



Community Asset Transfer Request

Bonnyrigg Rose Community Football Club, Scottish Charitable Incorporated Organisation (SC050923)

Report by Kevin Anderson, Executive Director, Place

Report for Decision

1 Recommendations

It is recommended that the Committee agree to the request from Bonnyrigg Rose Community Football Club, Scottish Charitable Incorporated Organisation (SC050923) (BRCFC), for the transfer in ownership of Poltonhall Sports Complex (including the astro pitches, grass pitches, pavilion, caretaker's flat and car park), as shown outlined in red on the plan in Appendix B but excluding the public footpath which runs through the property onto Rosewell Road subject to:

- a. the conditions detailed in section 3.37 of this report; and
- b. such other reasonable terms and conditions as the Executive Director, Place may consider are necessary or expedient to secure the transfer within a reasonable time.

2 Purpose of Report/Executive Summary

The purpose of this report is for members to consider the Community Asset Transfer (CAT) request made by BRCFC for the transfer in ownership of the property.

Date 22 November 2023

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3 Background

Community Empowerment (Scotland) Act 2015 (the Act)

- 3.1** On 2 October 2018, Council approved a Community Asset Transfer (CAT) Framework to assist with the determination of CAT requests. This is included as Appendix C and was used to assess the application from BRCFC. Council also agreed to establish the Community Asset Transfer Committee to determine initial CAT requests and the Community Asset Transfer Review Committee to consider any applications for review.
- 3.2** The change in policy at that time reflected the Scottish Government's move forward from a voluntary approach to a more formal asset transfer process with the introduction of the Act. The Act introduced a right for community groups to make requests to all relevant authorities (which includes Local Authorities) for land or buildings that they consider could be better utilised. Part 5 of the Act came into effect on 23 January 2017 and sets out the formal asset transfer process that relevant authorities must follow.
- 3.3** In deciding whether to agree to or refuse a CAT request, the Committee must consider the following:
- a) The reason(s) for the request;
 - b) Any other information provided in support of the request;
 - c) Whether agreeing to the request would be likely to promote or improve:
 - Economic development
 - Regeneration
 - Public health
 - Social wellbeing
 - Environmental wellbeing; or
 - Whether agreeing to the request would be likely to reduce socio-economic inequalities
 - d) Any other benefits that might arise if the request were agreed to;
 - e) How the request relates to the authority's duties under Equalities legislation; and
 - f) Any obligations that may prevent, restrict, or otherwise affect the authority's ability to agree to the request.
- 3.4** In reaching their decision, the Committee must compare the benefits of the community transfer body's proposals with the benefits that might arise from any alternative proposal. Alternative proposals may be another asset transfer request; another proposal made by the Council; continuing the existing use or disposal on the open market.

- 3.5** As well as assessing the benefits which the proposed CAT may deliver the Committee must also assess whether the community asset transfer body is able to successfully deliver the project and make it sustainable. The statutory guidance advises that Relevant Authorities should ask if the community group have identified appropriate and realistic sources of funding – for example, will they be eligible for any suggested grants, are any fees for activities affordable for their target market and do they have a viable business plan for any proposed commercial activities.
- 3.6** Importantly, the Act requires the Council to agree a CAT request unless there are reasonable grounds for refusing it.

CAT request - background

- 3.7** In 2018, the Council wrote to users of existing sports pitches to advise of actions following a recent Sports Pitch Audit (See Appendix D). The Council's recommended action was to seek to transfer the pitches to BRCFC or close the facility in August 2018.
- 3.8** On 25 July 2018, the Council received an application for the transfer in ownership of the property from BRCFC. Whilst the Committee agreed to the request on 30 April 2019 based on the information provided it was subsequently discovered that BRCFC at that time was an unincorporated association and not an incorporated body. As such, it did not have the required governance structure as required by the Act to apply for ownership. Accordingly, that application could not be progressed.
- 3.9** An interim lease arrangement was agreed between the Council and BRCFC for the pitches (noting that pavilion was subject to existing lease arrangements; and the car park and caretaker's flat remained under the control of the Council). The interim lease for the pitches is a reduced let of £42/monthly, which continues to be in place at the time of writing this report.

