

Agenda Item: 5

Report to: Full Council

Date: Wednesday 17th February 2021

Subject: To consider Sports Park lease proposals

Summary: To receive recommendation from Sports Park Lease Working Group to approve the transfer of management responsibility of Sports Park Management to tactive.

Decisions Required:

To approve the tactive sublease and management agreement for Kings Hill Sports Park, for associated legal works to be carried out by Berry and Lambert solicitors and completion of the transaction by the proper officer in consultation with the Sports Park Lease Working Group.

1. Background

- 1.1 In February 2020 tactive approached local parish councils to offer assistance and expertise with their sporting facilities and the CEO offered to assist the parish council. At this time a dispute was taking place with Kings Hill Football Club which overshadowed all other work of the council. Once this issue was resolved discussions regarding the parish council terminating its lease on the Sports Park began. At the full council meeting of 15th June 2020 the clerk was tasked to investigate the possible options of surrendering the Sports Park lease with Rouse Kent. Liberty Property Trust, on behalf of Rouse Kent, confirmed that this is not possible.
- 1.2 Liberty Property Trust advised the parish council that Rouse Kent could, in principle, support assigning a management agreement/sub lease of the Sports Park to a professional qualified entity backed by an experienced local authority if an agreeable, detailed business case was presented and the parish council retain overall responsibility for the facility on behalf of the community.
- 1.3 A working group was formed to investigate the options and organisations that meet these requirements.

- 1.4 In the meantime, the parish council had appointed an independent financial investigator to verify the claims that the parish council had committed several failings between 2016-2019 which had led to the dire financial position of the parish council primarily due to the actions taken by councillors at the Sports Park.
- 1.5 One of the primary recommendations of the financial investigation report was the following to be considered as a 'matter of urgency':

9.2 Recommendation 2

The council should seek to identify a professional community sports and leisure management company to take over day to day control of the Sports Park. In so doing the council will reduce the financial and operational risk inherent in direct management. Such an agreement must be of sufficient length to ensure that long-term planning and investment is viable. Taking legal and financial advice on the terms of any contract is essential.

- 1.6 The working group began investigating the options and found that tmaxactive were the organisation best placed to meet all of these requirements, including the strict legal obligations as laid out by Rouse Kent in the head lease.
- 1.7 At its meeting on 16th December 2020 the working group presented its findings and the full council made a formal decision to approve the initial proposal from tmaxactive and instruct the recommended solicitor to prepare the draft legal documents and seek a final proposal for full council agreement.
- 1.8 At its meeting on 16th December 2020 the full council also formally approved its 2021-22 budget to account for the third party management of the Sports Park by tmaxactive and agreed all income and expenditure based on this outcome.
- 1.9 1st April was set as a crucial deadline in the management process to alleviate the financial pressures on the parish council.

2. Public Contract Regulations

- 2.1 Despite the legislation being confirmed in previous reports, there have still been statements made by some councillors that the parish council is required to tender the lease options to other parties. At the January 2021 full council meeting Cllr Petty suggested an alternative proposal from 'Get Golfing' was going to be submitted.

(See Appendix 1 for summary of these actions)

2.2 The council cannot tender the sub lease to the Sports Park, the head lease belongs to Rouse Kent and Section 11 of the financial regulations of the council set out the procurement process. The overarching framework of UK public procurement policy is laid out in the EU Public Contracts Directive (2014).

2.3 **Article 10A of the Public Contracts Directive 2014/24/EU sets out the specific exclusions for service contracts¹.**

***"This Directive shall not apply to public service contracts for:
(a) the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon;***

2.4 Therefore, the financial regulations do not apply with regard to the council's decision to sub lease the Sports Park to a third party. The final decision is that taken by the freeholder, Rouse Kent, and the council is legally bound by the head lease in this respect.

3. Lease Obligations

3.1 The ttractive proposal and legal documents have been passed to Rouse Kent for formal consideration as the terms of the underlet must comply with the following conditions:

4.16 Underletting

4.16.1 Not to underlet the Premises except as Permitted Parts.

4.16.2 Not to underlet a Permitted Part without the Landlord's consent, which consent is not to be unreasonably refused or delayed where:

4.16.2.1 the proposed undertenant is a sports organisation which is affiliated to the appropriate national governing body for that sport, and that national governing body is recognised by Sport England (or its successor body);

4.16.2.2 the Landlord is given references and other information concerning the proposed undertenant that are satisfactory to the Landlord;

4.16.2.3 the proposed undertenant provides guarantors of acceptable financial standing to the Landlord to guarantee to the Landlord the obligations of the proposed undertenant in a form approved by the Landlord;

4.16.2.4 the Tenant has paid all money due and complied materially with its obligations in this lease and any supplemental deed or agreement;

3.2 Rouse Kent has confirmed that ttractive meet these requirements in order for the parish council to proceed with the transfer and in their opinion are an excellent all round choice.

