

# Local Council Consultancy: Report to Kings Hill Parish Council

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# Local Council Consultancy: Report to Kings Hill Parish Council

## 1. Introduction

1.1 Kings Hill Parish Council (KHPC) has commissioned the Local Council Consultancy (LCC) to review its financial and governance arrangements, with particular regard to actions taken and consequences resulting in relation to Kings Hill Sports Park. The formal approval of this appointment is contained in the Finance and Human Resources Committee minutes of 22 July 2020:

**“FHR20/107. To note procurement procedure is underway to appoint a professional body to verify Cllr Finlay’s financial report.**

It was reported that a quotation has been received from a professional body. It was **RESOLVED** to proceed with the quotation from the SLCC consultancy.”

1.2 This report addresses the following issues:

- a) The current financial position of the parish council.
- b) The key financial decisions which have resulted in the current position.
- c) Governance and the process by which key financial decisions have been made.
- d) The future management of the Sports Park.
- e) Conclusions and recommendations.

1.3 I have reviewed the report by Cllr Chris Finlay v.0.5 (the Finlay Report) and will not go into detail reiterating the information contained within it. I can confirm that I agree with the overall financial analysis and conclusions although I have not checked every detail in the Report for factual accuracy, nor do I have comments on any of the personal observations made in it. Nonetheless, I endorse all the Recommendations made on page 7. Cllr Finlay’s Report is attached as an Addendum to this report.

1.4 This report is the result of an ‘arms-length’ analysis of factual information, most of which is already in the public domain. I have intentionally not engaged in discussions with individual parish councillors, otherwise it would be necessary to interview all of them, including those no longer on the council. This would necessarily have resulted in a wide range of personal perspectives, which are not relevant to the objective purposes here. This report does not seek to apportion ‘blame’ to individuals. Accountability for past actions and responsibility for those in the future reside with the council as a whole. However, this principle requires all councillors to individually fulfil their roles in accordance with good governance: this has clearly not always been the case in the past.

1.5 Nothing in this report needs to be regarded as confidential. In fact, there would be great merit in the parish council using this report as the basis for an open dialogue with residents about learning lessons from the past to improve matters for the future. I am more than happy to discuss my findings with the Council in open or closed session.

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## 2. Overview

2.1 The information I have used to inform this report includes the following

- 2013 business Plan for the Sports Park
- Annual Reports from 2011-12
- Audit Reports from 2011-12
- Budgets from 2012-13
- Community Survey 2018
- Finlay Report v0.5
- Internal Audit Plan 2019-20
- King's Hill FC Step 7 letter 22 February 2018
- Kings Hill Sports Park Lease Agreement 2014
- Licence Agreement with Ebbsfleet United FC, 2016
- Parish Council policies
  - Financial Regulations
  - General and Earmarked Reserves
  - Investment Policy
  - Protocol for Councillor and Officer Relationships
  - Standing Orders
  - Terms of Reference and Scheme of Delegation
- Relevant committee minutes
- Strategic Plan 2018-2023

## 3. Legal Background

3.1 The legal status of the Sports Park is governed by a lease of 4 April 2014 on the 'Kings Hill Sports Park, Heath Farm', agreed between Rouse Kent (Residential) Ltd and King's Hill Parish Council. I am aware of subsequent changes to the owners, but these are not relevant to this report. Key conditions of the lease include:

- Term: 125 years.
- Management: full repairing.
- Rent: Peppercorn (if demanded).
- Tenure: the Council has no option to surrender the lease, nor are there any break clauses, other than in exceptional circumstances.
- Exclusions: the lease is excluded from the provisions of sections 24 – 28 of the Landlord and Tenant Act 1954.
- Section 4.15 of the Lease ("Letting others use the Sports Facilities") states:  
"the Tenant may permit sporting clubs, schools, community groups or other similar organisations to use the Sports Facilities on the Premises subject to:... 4.15.2 the Tenant not allowing such people or organisations exclusive possession."

3.2 The option of KHPC acquiring the Sports Park were being seriously considered as early as 2010, and discussions in 2011 made specific reference to the importance of "adequate provision of facilities to the community."

3.3 The KHPC Annual Report of 2014/15 referred to its ambitions for the use of the Sports Park: "Our aim to widen the number of sports provided is slowly being achieved; in addition to the KHFC (a major user), walking football, keep fit, running, cycling groups and rugby all take place each week, with archery planned imminently. We have been

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discussing the likely improvements arising from Phase 3 planning obligations. This could bring us tennis, hockey, netball, basketball and extra cricket provision.”

- 3.4 In the Annual Report of 2015/16, there was a change of tone, with a focus on football. “The Sports Park is the base for Kings Hill Football Club who train on a weekly basis on the floodlit 3G pitch. They also play their home games on the excellent grass pitches throughout the season. The 3G pitch is available to hire for regular training or 5 a side games and is a popular venue for football parties. Spaces come up intermittently during peak times.”
- 3.5 In the 2016-17 Annual Report there was an acknowledgement of problems and a continuing focus on football: “The Kings Hill Sports Park has had a bumpy year, with the pitches not being up to scratch at the beginning of the season. This led to the purchase of irrigation equipment, enabling us to be able to water the pitches and try to keep them in good condition. We did our very best, at extreme short notice, and it certainly was a steep learning curve! As many of you know the Council has appointed a full-time groundsman, Andy Gibbins. Andy was the head groundsman at Dartford FC and comes to us with a wealth of experience.”
- 3.6 By 2018-19 the change of focus from a community facility was clear: “Sports hire income has been difficult as the committee worked through the loss of a major private hirer, however, thanks to the dedication and hard work of the facility team, semi-professional clubs have been marketed and are now actively using the facilities, which is great for the Sports Park’s reputation as a high-quality sports facility as well as replacing the loss of revenue.”
- 3.7 Throughout this period, there appears to have been no robust risk analysis in place, nor an ongoing review of the consequences of incremental operational and financial decisions. This is an object lesson for future initiatives, in terms of strategic direction and operational controls.