Main Report

- 3.10** The application (See Appendix E) for consideration by the Committee is from BRCFC which is both a registered charity (SC050923) and a company limited by guarantee. BRCFC are a grassroots football club governed by a Board with a membership of over 700 players. Following their first application in July 2018, the club have modernised their governance structure from an unincorporated association to an incorporated charity. The charitable objects of BRCFC are to:

- advance and serve the Midlothian community by identifying and improving recreational, environmental, health and emotional opportunities for children, young people, adults and families;
- Working with voluntary and statutory professionals, local businesses, and funders, to improve outcomes for the community of Bonnyrigg.
- To advance and to identify opportunities within the local community to enable young people to achieve their full potential through any of the following - education, recreation, sport, volunteering opportunities.
- To promote, develop and identify strategies to help to ensure the inclusion of senior citizens within the Bonnyrigg and Lasswade community.
- To relieve and support people to pursue a better quality of life, by improving access to positive Mental Health.
- To strengthen the Bonnyrigg and Lasswade community by encouraging more active citizens, working together to tackle their problems, challenges and promoting a healthier and happier community.
- To provide a united and effective voice in discussions with local authorities and other providers of services and/or businesses/others on issues that impact on the health, welfare or environment of the Bonnyrigg and Lasswade Community; and
- To Identify and apply to funding bodies for resources to support these aims.

- 3.11** BRCFC have applied for the transfer in ownership of the property. The proposal from BRCFC is to continue to use the property to offer a quality facility for all to access and support the needs of the local community through football and community access.
- 3.12** The application was received on 29 August 2022; due diligence checks were carried out and BRCFC were asked to provide a list of members, a detailed map and advised that they needed to specify a price in their application. The final information was provided on 28 September 2022 and the validation date was set. The Council had 6 months from the validation date to make a decision on the request (i.e. by 28 March 2023) unless extended by agreement.
- 3.13** The application and notice of the asset transfer request was uploaded to the Council website and a copy displayed at the Poltonhall Sports Complex. Community Councils and elected members were formally notified of the asset request.

Representations

- 3.14** One representation was received from Poltonhall Galaday Committee (PGC) on 17 November 2022 (Appendix F) regarding the use of the ground and recreational pavilion by PGC for the community gala day. PGC have requested that the annual use of the facilities at Poltonhall Recreation Grounds by PGC be written into the asset transfer agreement. This was discussed with BRCFC who have agreed in writing to continue to welcome PGC to meet at the club's pavilion as well as continue to support Poltonhall Galaday at its annual event. The detail of requests/ requirements for the event will be agreed as it has been historically at the time of the event. The assessment panel are satisfied by this written undertaking from BRCFC in response to the representation.

Assessment process

- 3.15** The application was subject to assessment by the Community Management Assessment Group's (CMAG) assessment and scoring panel. The panel met on 23 November 2022 and it was identified that further information was required in order to complete the assessment. On the 27 January 2023 BRCFC were contacted to request an extension until 23 June 2023. The panel subsequently met on 15 May 2023, and following that session it was the view of the CMAG that there was not enough information to make a recommendation to the Committee. To allow additional information to be provided BRCFC were written to on the 6 June to request an extension until 23 September 2023. To allow BRCFC to prepare and submit a business plan BRCFC were written to on the 5 October requesting an extension until 22 December 2023. A further extension was then requested on 22 December 2023 to 30 January 2024, as this is the scheduled Committee date.
- 3.16** BRCFC have raised their frustrations that the process has taken longer than they expected and has been extended beyond the initial six-month period. Acknowledging the concerns raised, it was agreed between both parties that due to the complexity of the request that regular meetings to discuss the progress of the application would be a positive way forward to bring the request to a conclusion within a reasonable time frame. It should be noted that the contents of this report have been shared and discussed with BRCFC who have also informed the report with their views to aid the Committee in their consideration. BRCFC have asked that the Committee be made aware of their disappointment that the process has taken much longer than positioned in the Council's planned timescales.

CAT request – assessment summary

- 3.17** A copy of the completed assessment based on the framework approved by Council in October 2018 is included in Appendix C. The assessment indicates a score from the assessment panel based on the evidence provided. The assessment panel scored the application 52/70 which equates to 74%. This is a positive score.

3.18 The assessment panel noted the following positives:

- The project objectives meet the Single Midlothian Plan objectives and the evidence provided led to a higher score.
- The Council's value for alternative use/redevelopment of the site was minimal.
- The proposed and other community benefits scored highly as well as the level of community benefits provided.
- The application demonstrated how the project contributes to the delivery of improved outcomes for Scotland.
- The club has effective partnerships with others in the community.