4. Working Group Recommendations

4.1 Through extensive research and meetings with tactive, the working group is recommending that the council complete the transfer of management to tactive. The trust has extensive experience in the sport and leisure industry, with the resources and expertise to progress the existing facility and develop the new s106 obligations to ensure a 'sport for all' approach in the Kings Hill Community without political interference.

4.2 The organisation:

(a) is a charitable trust only working locally in Tonbridge and Malling Borough with extensive sports and leisure experience with a proven financial track record of success (£7m turnover per annum)

(b) is a company limited by guarantee with exclusively charitable purposes, which means that any profits made at the Sports Park must be reinvested back into the Sports Park.

(c) is backed by the principle authority, Tonbridge and Malling Borough Council – a pre-requisite from Rouse Kent on the calibre of organisation that it would consider subletting the facilities to.

(d) has established sales and marketing tools and expertise that it can use to increase the profile of the facility

(e) is in a position to recover the VAT at the facility resulting in substantial savings to the parish council

(f) will take on the staff at the Sports Park through TUPE, resulting in a staff costs budget saving to the parish council of £157,500.

(g) Is in a position to train and develop the staff using resources not /available to the parish council to increase team competences.

(h) has access to savings in utilities and cleaning costs not available to the parish council due to the aggregation of contracts at its many sites

5. Performance Management

5.1 The Sports Park performance management is the responsibility of the corporate body, with instructions given to staff to carry out strategies on behalf of the council. As detailed in the financial investigation report this has not proved successful in the past due to the previous committee's knee jerk reactions without considering the risks and costs thoroughly and staff being blamed for the poor

results.

- 5.2 This can now be avoided through the performance management of ttractive using the specifically itemised service delivery agreement linked to the legal agreement. The staff will be answerable to their new employer, the trust, and the trust responsible for the performance of the Sports Park – ensuring there is one accountable body with specific key performance indicators that if not met shall impact upon the terms of the lease, securing responsibility legally.

6. Summary of terms

- 6.1 The full suite of documents is attached to this report which includes the management agreement, transfer document and sub lease. These have been substantially negotiated by the working group and contain the following key points:-

- (a) 25 year term
- (b) Management fee of £18,000 until April 2023 with surplus/deficit risk to parish council
- (c) After April 2023 surplus/deficit risk transferred to trust and profit share to be negotiated with all profits returned to the Sports Park.
- (d) An agreed service delivery plan for the PC to monitor performance against objectives
- (e) Protected booking rights for Kings Hill Football Club
- (f) Trust responsible for utilities and day to day maintenance, operating an open book accounting for the parish council scrutiny
- (g) The parish council retain the head lease for the facility and overall ownership for the community.

7. Next steps

- 7.1 The working group recommends that the parish council formally agree the terms as presented in the attached documents and that ttractive begin the third party management of the Sports Park as of 1st April 2021.
- 7.2 The working group recommends that to ensure the deadline of 1st April 2021 is met and that the transaction is completed lawfully and correctly the council exercises delegated powers to the proper officer under LGA 1972 s101 to complete the transaction, in consultation with the working group.

- 7.3 Whilst the working group acknowledges that the documents have been drawn up by a highly respected law firm with many years experience in leisure trust management the parish council is minded to receive independent legal advice on the documents. Solicitors Berry and Lambert have developed significant experience in the structure of Rouse Kent and the Parish Council through its work on the Community Centre lease and it is recommended that they continue to work with the parish council providing advice and acting on behalf of the council in this transaction.
- 7.4 The costs for the legal works have already been budgeted in the 2021-22 budget as agreed at 16th December 2020 full council meeting.

8. Decision Required

To approve the tmactive sublease and management agreement for Kings Hill Sports Park, for associated legal works to be carried out by Berry and Lambert solicitors and completion of the transaction by the proper officer in consultation with the Sports Park Lease Working Group.

Sports Park Working Group, Date: 9th February 2021