



Community Asset Transfer Committee

Date	Time	Venue
30 April 2019	9.00 am	Council Chambers, Midlothian House, Buccleuch Street, Dalkeith

Present:

Councillor Muirhead (Chair)	Councillor Alexander
Councillor Cassidy	Councillor Hackett
Councillor Hardie	

In attendance:

Kevin Anderson, Acting Director, Resources	William Venters, Principal Solicitor
Magnus Inglis, Resource Officer, Education	Stephen Bermingham, Senior Communities Officer
Verona MacDonald, Democratic Services Team Leader	

Also present:

Trisha Sime (on behalf of the applicants for Item No. 5. 1 on the agenda)	Sam Elliot (on behalf of the applicants for Item No. 5.2 on the agenda)
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1. Apology

The Clerk intimated an apology for absence on behalf of Councillor Winchester.

2. Order of Business

It was noted that the order of business was as per the agenda circulated.

Prior to the commencement of business, the Chair made reference to a letter he had received just before the meeting commenced from the applicant with regard to Item No. 5.2 on the agenda. He advised that it was likely the other Members present had also received the same letter and suggested that Members may wish to take a few minutes to read over the letter. With the agreement of the other Members, the Chair adjourned the meeting for up to 20 minutes.

Sederunt:- The meeting re-convened at 9.16 am

3. Declarations of interest

None

4. Minute of Previous Meeting

The Minute of Meeting held on 21 January 2019 was submitted and unanimously approved. The Chair was thereafter authorised to sign the Minute as an accurate record.

5. Reports

Report No.	Report Title	Presented by:
5.1	Application by Bonnyrigg Rose Community Football Club for an asset transfer of Poltonhall Pavilion and associated grounds, Polton Avenue Road, Bonnyrigg	Acting Director, Resources
Outline of report and summary of discussion		
<p>The Acting Director, Resources spoke to the terms of the report circulated with the agenda. He noted that the site included the caretaker's flat, pitches and parkland and was valued at £345,000. The current cost to the Council for pitch maintenance being £26,663 per year with additional costs for the maintenance of the car park and when the income from football lets of £19,927 is off-set against the maintenance costs, the annual loss incurred by the Council is at least £6,736. He noted that these figures did not include the replacement of the astro pitches which were anticipated to be approximately £202,000 and that this is because no financial provision for this is included in the General Services Capital Plan.</p> <p>Councillor Muirhead enquired as to whether a clear agreement had been reached with the applicant with regard to ownership of machinery and who would be responsible for the maintenance of areas and the machinery. Mr</p>		

Anderson advised, should the Committee agree to the transfer application, these were matters which would be resolved between the Council and the applicant prior to the agreement being concluded. He confirmed initial discussion had taken place. Councillor Muirhead queried whether this should have been done prior to the application being before the Committee and Mr Anderson in reference to the report advised that Fields in Trust still had to agree to remove the part of the application area which is subject to an agreement between them and the Council and the completion of any asset transfer would be subject to formal approval by Fields in Trust. He further advised that if the Committee wished legal agreements to be concluded prior to considering applications that this would cause a considerable delay in processing applications and remind Members that the Council has a legal obligation to make a decision on applications within 6 months of them being deemed valid.

Councillor Alexander, with reference to Page 7 of the report, asked for confirmation that any financial benefit derived by the Lands Tribunal varying or waiving the use restriction would return to the Council. Mr Anderson confirmed that this would also be written into the final agreement whereby, as per the terms of the report, the Council would receive 100% of the uplift in value ie the difference in value between the land as a community football club and the value with the proposed change of use.

The Chair, with reference to the terms of the report and the application, asked for clarification as to who would be responsible for the replacement of the pitches. Mr Anderson advised that the Council did not have the financial provision in the General Services Capital Plan and therefore would not undertake this prior to the asset transfer. Councillor Muirhead stated it was important that the applicant was aware of this and suggested the Council could work with the applicant with a view to identifying external funding including developer contributions.

Councillor Hardie stated developer contributions should not be used for projects outwith the Council. Councillor Muirhead advised that he was referring to additional developer contributions and in light of the applicant's application whereby the facility would be used by the wider community.

The Chair then asked the applicant, Ms Sime who was present, if she wished to address the Committee. Ms Sime advised that the site would become a community facility and a considerable consultation exercise had already begun and the results would contribute to the Club's plans going forward.

The Chair referred to the outstanding arrears noted in the report. Stephen Bermingham advised that the Club currently owed £20,000 but he understood Elected Members had suggested to the Club this would be waived due to work undertaken and money invested in the facility by the Club.

Ms Sime advised that Elected Members had told the Club the arrears would be written off due to money being spent by the Club on the facility.

Councillor Hackett took issue with this statement and advised that this was not right as many other clubs pay rent and also spend money on facilities and therefore Clubs were not being treated the same. Councillor Hardie stated that Elected Members did not have the authority to act in this manner. He subsequently requested that his concern with regard to the advice provided by

Mr Bermingham and Ms Sime with regard to Elected Member involvement in arrears of rental due to the Council, be recorded in the Minute of the meeting.