3.19 Initially, the assessment panel scored lower on the '*likelihood that the benefits would be delivered over a 5 year period*'. This scored 2/5. The panel assessed that there was insufficient evidence to understand the likelihood of how the business will grow and be sustainable as no viable business plan had been submitted. This was discussed with BRCFC, and an offer of support made from Business Gateway. Subsequently, on 1 November 2023, a business plan including a letter of support from the Scottish Football Association (SFA) (Appendix G) were provided. An assessment panel was convened on 13 November 2023, and after review of this additional evidence, this element of the framework was reassessed and scored 3/5.

3.20 In terms of the Best Value themes, following receipt of the business plan, the club scored high on all seven themes:

- Vision and Leadership
- Effective Partnerships
- Governance and Accountability
- Performance Management
- Use of resources
- Sustainability
- Equality

3.21 BRCFC have confirmed that in terms of growth the club has not increased fees in 5 years and is working hard not to increase fees to help their members at this current time, in particular due to the cost-of-living crisis. They have waiting lists across all age groups and anticipate club membership increasing by 7% per year for the next 5 years, this without any increase in fees would net circa £16k per annum. BRCFC are confident of the increase in club membership given there is a further 1000 houses still to be built on the nearby Hopefield estate.

3.22 The information provided demonstrates BRCFC's ability to secure a range of external funding and their accounts demonstrate sound financial management. The assessment panel also noted that over the period of renting the site from 2016, BRCFC has invested circa £93k in the pavilion as well as £50k towards the upgrade of the pitches.

- 3.23** BRCFC has established a sinking fund to protect the financial costs required to replace the pitches when worn, and at end June 2023 the club provided bank statements to show that they had saved £100k into a separate sinking fund with a Standing Order of £3k/month into this account. BRCFC have informed the Council that it is in the process of changing its constitution to ensure it accepts the ongoing responsibility of having a sinking fund toward the replacement of future pitches. This mitigates the risk of funds not being available to keep the playing pitches available for community use.
- 3.24** The assessment panel noted the value of the UEFA Social Return on Investment (SROI) report (included in the Business Plan – Appendix G) produced in January 2022. This report states that the total current impact of participation amounts to €3.95m split over economic impact of social benefits (€2.252m), direct contributions to the economy (€475.264k) and health (€1.224m). This report is not carried out on an annual basis and was a one off.
- 3.25** The panel also noted that BRCFC have secured a range of external funding grants. It is explained in the business plan that these grant funders assess the impact of the grant and that BRCFC report on performance and outcomes aligned to those specific projects, as well as regular outcome reporting to OSCR and the SFA. The SFA recognises BRCFC as a Platinum Quality Mark Club.

Risk assessment

- 3.26** The assessment panel concludes that there are risks associated with proposed asset transfer and recommends a number of mitigating actions to be incorporated into the transfer contract. These are set out below in Table 1.

Risk ref	Risk	Risk reason	Options to mitigate risk
BR01	Project failure	Risk that BRCFC are unable to maintain the upkeep of the Sports Complex and the Council are expected to finance repairs and replacement of the pitches	BRCFC have established a sinking fund of £36k/annum for upkeep/replacement. Current balance is £100K. The transfer will be subject to condition that BRCFC maintain the asset and an appropriate level of cash reserves. The club is in the process of amending its constitution to reflect the ongoing responsibility to maintain the sinking fund for the purpose of replacing the pitches.
BR02	Community facilities	There are limited community facilities with the local area and the transfer of ownership would reduce the current provision	Use of conditions to safeguard the property for community use.
BR03	Reputational risk	The Community Empowerment (Scotland) Act 2015 sets out the process for CAT. The presumption is that all CATs will be approved unless there are reasonable grounds not to do so.	The CAT Committee agrees to the CAT request subject to conditions.

Table 1 – risk assessment

3.27 The risks and mitigations have been discussed with BRCFC. The club's application is for transfer of ownership in the property. The option of a long-term lease is not acceptable to BRCFC because:

- a) There are potential issues with securing future loan or grant funding, and
- b) The club consider that the Council does not have the financial means to ensure that the facility will be maintained nor that funding would be ring-fenced to upgrade/replace in future years when required. This is assumed from the previous decision in 2018 and the quality of other facilities in Midlothian.

Disposal of Land by Local Authorities (Scotland) Regulations 2010 (the Regulations)

- 3.28** The application is to acquire ownership of the property for £1.00.
- 3.29** In terms of the Regulations the Council may dispose of land for a consideration less than the best that can reasonably be obtained if it is satisfied that the consideration is reasonable, and the disposal is likely to contribute to any of the purposes set out below in respect of the whole or any part of the area of the Council or any persons resident or present in its area.
- 3.30** Those purposes are the promotion or improvement of:
- (a) Economic development or regeneration;
 - (b) Health;
 - (c) Social wellbeing; or
 - (d) Environmental wellbeing.
- 3.31** It is considered that the transfer for £1.00 is reasonable given the level of community benefits to be delivered and the likelihood that these will be delivered in a 5 year period and that the proposed disposal, having been assessed by the Community Management Assessment Group, is likely to promote or improve economic development or regeneration, health, social wellbeing and environmental wellbeing in Bonnyrigg and Lasswade and the surrounding area.