## 4. Financial Background

- 4.1 The acquisition of the Sports Park was a major financial and management commitment for KHPC, and whilst intentions were positive and community oriented, I have not been able to identify a robust and strongly managed business plan from the outset. In any enterprise of this nature it is likely that financial surpluses are not going to be generated in the first three years of operation. As long as the Business Plan is realistic and progress is made in meeting its objectives, early losses are an acceptable risk. However, in the case of the Sports Park it was in year 2 of operations that financial control was lost, resulting in major spending without adequate understanding of the consequences on income or the parish council’s capacity to continue sustaining the losses.
- 4.2 A decision was made in 2016 to market the facilities to semi-professional football clubs. The aim to generate more income was sensible at face value, but the council lost sight of the importance of spending controls as well as generating a surplus income i.e. profitability. The pursuit of high-income clubs as tenants had a superficial degree of legitimacy, but required a very clear understanding of their expectations, the investment

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required and the financial return on that expenditure. I have not been able to find evidence that this risk analysis was conducted adequately.

4.3 Despite the implications of this change into a more commercial direction there was no formal agreement with Dover Athletic FC. There was a formal agreement with Ebbsfleet FC, and even so, disputes arose about respective responsibilities for expenditure. The detail of additional expenditure made by KHPC in the period 2016-18 is contained in the Finlay Report v0.5. (pp 2-3).

a) The agreement with Ebbsfleet United FC was a licence running from 11 July 2016 to 12 May 2017. EUFC had the right to extend the agreement "on the same terms": in other words, irrespective of whether KHPC was generating a surplus income, it was committed to extending the agreement by a further ten-month term (which is what occurred). It is normal practice that in an agreement of this type the landowner would only commit themselves to capital expenditure they could depreciate over the term of the agreement. In this case, a ten-month term would not justify any such expenditure, unless it could clearly be justified from the rental income.

b) The agreement gave EUFC the right to install a modular building on the site, which they were obliged to remove at the end of the term and reinstate the land. However, KHPC was obliged to obtain the planning consent (at EUFC's expense), and if it were not obtained by 31 July 2016 it was obliged (at no additional cost to EUFC) to provide an additional changing room, inevitably limiting the use of this space for other hirers. If pitches were unavailable EUFC had the right to use the 3G pitch, precluding their availability for other users.

c) KHPC was fully liable for the costs of maintaining the pitches "to a reasonable standard" to be done in conjunction with EUFC's nominated groundsman. Without further detail, this wording created an 'open-ended' expectation, which resulted in significant unplanned expenditure by the council.

d) Clause 24.1 states that "The Council gives no warranty that the Property is physically fit for the purposes specified in clause 2" i.e. the pitches and facilities. Despite this, the council made major financial commitments to maintain pitches at a standard for professional football with no long-term security of tenure from EUFC, which might have justified the expenditure.

e) This agreement, and the consequent spending decisions made by the Council highlight that an adequate financial and operational risk assessment was not carried out. The purchasing of equipment specifically for the maintenance of pitches shows that KHPC did not have the resources in place at the outset to fulfil its contractual requirements, nor did it factor into a business case for the contract that these costs could be recouped from the income received from EUFC. Inevitably, there was a lack of clarity regarding expectations from both parties, but the financial consequences of this were borne by KHPC.

4.4 The largely exclusive nature of the arrangement with Ebbsfleet United FC, and the consequent loss of bookings from local schools (for example), created a situation which

