished in 1989.
- 2.7 It is not proposed to include the public toilets at the rear of the building in the proposed lease nor the two garages within the fenced compound at the rear of the pavilion.
- 2.8 Market Valuation would be achieved at the rent of £1,056 per annum.
- 2.9 It is proposed that the Frederick Franklin Charity should continue to keep the building wind and weather-tight but that the Club should be responsible for all other repairs, decorations and outgoings for the pavilion. Past experience with other pavilions in the district has shown that it is better for the landlord to keep the building wind and weather-tight to maintain the long-term life of the building.
- 2.10 The Club has also indicated its intention to train during the summer season and therefore the lease for the pavilion would allow for use for the full calendar year.
- 2.11 Furthermore, the Club have invested £10,000 to improve the property, maintain it and pay for all outgoings, as well as offering additional sport services to the community. They will initially only be occupying the building on one afternoon a week for matches, and one evening for training. They are hoping to start a women's team and a youth team in January 2020 so will still only occupy the building for half the week.
- 2.12 The Trustees need to be informed that, as the building needed to be ready for the start of the football season, the Club was permitted to carry out works to the building at their own risk in the event that the Trustees decide not to grant the lease. These works include the installation of a shower in the referees' changing-room which is required in the rules of the league they are playing in.
- 2.13 Trustees need to be aware that despite the building not being heated, it will require an Energy Performance Certificate and any remedial works to get the building to the minimum standard required by law.
- 2.14 Trustees also need to be aware that a number of representations regarding the proposal have been received and are appended to this report for Trustees to consider. Due to Purdah, a holding response was sent out to those that had written or e-mailed in to the Council in relation to the granting of this lease and, following the end of Purdah, a detailed response letter was sent out. Both these letters are appended to this report.

3. Identification of Options

- 3.1 Option 1: To offer the club a 2-year lease. It is proposed to include a break clause actionable by either party on serving six months' written notice.
- 3.2 Option 2: To offer to hire the building on a non-exclusive basis for match days and practice days. On other DDC-owned grounds with pavilions, the pitch hire fee does not cover the pavilion costs.
- 3.3 Option 3: Not to offer the club a lease.

4. Evaluation of Options

- 4.1 According to the Charity Commission's website the aims and activities of the Frederick Franklin Charity are:

"Provides sport and recreational facilities for the general public/mankind in the form of building, facilities and open space".

In addition it also lists the objective of the charity as: "The object of the charity is, in the interests of social welfare, the provision of, or to assist in the provision of the facilities for recreation or other leisure time occupation to improve the conditions of life for the inhabitants of the area of benefit without distinction of political, religious or other opinions.

- 4.2 Trustees have a duty to act solely in the best interests of the Charity. Trustees are required to act reasonably and prudently in all matters relating to the charity and to act with the same degree of care and skill as a prudent person or business would exercise in the management of his or her own affairs or those of someone else for whom they had responsibility.
- 4.3 The Cabinet, acting as Trustees, are required to decide which of the options are in the best interests of the Charity.
- 4.4 The Charity is governed by a scheme dated 22nd April 2002. The scheme provides general authority for the trustees to let the land provided the restrictions on disposal given in the Charities Act 2011 are adhered to unless the disposal is excepted from those restrictions. The trustees are provided with further powers in the Charities Act 2011 (s117) to dispose of land but again must ensure they have considered any restrictions.
- 4.5 The restrictions are that the disposal of the land is not to a connected person as defined in s118 of the Charities Act or a trustee for, or nominee of, a connected person.
- 4.6 Furthermore, S120 (2) of the Charities Act 2011 sets out the requirements to be considered for leases which are to be granted for less than 7 years, which is the case here, as the lease term is for 2 years only. The requirements are:

that the charity trustees must, before entering into an agreement for the lease—

(a) obtain and consider the advice on the proposed disposition of a person who is reasonably believed by the trustees to have the requisite ability and practical experience to provide them with competent advice on the proposed disposition, and

(b) decide that they are satisfied, having considered that person's advice, that the terms on which the disposition is proposed to be made are the best that can reasonably be obtained for the charity

Correspondence with the Charity Commission

The Charity Commission have been written to by Legal Services and they have confirmed that the substantive disuse of the pavilion in the last two years amounts to a period of no occupation under clause 8 of the Charity Commission scheme dated, 22 April 2002. This in turn means that the Trustees are free to grant a lease subject to the following:

- Trustees must act in accordance with the governing document and the statutory requirements relating to the disposal of property.
- Any decision to lease the property must be appropriate and in the best interests of the charity.

- Trustees should take into account any local opposition and ensure that they are open and transparent with regard to any proposals they might have relating to the future use of the property.

4.7 Option 1: Would restore use of the pavilion and result in improvements to the building. It would also provide a small income for the Trust while reducing its liabilities. This is the recommended option.

4.8 Option 2: Is not acceptable to the Cinque Ports Football Club as they intend to invest in the building by installing furniture and equipment.

4.9 Option 3: Would result in the pavilion continuing to lay dormant while incurring expenses for the Trust.

5. Resource Implications

5.1 The lease would result in a small income for the Trust and reduce its liabilities in relation to the pavilion.

6. Corporate Implications

6.1 Comment from the Section 151 Officer: Accountancy has been consulted and has no further comment. (DL)

6.2 Comment from the Solicitor to the Council: The Legal Services Manager has been consulted during the preparation of this report and has no further comment to make. (BD)

6.3 Comment from the Equalities Officer: This report does not specifically highlight any equality implications however in discharging their duties members are required to comply with the public sector equality duty as set out in Section 149 of the Equality Act 2010 <http://www.legislation.gov.uk/ukpga/2010/15>.

6.4 Other Officers (as appropriate): None received.

7 Appendices

1 - Location Map

2 - Internal layout plan

3 – Public comments

4 - Rental valuation (exempt)

5 – Holding response due to Purdah

6 – Final reply letter

7 – Lease plan

8 – Report on Title

8. Background Papers

Relevant papers on file

Contact Officer: Robert Reid-Easton, Estate Valuation Manager - Extn 42257