Heads of Terms for Transfer

Caretaker's flat – BRCFC request

- 3.32** BRCFC have requested that the caretaker's flat undergo '*essential – make safe work (gas fire removed / mould treated, garden area tidied up) The flat will need to be in a reasonable standard if the club takes it on*'. As per the recent valuation it is estimated that the property would require circa £74k to bring it up to a standard that would enable it to be leased on a commercial basis to achieve an annual income of circa £7.5k/annum.

Caretaker's flat – CMAG response

- 3.33** It is recommended to Committee to agree to transfer the property on the basis BRCFC acquire the caretaker's flat in its existing state of repair without further monies being expended by the Council except in relation to electrical and gas safety testing with appropriate documentation/certification being provided by the Council to BRCFC prior to transfer. The flat is not held on the Council's Housing Revenue Account.

Pitch maintenance

- 3.34** The pitches have been upgraded in 2022 and the Council have been provided with a range of maintenance actions as instructed by Allsports. BRCFC must adhere to these maintenance conditions to secure the life of the pitch. These have been shared with the club as the current tenants of the site and the club confirmed by email on 10 July 2023 that they will continue to maintain the pitch in accordance with the Allsports guidance and maintenance schedule as the current tenants of the site.

Site maintenance – BRCFC request

- 3.35** Within the property, BRCFC have requested that maintenance is as per the current lease arrangements:
- the Council continue to maintain the perimeter hedgerow/fencing/trees bordering the site
 - the public footpath remains as Council property along with the maintenance and management of street lighting, edging, weed control of the footpath and general waste and dog waste bins
 - the club will maintain the grass areas, 11 a side grass pitches, 3G artificial surfaces, pavilion, car park and surrounding grassed areas.
- 3.36** There are also two electric vehicle charging points in the car park which BRCFC propose would remain in Council ownership and be available to the public at all times.

CMAG recommendations

- 3.37** It is recommended that the Committee agree to transfer the property to BRCFC subject to the heads of terms set out below:
- The consideration for the transfer of the property shall be for the nominal value of £1.00, (if asked). BRCFC shall pay the Council's legal fee of £1000.00 (No Vat charged) in connection with the transfer in ownership;
 - The public footpath which runs through the property onto Rosewell Road shall be excluded from the transfer and remain in the ownership of the Council who will continue to maintain the path and related public infrastructure and have rights of access over the property for the purpose of maintenance, repair and replacement, as necessary;
 - For the avoidance of doubt, the caretaker's flat within the property shall be transferred in its existing state of repair and condition without further monies being expended by the Council except in relation to electrical and gas safety testing with appropriate documentation/certification being provided by the Council to BRCFC prior to transfer;

- The use of the property shall be restricted in all time coming to the sole purpose of a community football club as outlined in BRCFC governing documents and in accordance with the proposal contained in the CAT transfer request. Any change in use will require prior written consent from the Council which shall not be unreasonably withheld where the proposed use is consistent with the aims of the governing documents;
- A clawback burden which provides that in the event of any sale for an alternative use e.g. commercial or residential planning permission (not including any proposed community uses), the Council would receive a 100% of the uplift in value, i.e. the difference in value between the land as a community football club and the value with the proposed change of use as determined at the time of any sale;
- BRCFC shall, in all time coming keep the property
 - (a) in good and substantial condition and repair and will, as and when necessary, reinstate and rebuild the property, all in accordance with good building practice and all applicable legislation and regulations and
 - (b) insured with a reputable insurance provider against all normal commercial risks to the sight and reasonable satisfaction of the Council. For the avoidance of doubt, in particular BRCFC shall maintain to the reasonable satisfaction of the Council an appropriate reserve fund of money to be held by it to meet the cost of the long-term maintenance, improvement, alteration, or replacement of the Astro Turf Pitches;
- In recognition that the property is an important community asset, then in the event that BRCFC wishes to dispose of the property either in whole or part there is reserved to the Council a right of pre-emption i.e. BRCFC must first offer the property to the Council on the same terms as the offer which they propose to accept for the disposal;
- Any moveable items within the property which are owned by Council shall not be included in the transfer unless the Executive Director, Place considers that it is appropriate to do so;
- Fields in Trust (FIT) agreeing to the transfer and BRCFC paying FIT's legal costs in connection with the obtaining the necessary consent;
- Any public electric vehicle charging infrastructure within the property shall remain in the ownership of the Council who shall have rights of access over the property for the purpose of maintenance, repair, and replacement, as necessary; and
- Any public electric vehicle charging points within the property shall remain available for public use at all times.