Councillor Cassidy, seconded by Councillor Alexander, moved grant of the application to transfer. The Chair advised that he was minded to agree to the Motion but on the basis outlined above whereby a clear agreement had to exist between the Council and the Club as to where responsibilities lay and that this should include the need to ensure the facilities are maintained at the same standard that the Council has for other facilities. He further noted that the agreement should also highlight that the Council does not have the money to fund the replacement of the pitches and therefore this would become the responsibility of the Club.

The Committee then heard from William Venters, Principal Solicitor who advised that should the Committee agree to the application this was in effect an agreement in principle with the legislation allowing for a period of 6 months for detailed discussion and the legal agreement to be finalised.

With no Member being otherwise minded, Councillor Cassidy's Motion with the additional requirements outlined by the Chair, became the unanimous decision of the Committee.

Decision

The Committee agreed to the application submitted by Bonnyrigg Rose Community Football Club subject to:

- (a) the conditions detailed in Section 3.5 of the Director, Resources report together with the conditions agreed by the Committee namely (i) that clear agreement had to exist between the Council and the Club as to where responsibilities lay and that this should include the need to ensure the facilities are maintained at the same standard the Council has for other facilities; (ii) the agreement highlights the Council does not have the money to fund the replacement of the pitches and that responsibility for this lies with the Club ;
- (b) Fields in Trust approving the removal of the part of the application area subject to the current agreement with the Council and;
- (c) such other reasonable terms and conditions as the Director, Resources may consider necessary in order to protect the interests of the Council.

Action

Director, Resources

Report No.	Report Title	Presented by:
5.2	Application by Bonnyrigg After School Club for an asset transfer of Poltonhall Bowling Club and land, Bonnyrigg	Acting Director, Resources

Outline of report and summary of discussion

The Acting Director, Resources spoke to the terms of the report circulated with the agenda. He noted the letter circulated to Members by the applicant and advised that whereas he was aware of it from what the Chair had said earlier in the meeting he had not had a chance to read or consider it.

Councillor Hackett advised that the site was part of the Strategic Housing Investment Plan (SHIP) approved by the Council in November 2018 but that the application may pre-date the approval of the SHIP. Mr Anderson confirmed that the application had come in before the Council had approved the SHIP.

The Chair enquired as to whether the applicant had been advised after the Council decision in November that the asset was therefore not available for transfer. Stephen Bermingham advised that whereby the timing was unfortunate the applicant had been advised. Councillor Hardie stated that the application had been made in good faith prior to the Council agreeing the SHIP and in effect deciding to do something else with the land.

In light of the foregoing, the Chair proposed that the application be continued for allow further discussion between the Council and the applicant. In doing so he enquired whether the applicants, who were represented, wished to address the Committee. Mr Sam Elliot on behalf of the applicants advised that the letter he had circulated to Members was important because officers in the Council had directed the Club to the site but the Club had not been advised of the inclusion of the land within the SHIP. He pointed out that the Council's Communities Team had provided a letter of support for the application. He further addressed issues contained in the objection from Bonnyrigg Community Council which was appended to the report in relation to car parking. He stated that the Community Council had advised him that should the car parking issue be addressed they would withdraw their objection to the application.

The Committee then heard from William Venters, Principal Solicitor. He advised of the terms of Standing Order 7.2 whereby the Committee cannot overrule a decision taken by the Council.

Discussion continued in relation to the powers the Committee had and in particular why the application had come before the Committee given that the land in question had already been designed for housing in terms of the Council's Strategic Housing Investment Plan (SHIP). Councillor Hardie suggested that the Committee undertook a quasi-judicial role and therefore had the power to grant the application regardless of the decision taken by the Council in November 2018. The Chair reminded Members that the Council had decided to deal with asset transfer applications by creating the Committee and also a Review Committee however the Council could have decided to have only a Review Committee with applications being considered and decided upon by officers only. He therefore suggested that the Committee was not quasi-judicial.

After further discussion, the Chair, seconded by Councillor Hackett, moved that the application be continued to a future meeting of the Committee to be held as soon as possible. In the meantime, further discussion should take place between appropriate Council officers and the applicant with regard to the application. It was further noted that this may also necessitate a further report to Council with regard to the inclusion of the land in the SHIP. The Chair enquired if the applicant was willing to agree to extend the 6 month period to allow for the additional discussion and Mr Elliot confirmed that he was agreeable to this course of action.

With no other Member being otherwise minded, this became the unanimous decision of the Committee.

The Chair further apologised to Mr Elliot with regard to the confusion which had arisen and discussion which had taken place some of which related to internal Council issues. He explained that the Committee was a recently formed one dealing with new legislation and to a great extent officers and Members were still getting to grips with the tasks delegated to them.

The Committee agreed to continue the application to a future meeting to be held as soon as possible, to allow further discussion to take place between appropriate Council officers and the applicant and further noted that the applicant had no objection to the 6 month time period for determination of the application being extended. It was noted that prior to determination of the application by the Committee, a further report may be required to go before the Council with regard to the Strategic Housing Investment Plan (SHIP).

Action

Director, Resources

The meeting terminated at 10.28 am