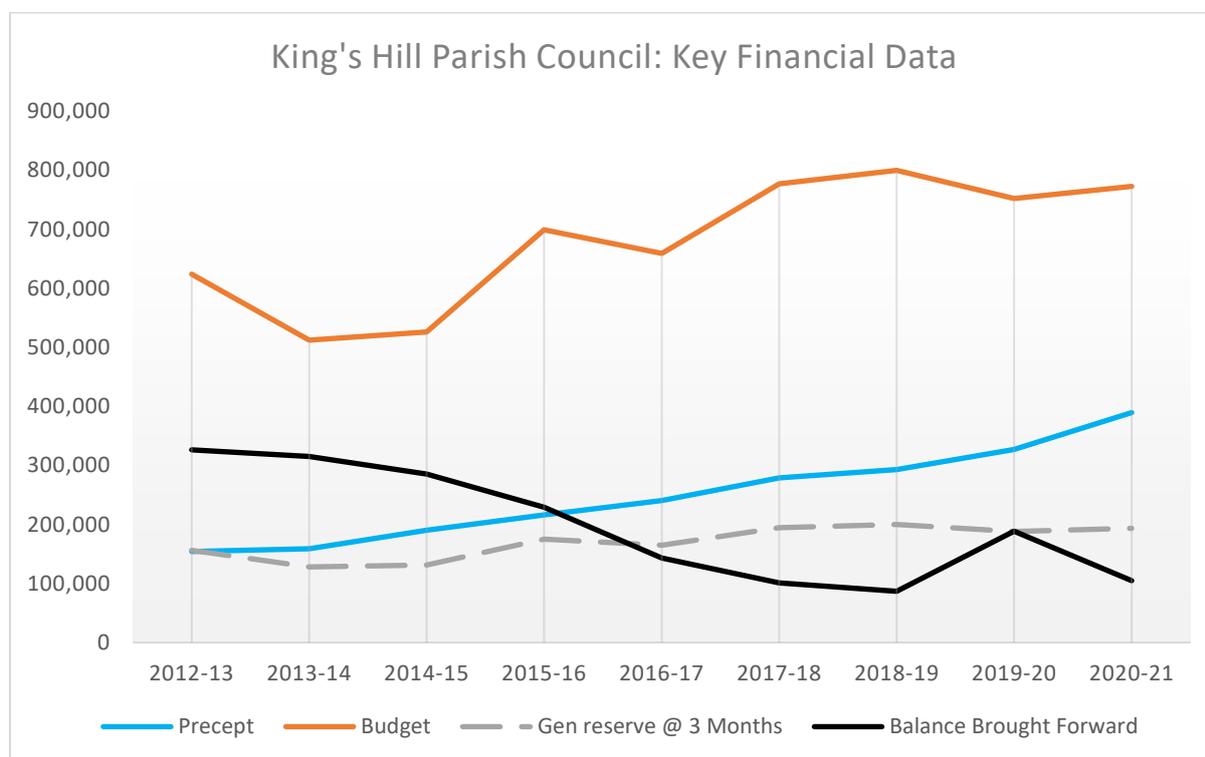
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was at odds with the clear obligations for community use in the 2014 Lease Agreement. These are the type of issues which would have been raised in an adequate risk assessment.

- 4.5 Significant unplanned financial decisions were taken including capital, staffing and consumable expenditure. This was an unacceptably high-risk approach which has left the parish council exposed both in terms of its capital position and on-going financial obligations. The peak years for unplanned expenditure were 2016-18, and this is reflected in the lowest point in the council's Balances Brought Forward at the end of financial year 2018-19 (Key Financial Data chart). The steep decline in the Balances Brought Forward should already have been a matter of concern in 2015-16 and remedial action taken. However, what actually happened was that expenditure increased without adequate income resulting, and the decline in reserves continued. These recovered in 2019-20, but the current year will inevitably be a major setback.

### 5 Current Financial Position

- 5.1 The finances of parish councils revolve around some simple principles. These are distinct from larger public sector bodies and the private sector and are more straightforward. The Key Financial Data chart below<sup>1</sup> highlights the essential indicators as to the financial strength of any first-tier (town or parish) council. In this case it specifically illustrates the progression of KHPC's financial position since the acquisition of the Sports Park.



<sup>1</sup> Figures taken from the audited Annual Financial Return.

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- 5.2 The graph shows clearly that there is a wide gap between budgeted expenditure and the Precept. This obviously means that a significant proportion of expenditure is dependent on recurring income, the nature of which may be quite volatile. This therefore highlights a risk (albeit manageable) for the council's financial position. Since 2013-14, when the acquisition of the Sports Park was being planned for, the budget has increased by 51% and the Precept by 146%. This reflects the fact that Precept increases have had to subsidise operational losses.
- 5.3 For several years there have been discussions at national level as to whether or not the town and parish council sector should be 'capped' in terms of raising Precept income. The purpose here is not to try and predict, it is to raise the issue as a risk to KHPC that continual large increases in the Precept may not be possible in the future, let alone desirable.
- 5.4 Reserves are broadly described as:
- a) '**earmarked**' (or 'specific') reserves, allocated for planned capital expenditure such as reinvestment in existing facilities, or the creation of new ones.
  - b) '**general**' reserves should be retained to guard against unexpected expenditure. It is incumbent on the council to retain, at all times, sufficient general reserves. As a rule of thumb this is normally set at a minimum of 3 months expenditure. However, this must be assessed in relation to the specific financial obligations of any council: these include contractual commitments for goods, services and employee contracts. In other types of organisations an overdraft might be used to manage fluctuations in cashflow. In a parish council this should be done through holding adequate general reserves, so that it never considers being in a negative financial position.
- 5.5 The 'Balance Brought Forward' expresses the financial reserves of the council in total. Clearly, this figure should be above the level of General Reserves at all times. Until the acquisition of the Sports Park, the Balance Brought Forward showed the KHPC finances to be sound. The graph shows that the Balances Brought Forward have been declining since 2012-13 and in 2016-17 went below a minimum General Reserves figure and has remained there since. The increases in the Precept are therefore not generating enough surplus income to bring General Reserves into a healthy position because significant operational losses continue to be sustained.
- 5.6 In itself, major capital expenditure is not a problem if it is being invested in such a way as to secure a social and/or financial return, justifiable to the residents. If the consequence of the capital spending and the Precept increase was to result in a community benefit (i.e. a so-called 'social value'), then this may be acceptable to residents. However, such an outcome needs to be planned, whereas in this case it is the result of the council losing control over its spending, and simultaneously being over-optimistic in its projection of income. Therefore, the evidence is that the council has been over-extending itself in its capital expenditure and simultaneously having to increase the Precept to take account of the fact that the capital and recurring expenditure is not producing a financial return.