It is considered that where appropriate the most effective way to protect the Council's interest is to include the above conditions in the disposition to be granted in favour of BRCFC as economic development burdens under section 45 of the Title Conditions (Scotland) Act 2003. It is generally accepted that the legislation allows a broad approach to the securing of economic benefit. There is clear potential economic benefit to the Bonnyrigg and wider area in facilitating the development of the current facilities.

It will secure a safe, health promoting facility for the area, helping to attract/retain a workforce, and promotes the social inclusion/cohesion in the community which is vital for the economic future of Midlothian:

- 3.38** The Committee can accept or refuse the application but should note that the Act requires the Council to agree a CAT request unless there are reasonable grounds for refusing it.

4 Report Implications (Resource, Digital and Risk)

4.1 Resource

Currently, the Council achieves a rental of £42/month for the Complex. This is reduced through a previous agreement until such time that the CAT request is considered. If the complex were to remain in the Council's ownership; based on valuations in May 2023:

- If the site were to be sold on the open market it could achieve: flat £40,000, pavilion £85,000, pitches £85,000 capital - total £210,000
- If the site were to be rented at market value it could achieve (per annum): flat £7,500, pavilion £8,300, pitches £23,200 – total £39,000.

It should be noted that the caretaker's flat was inspected in May 2023, and it is estimated that there would require an investment of circa £74k to bring the property up to a standard that would enable the flat to be rented out on a commercial basis (to then achieve £7.5k/annum). The sale value of £40k is based on the existing state of condition.

Maintenance costs of the site are between £18k-£25k/year depending on lease arrangements and repairs etc. Plus £1k-£5k/annum for hedge and tree maintenance.

4.2 Digital

No implications

4.3 Risk

A risk assessment has been carried out and presented in 3.26 – 3.27.

4.4 Ensuring Equalities (if required a separate IIA must be completed)

The framework assessment takes into account the equalities impact with the transfer of ownership. The assessment concluded that BRCFC meets the equality requirements of the application.

4.5 Additional Report Implications (See Appendix A)

See Appendix A

Appendices

Appendix A – Additional Report Implications

Appendix B – Map of property requested

Appendix C - Completed assessment framework

Appendix D – Letter from Council Leisure Service

Appendix E – BRCFC Application

Appendix F – Representation from Poltonhall Gala Day

Appendix G – Business Plan (including letter of support from the Scottish Football Association, UEFA Social Return on Investment report and three-year cash flow)

APPENDIX A – Report Implications

A.1 Key Priorities within the Single Midlothian Plan

The project objectives meet the objectives of the Single Midlothian Plan:

- Reduce the economic circumstances gap
- Reduce the gap in learning outcomes
- Reduce the gap in health outcomes
- Reduce carbon emissions in Midlothian to net zero by 2030

A.2 Key Drivers for Change

Key drivers addressed in this report:

- Holistic Working
- Hub and Spoke
- Modern
- Sustainable
- Transformational
- Preventative
- Asset-based
- Continuous Improvement
- One size fits one
- None of the above

A.3 Key Delivery Streams

Key delivery streams addressed in this report:

- One Council Working with you, for you
- Preventative and Sustainable
- Efficient and Modern
- Innovative and Ambitious
- None of the above

A.4 Delivering Best Value

Best Value has been assessed and mitigating actions identified to ensure Best Value is secured.

A.5 Involving Communities and Other Stakeholders

The application has been subject to community and elected member consultation. One representation was received as described in 3.14.

A.6 Impact on Performance and Outcomes

The application has demonstrated a range of outcomes that are achieved through the work of the club. The UEFA Social Return on Investment (SROI) report (Appendix G) written in January 2022 states that the total current impact of participation amounts to €3.95m split over economic impact of social benefits (€2.252m), direct contributions to the economy (€475.264k) and health (€1.224m).

A.7 Adopting a Preventative Approach

As above – exercise and access to quality sports and leisure facilities promote healthier lives and contribute to the prevention of negative mental and physical health issues.

A.8 Supporting Sustainable Development

The request to transfer ownership to the club would enable the club to secure additional funding and grow the club as an asset for the community.