

Agenda Item: 7

Report to: Full Council

Date: Wednesday 16th December 2020

Subject: To consider Sports Park lease proposals

Summary: To receive recommendation from Sports Park Lease Working Group to approve the initial proposal from tactive.

Decisions Required:

To approve the initial proposal from tactive and instruct the recommended solicitor to prepare the draft legal documents and seek a final proposal for full council agreement.

1. Background

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.

2. Meeting with Liberty Property Trust

The clerk attended an initial teleconference meeting with Liberty Property Trust (acting on behalf of Rouse Kent) and they informed the following which was reported to full council at the meeting on 15th July 2020:

- There is no ability to assign the lease to a new leaseholder
- There is no ability to unilaterally surrender the lease
- There is an option to underlet permitted parts subject to scrutiny and further clauses however the council would remain financially liable

Liberty Property Trust sympathised with the challenges that the parish council face and advised that it in principle could support assigning a management agreement/sub lease 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.

3. Public Contract Regulations

There have been statements made by some councillors that the parish council needs to tender the lease options to other parties or obtain three

quotes for management of the facility. 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).

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;**

Therefore, the financial regulations do not apply with regard to the sports park being managed by tmactive on behalf of the parish council.

4. Historic Discussions

Initial discussions took place with:-

- tmactive
- Cllr Balfour/ Cantium Business Solutions creating a new charitable trust

As both organisations the requirement of being a local authority backed proposition. Both were asked for a business plan by the parish council.

Cllr Balfour/ Cantium Business Solutions explored the possibility of a creating a charitable trust however Rouse Kent required a proven track record to move this proposal forward. The offer was withdrawn.

tmactive presented their vision at the extraordinary meeting held on Wednesday 23rd September 2020. where it was agreed to form a working group to progress with discussions relating to the sports park lease and how tmactive could benefit the community.

The working group has met with tmactive regularly, and the final recommended proposals are to be presented at this meeting.

5. Risks to the council

It has been noted in the recent independent financial investigation that the parish council has adopted an unacceptable high risk approach in managing the sports park which has exposed the parish council in terms of its capital position and ongoing financial obligations.

¹ <https://www.legislation.gov.uk/eudr/2014/24/article/10>

The parish council does not hold a robust and strongly managed business plan to run the sports park. The financial investigation report recommends the outsourcing of the management of this facility to a professional, experienced organisation.

The report confirms that parish councils should not contemplate taking financial risks that would ordinarily be legitimate for a business without a rigorous legal and financial risk assessment. The continued management of the sports park by the parish council puts the council at severe financial risk, as the only way it can sustain its current management control is by increasing revenue or increasing the precept.

Whilst the parish council is at a critical financial position, this initial expenditure of drawing up the legal documents required to enable a third party to manage the facility could secure the future financial position of the council over the coming years. The cost could be up to £11,800, this expenditure could be assigned to the capital projects budget for 2020/21 and deemed as an investment in the future financial stability of the council.

The risk exists that tactive may not be successful in delivering the financial performance in its proposal. In this situation, the parish council would have to take back the management of the sports park and review its operating options. As tactive are proposing an open book accounting method to monitor its performance this will minimise the potential risk of this situation going unchecked and contingency plans can be put into place with early warning indicators being managed by the council.

tactive is a professional management organisation that presents a business case for using its experience, knowledge and resources in the leisure industry to stabilise the financial position of the sports park and grow its use for all of the Kings Hill community in the future.

6. Decisions Required:

To approve the initial proposal from tactive and instruct the recommended solicitor to prepare the draft legal documents and seek a final proposal for full council agreement.

Contact Officer: Georgina Jackson, Deputy Clerk

Date: 9th December 2020