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- 5.7 There has been a consistent pattern of over-optimistic budgeting, with shortfalls being greater even than those planned. In the current year for example, the budget projected a £1,000 surplus for the Sports Bar Café (effectively break-even), which is a poor return on planned income of £110,000. Staffing costs of £70,000 are excessive to only achieve break-even. If the facility was run by a private enterprise or a sub-contractor to the council it would be paying rent, and therefore would be unable to make a profit. In this respect the council should be judging its own performance against commercial standards. Of course, in reality the Covid-19 crisis has undermined the entire financial situation, but even without it the council was persisting in creating unrealistic financial plans.
- 5.8 Increases in the Precept to bring the General Reserves position back to an acceptable level on a planned, incremental, schedule has become an unwelcome necessity. However, the Precept is also still having to be increased to underwrite ongoing operational losses, which is not an acceptable, or sustainable plan of action. There is a clear risk of the Council struggling to fulfil its commitments (such as staff salaries) because of cashflow problems and it therefore runs the risk of putting itself in the position of what would be described commercially as 'trading insolvently'.<sup>2</sup> There is no justification for a parish council being in this position: to reiterate, it should have a constant positive cash position through its General Reserves.
- 5.9 The budget for 2020-21 included a Precept increase of 15%, and the budget for 2021-22 is considering a rise of 18%. These are substantial increases, which a council would normally only consider for new developments and/or initiatives for which it had obtained a mandate from residents through a public consultation. Having to impose these increases to address a critical financial position created by historic decisions is a serious matter, especially as there is no guarantee as to when the financial position will be stabilised.
- 5.10 Parish councils should not contemplate taking financial risks that might be perfectly legitimate for a business. As community organisations, councils should be extremely wary about engaging in commercial activities and any such enterprise must be subject to a rigorous legal and financial risk assessment. Following a decision to proceed it must ensure adequate business planning and operational controls are in place. Irrespective of the enterprise being considered, there are clear risks which can be summarised as follows:
- a) there is always a high potential for community and commercial objectives to become conflated, creating an inevitable tension between competing objectives.
  - b) this is usually coupled with unrealistic expectations being created where users of a facility effectively expect the council to take on unlimited financial liability because of the innate assumption that it is compelled to support 'community' activity. In other words, a perspective tends to arise that the council will always be required, and is able, to provide a financial 'safety net'.

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<sup>2</sup> An insolvent company is defined as one which is unable to meet its financial obligations as and when they fall due and/or when its liabilities outstrip its assets. This may be a temporary situation but is nonetheless serious.

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- c) it is easy for a view of 'community' to end up benefitting a small number of groups, which in line with the notion of 'opportunity cost' has the unintended consequence of disadvantaging others. Opportunity cost is where expenditure in one area precludes expenditure on something else. This principle is vital in being even-handed with all residents, and so not directly or inadvertently favouring one section of the community over another. Therefore, whilst supporting the activities of local groups is an obvious objective, effectively subsidising specific special interest leisure pursuits needs to be carefully weighed, as the same benefit should be available to all (or none) of the groups in the area.
- d) points a) to c) are frequently compounded by a public perception often driven by the personal involvement of councillors in day to day operations so that residents are unclear whether their elected representatives are speaking and acting on behalf of the council or in a personal capacity. Councillors may actually, or be perceived to have, a conflict of interest. This is why the separation of duties between councillors and officers of the council is so important in theory and practice.
- e) the very nature of parish council decision-making processes do not lend themselves to efficient commercial management.

### 6. Governance

- 6.1 In law the Parish Council is a 'sole corporate body'. The practical implication of this is that decisions are made by the Council as an entity, they are not made by individual councillors. No councillor has any form of executive authority or the right to act or speak on behalf of the Council unless they have been given express permission to do so by a resolution of the Council.
- 6.2 The Internal Auditor's Report for the year 2016-17 referred to the purchase and sale of a Suzuki vehicle, the purchase of a tractor, 3 smart TV's and cabling. His report states that "I would remind all Members that they cannot purchase goods or services on behalf of the Council in line with Financial Regulation 10.4 of the Regulations adopted 20 May 2015 and amended 15 June 2016 (Min FC 16/140)." Although this observation could have been expressed more forcibly, it is explicit enough for councillors to understand they had crossed a clear and unequivocal boundary. My report does not question anyone's motivation or intentions, but equally the actions reported by the auditor were unacceptable, not only breaching the council's own Financial Regulations, but also the well-established legal position and obvious good practice. These actions put the reputation of the council and individual councillors at risk.
- 6.3 Councillors should be aware of the potential that at times in the past it acted in contravention of the Hillingdon (1985) case law, whereby a council cannot delegate the performance of its statutory and legal responsibilities to individual councillors, including the Chairman. It is not permitted for a group of councillors, even a constituted committee to take decisions outside of formal meetings and within the terms of reference of that committee. Actions presented as a *fait accompli* to the council cannot lawfully be ratified at a subsequent meeting. Spending commitments cannot be retrospectively presented

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to council as a done deal unless proper delegated authority is in place, but this power can only be given to employees, not councillors.<sup>3</sup>

- 6.4 Given that expenditure decisions continued to be made even when it was clear that the agreement with Ebbsfleet United FC in particular would be loss-making, the council could be accused of engaging in activity addressed in the Wednesbury case of 1948. This established the precedent that actions by a council, or individual councillors, may not be illegal but are irrational and subject to censure because they are unreasonable.
- 6.5 KHPC has an up to date set of governing documents, and the full suite have been in place from at least 2016. It is not enough for councillors to believe that what they are doing is in the interests of the community. They have an obligation to go through the clearly laid out procedures laid down by the council, in line with the law and best practice. In this respect I can comment that the KHPC governance documents are fit for purpose, therefore the issue is not one where the requirements on councillors are unclear, it is that they must be respected in their observance. This is not an option, it is an obligation.
- 6.6 These legal and policy obligations must be understood and respected by councillors as well as the officers of the council, as they clearly set out the separation of roles and responsibilities of both, which have been created in law. These are well set out in the Protocol for Councillor and Officer Relationships, first adopted 13 July 2016. Some key points in this Protocol need to be emphasised:

#### **"4. The Relationship between Councillors and Officers:**

- 4.1. Should be characterised by mutual respect and courtesy and recognise each other's roles and responsibilities;
  - 4.2. Professional collaborative working between Councillors and Officers is essential;
  - 4.3. Officers work to the instructions of the Parish Council as a whole and/or committees with devolved powers, not individual councillors;
  - 4.7. Councillors must not take on the duties of an officer unless the Councillor is doing a specific task, which has been agreed by the relevant committee and done so in a way that does not undermine the officer;
  - 4.9. It must be recognised by all Councillors and officers that in discharging their duties, officers serve the Council as a whole;
  - 4.10. Councillors and officers must respect the confidentiality of any meeting or part thereof that is not open to the public at which they are present and must not relay the content of such discussions to other individuals or groups;"
- 6.7 Earlier in this report reference was made to the importance of General Reserves. KHPC has had a General and Earmarked Reserves Policy since 18 May 2016, which was most recently reviewed and approved on 15 July 2020. The Key Financial Data graph shows that with the Balances Carried Forward figure falling below a minimum three-month General Reserves figure in 2015-16, the Council has never adhered to its own Reserves Policy, which is explicit in its requirements, some of which are quoted below:

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<sup>3</sup> National Association of Local Councils Legal Topic Note 1, 2013.

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### **“1. Policy**

- 1.1. The Council is required, under statute, to maintain adequate financial reserves in order to meet the needs of the organisation. Section 50 of the Local Government Finance Act 1992 requires that Local Councils have regard to the level of reserves needed to meet estimated future expenditure when calculating the budget requirement.
- 1.2. The Council’s policy on the establishment, maintenance and adequacy of reserves and balances will be considered during the annual review of the Council’s Financial Strategy and preparation of the annual budget.

### **2. Earmarked Reserves**

- 2.1. The Council will hold reserves for these three main purposes:
  - 2.1.1. A working balance to help cushion the impact of uneven cash flows and avoid unnecessary temporary borrowing.
  - 2.1.2. A contingency to cushion the impact of unexpected events or emergencies for specific earmarked expenditure.
  - 2.1.3. A means of building up funds to meet known or predicted requirements or replacement of capital items.

### **3. General Reserves**

- 3.1. The General fund balance is a balance on the Council’s revenue account which is not held for any specific purpose other than to cushion the Council’s finances against any unexpected short-term problems in the Council’s cash flow.
- 3.2. The General Reserves should be maintained at a level based upon a risk assessment carried out annually by the Responsible Financial Officer when setting the budget for the forthcoming year.
- 3.3. Any surplus on the General Reserve above the required balance may be used to fund capital expenditure, be transferred to an appropriate earmarked reserve or used to limit any increase in the precept.

### **5. Review of Adequacy of Balances and Reserves**

- 5.1. In assessing the adequacy of reserves the strategic, operational and financial risks facing the Council will be taken into account. The level of earmarked and general reserves will be reviewed as part of the annual budget preparation process.”

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### 7. Options for the Future Management of the Sports Park

- 7.1 As set out earlier in this report, there are inherent difficulties in parish council's managing sports and leisure facilities, particularly when the enterprise is of a significant operational and financial scale. When commercial considerations become paramount for the sustainability of the facility the inherent tensions between the council's community role and its financial commitments can create a contradictory position. It is my opinion that such a situation has arisen with King's Hill Sports Park.
- 7.2 The council has created an untenable situation for itself. The current position is that KHPC can only sustain its current management control of the Sports Park by generating more revenue and/or by continual increases in the Precept. Neither of these represent viable options, especially as this does not begin to realistically address the problem with General Reserves, and therefore cashflow.
- 7.3 It is a statement of simple fact that the current position must not be allowed to continue. The question therefore arises as to the viable alternatives. Any change must conform to the conditions set out in the 2014 Lease Agreement and to the parish council's legal and financial obligations. Even if KHPC was able to obtain the General Power of Competence (which it cannot given the current proportion of co-opted members of council), it has no power to trade. It may be considered that the council has effectively been 'trading' in relation to the Sports Park, and such activity can only legitimately be carried out by a parish council through a limited company (section 4 (2) Localism Act 2011). KHPC is in no position to reasonably consider the creation of a limited company either in terms of its current financial position or its track record of financial management.
- 7.4 Section 4.16 of the Lease Agreement permits underletting, subject to the landholder's consent, which is not to be unreasonably withheld. KHPC is therefore able to consider a sub-lease to an appropriate organisation/s, within the clear constraint that the wider community should be the beneficiaries. The consideration is therefore whether a single or multiple tenants is most suitable:
- a) **Multiple tenants.** In practice this would involve sub-leases to individual sports clubs. However, this approach would not fulfil the lease requirement that no group should have exclusive use. Further, at a practical level, such an arrangement would immediately create a host of operational problems whether the sub-leases were 'full-repairing' or KHPC retained control for site management. Even if permitted by the landlord, this approach would lose all the benefits of integrated management of the site and the economies of scale that go with it, and would generate inevitable areas of conflict which could even be worse than experienced to date.
  - b) **Single tenant.** Clearly, this cannot be a sports club as this would be a clear breach of the Lease, and (realistically) undermine the general obligations of the parish council to the wider community. A single tenant would need to be a professional organisation with a proven track record in the successful management of community sports and leisure facilities. They would have specialist operational staff, grounds and facilities management expertise and bring benefits such as greater purchasing power of consumable items. Any tenancy agreement would need to be

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carefully negotiated, and KHPC would need to take professional advice on the legal and financial terms.

- 7.5 Negotiating a suitable deal with a professional management organisation would address the council's current difficulties in the following ways:
- a) It would limit the parish council's financial liability, although the agreement would inevitably have to address the issues of future capital investment. However, this is a matter for detailed risk assessment and negotiation.
  - b) It would also distance the council from the difficulties inherent in it having direct management control of the Sports Park.
- 7.6 Ideally, the management organisation would have a commercial ethos focussed on community benefit. In general terms a 'not for profit' enterprise is likely to be more attractive than a typical commercial company. However, the often misunderstood element of 'not for profit' ventures is that they are still required to generate financial 'surpluses', because this is essential for the purposes of long-term reinvestment in facilities consequent upon normal operational wear and tear, as well as looking to invest in improvements to facilities. Therefore, the key distinction between for-profit and not for profit ventures is how surpluses are utilised. Broadly speaking, in the former the surplus goes to shareholders and in the latter it is reinvested in the enterprise.

## 8. Conclusions

- 8.1 Kings Hill Parish Council should be under no illusions that it faces an extremely serious financial situation. KHPC has made financial commitments over a number of years towards the Sports Park which have depleted its financial position to the point where even a provision for a three-month General Reserve cannot be achieved. Capital commitments have not represented investments in creating realistic potential for increasing regular income. The Council is therefore in a position where it cannot generate surplus revenues to restore reserves to an acceptable level, and is faced with the need for a major capital investment in the near future to ensure a continued revenue stream from the 3G pitch. The fact that the Council has used provisions set aside for this reinvestment in order to address pressing cashflow problems underscores the severity of the financial position, compounded by the Covid-crisis in the current year, which for the purposes of prudent financial planning should be assumed will extend into at least part of 2021-22.
- 8.2 The decision-making and actions taken from 2016 in particular are characterised by over-optimistic forecasting, a failure to recognise that revenue does not equate to profit and a lack of recognition that expenditure unrelated to an objective analysis of benefit does not equate to financial or social investment and is not an acceptable use of public funds. The consequence is that KHPC is now unable to support the community in any new initiatives which require a financial commitment.
- 8.3 The short history of the Sports Park has demonstrated that KHPC does not have the financial or management resources to make a long-term, sustainable commercial success of what is a first-class asset for the community. It is clear from the process of

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decision-making and the financial commitments made that KHPC lost control of the management of the Sports Park at an early stage. The outcome of this process has been unproductive tensions within the council and the community and has brought the parish council's finances to the brink of technical insolvency. This is now being addressed, but a long-term, and realistic, recovery plan is required.

- 8.4 The mechanisms of parish councils, even when operated properly, are generally unsuited for the management of complex and/or high commercial activities. The tendency is for objectives to become blurred, the personal and public role of councillors becomes conflated, and as in this case, become mutually exclusive. For KHPC this situation has been compounded by individual councillors taking action without the approval of council, in contravention of the council's own governance policies, which are based on statute. The retrospective sanctioning of these decisions is not permitted in law and undermines the integrity of the council's reputation and financial position.
- 8.5 Unfortunately, as a consequence of its actions over a number of years, and its current parlous financial position, KHPC has a credibility problem. By this I mean that any plan the council puts forward for future management of the Sports Park, or any other community facility, is likely to be met with scepticism, given its track record with the Sports Park. This is a further reason why it should arrange for a third-party professional management company to take control of operations at the Sports Park. The Council should therefore focus its attentions on ensuring that an appropriate contract is negotiated, where first and foremost, the financial and legal interests of the council, and therefore of the community, are safeguarded.

### 9. Recommendations

These should be read in conjunction with the Recommendations in the Finlay Report. All of the following should be considered as matters of urgency.

#### 9.1 Recommendation 1

Any organisation in the critical financial position that KHPC is in should conduct a thorough review of all its activities and look to where it can make savings, and if possible, generate more income. Clearly, with the Covid-crisis still very much with us, the latter option is not realistic. 'Business as usual' is not an option. The Parish Council no longer has the luxury of spending money on 'nice to have' items.

This process starts with the current financial year and is essential to planning for 2021-22 and beyond. An analysis of all overhead costs must be undertaken, and action taken to reduce expenditure where possible, in the short and medium term. Any risks associated with cost-cutting must be clearly analysed and understood.

A key principle in this review is that the Council should consider its role in directly managing services, contracting them out or facilitating the activities of other organisations. On the principle of opportunity cost the council should consider where it is subsidising the activity of certain residents, and by so doing, does not have the capacity to assist others. Areas to consider include (but are not limited to):

- Grants

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- Sports Park
- Community Centre
- Allotments: many councils find themselves in the position of incurring net expenditure and a significant amount of staff time in running allotments. Self-management by tenants obviates an ongoing financial and staff-time commitment by the council and should be considered. This would clarify the role of the Council as a landlord, not an operator of a service.
- Open spaces, in particular landscape costs
- Events
- Projects

### 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.

### 9.3 Recommendation 3

The Council should properly implement its policy for General and Earmarked Reserves. A thorough analysis of the required level of General Reserves must be part of the budget setting process for 2021-22. The figure will be not less than 3-months expenditure, so it is further recommended that this is used as the baseline target figure with immediate effect and reconsidered when a financial action plan is agreed. The council should consider, in its annual review of the General Reserves figure, whether the agreed level is explicitly written into the Reserves Policy for the forthcoming year for the avoidance of doubt.

The General Reserves and cashflow position should be the subject of ongoing review by the council, as part of its normal financial controls. Until the financial position is stabilised, this should be done monthly.

### 9.4 Recommendation 4

The council should utilise a rigorous risk management model for all its activities, identifying (at a minimum) the impact of potential risks and mitigation measures taken or proposed to reduce the risk. This will build on the existing Internal Auditor's Audit Plan but encompass all aspects of council business. As the council should consider itself in a crisis situation, a risk review should be carried out on a monthly basis until further notice to ensure the tightest controls are in place.

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## 9.5 Recommendation 5

The council should undertake in-house training on its key policies. This is so that existing members refresh their understanding and new councillors can be made aware of their significance at the earliest opportunity. The training needs to emphasise the importance of adherence to these policies, which are legal obligations, not guidance. In the context of this report the key policies are:

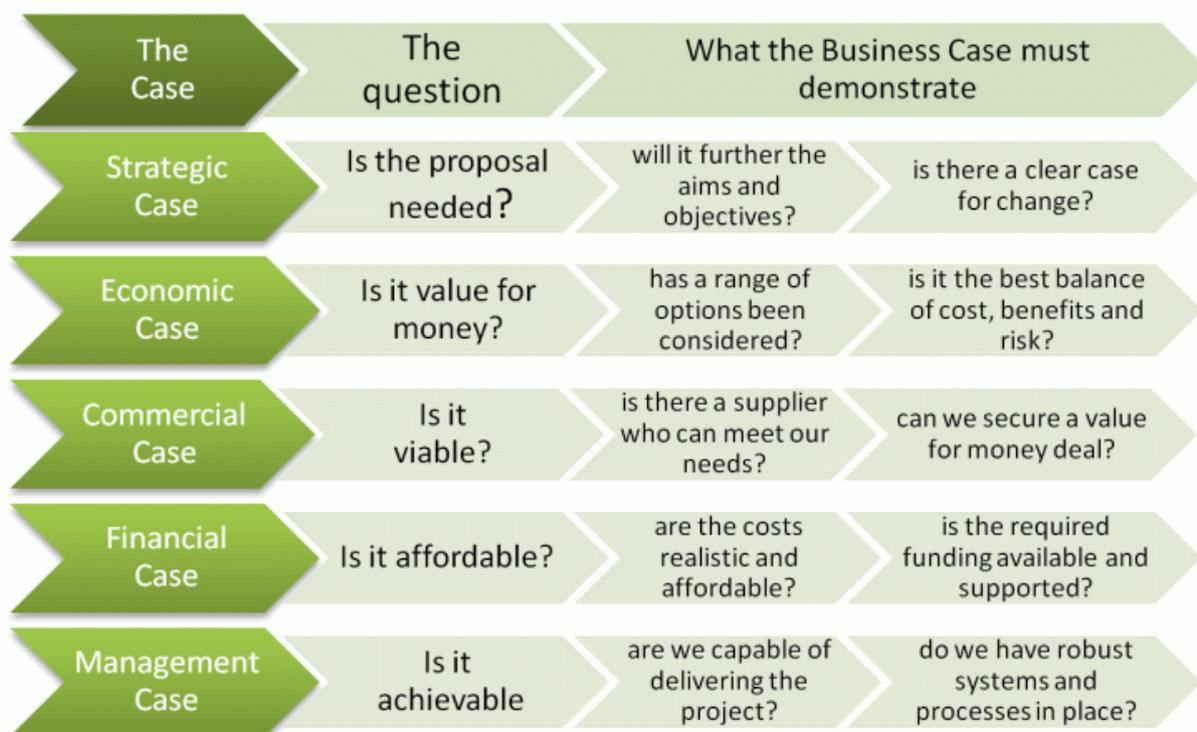
- Code of Conduct
- Financial Regulations
- General and Earmarked Reserves
- Protocol for Councillor and Officer Relationships
- Standing Orders

## 9.6 Recommendation 6

The council should review its committee and decision-making processes including reports supporting agenda items, so councillors are adequately informed of issues prior to meetings and the recording of resolutions and the context in which these resolutions have been made is clear and comprehensive.

## 9.7 Recommendation 7

KHPC must ensure that any significant financial commitment in future is subject to a rigorous risk and business case assessment utilising an approach such as The Five Case Model developed by the government for use in the public sector: [fivecasemodel.co.uk/overview](http://fivecasemodel.co.uk/overview)



# **Local Council Consultancy: Report to Kings Hill Parish Council**

## **Addendum: Cllr Finlay Report v0.5**

### **Report to KHPC Finance Committee regarding Sports Park Losses**

**By Chris Finlay, Vice Chairman of KHPC, and a member of the Finance Committee**

#### **The Losses and the Questions**

Since the press release in October 2019, residents have been asking about the huge losses at the Sports Park - £150,000 in the Apr 2018 to Mar 2019 financial year ..... £97,000 in the last financial year Apr 2019 / Mar 2020. Equally, residents have also expressed concern with the council tax increase of 15% and the fact that the parish council has little or no reserves left.

What happened to cause the council to approve such expenditures? Why did the council make decisions to spend beyond the budgeted losses? Why are the reserves so depleted? Will this loss-making budget position continue in the years to come?

#### **The Author**

I joined the council in August 2019 and the Finance sub-committee in September, going immediately in to a budget setting exercise for the Apr 2020 / Mar 2021 financial year. I was appalled at the state of the finances, as the parish seemed to be heading for bankruptcy, the reserves were very depleted, and sensible provisions for future expenses had been jettisoned. I felt it important to understand the reasons behind these exceptional losses, and their root cause.

This report is the result of my personal examination into the historic financial performance, what I found, and my recommendations to avoid such pitfalls in future.

#### **Background**

The Sports Park was first mooted in 2010, with Charlton Athletic Charitable Trust as Liberty's chosen partner to run it, however CACT pulled out for whatever reason. Subsequently the Parish Council entered negotiations with Liberty and, after the addition of further pitches, changing rooms, an artificial pitch (3G), and outside toilets, the PC to develop a workable 5 year plan that could bring the park to a breakeven position in 5 years.

Instantly the Sports Park became the home of Kings Hill football club with its 32 teams and 400 players (now 48 teams and circa 500 members).

At the time, the parish council precept (sometimes referred to as the levy) was used to fund the investment costs in setting up the park (the 5 year plan), after which time the sports park was expected to be self-funding (the Sports Park has a separate budget within the KHPC accounts).

In the early years the sports park made predictable budgeted losses as it was in 'investment mode' (as anticipated in the business plan), and the sole revenue source was through the football facilities. Expected losses in the Apr 2014/ Mar 2015 financial year were £113k, in 2015/16 £36k, in 2016/17 £71k and, finally, the figures started to show signs of improvement, with losses contained to £26k in 2017/18.

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## Ebbsfleet and Dover

The Sports Park has an unusual business profile. During the week, daytime use is generally very quiet (taking due account, of course, for pitch resting), and evenings are focused solely on the midweek training requirement that uses the 3G pitch, with use of the Café and Bar running alongside any such activity. Weekends, however, are a hive of activity, with most of the pitches in use, as several hundred school age children, and adults, pursue their favourite sport – football. Relying solely on the football revenue from weekday evenings and weekends was never really going to be sufficient to fund the sports park fully, and something else was required, either new sports or more football.

Given the above realisation, the strategy was changed in 2016, by the parish council, to desist from marketing to schools and small hirers that might use the day time slots, in order to focus on professional football clubs and their potential use to utilise the unused daytime pitches. The Sports Park Manager expended considerable effort pursuing this new avenue of potential revenue – with Ebbsfleet and Dover identified as possible customers. Councillors then intervened to negotiate the commercial terms between Ebbsfleet and Dover, in the summer of 2016.

[In hindsight, councillors should not have got involved in operational decisions or commercial negotiations. It introduces the potential for a conflict of interest, and it undermines the staff authority with the potential customer / supplier.]

## The Pitch Condition

Unfortunately, Ebbsfleet didn't want just a standard municipal football pitch, they wanted, and demanded, a much higher quality playing surface. They demanded a groundsman. They demanded a portacabin for their physio. They wanted feeding at breakfast and lunch times. These demands gave rise to significant levels of effort and expense, expense that negated the revenues and ultimately pushed the sport park into significant levels of loss making.

It has not been possible to identify the basis of the charge for pitch hire, or the anticipated cost for the resultant service delivery, as only ultimate decisions were recorded at the Sport Park Committee, and there is no record of any detailed, supporting paper work or costings. Without such detail, it is impossible to know how the fees were calculated, or who agreed the charges with the clubs, save that the sports committee ratified such decisions.

We do have, however, a well-documented list of unplanned, councillor approved, expenditures directly linked to servicing the Ebbsfleet and Dover demand for a high pitch standard, as shown below:

1. Summer 2016, over £24,000 was spent on purchasing bowzers, watering equipment, sand, contract cutting and lining (with KCC)
2. August 2016 a groundsman was recruited (circa £30,000 pa),
3. September 2016 two councillors personally purchased a Suzuki Vitara (c. £12k, subsequently reimbursed by the council) to tow the water bowser, which proved ineffective, and was resold in Feb 2017 (for £9,250, a loss of c. £2,750),
4. September 2016 an irrigation system was purchased (£5k),
5. November 2016 another irrigation system was purchased (£6k),

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6. March 2017 a tractor was purchased (£8k),
7. The new groundsman ordered grass seed (£3,500) and fertiliser (£1700),
8. March 2017, a new mower was purchased (£7,800),
9. Summer 2017 Rigby Taylor did some summer pitch renovation (£15,000),
10. Food and beverages for Ebbsfleet and Dover cost £2k - £3k pm,
11. 2017 summer/autumn there were budget concerns with overspending at the Sports Park, and in January 2018, the groundsman was dismissed / paid off,
12. January 2018, KHFC erected barriers and dugouts (commercial irregularities and non-compliant with CDM regulations),
13. March 2018 a new groundsman (MM) was employed (£30k pa),
14. June /July 2018, Rigby Taylor again performed summer maintenance (£15,000),
15. June 2018 flood lighting was purchased (£5,000),
16. 2018, during the hot summer, watering the pitches (against expert advice) cost £6k,
17. September 2018 a new security system was purchased (£13k),
18. September 2018, another new mower was purchased (£36,000, financed), and so on.

### Sport Park Financial Performance

The net effect, when all the numbers are summed to determine income and expense, is that although Ebbsfleet and Dover brought in circa £100,000 a year in income, the consequent and unforeseen demands for higher quality pitches, groundsman, and associated facilities and services culminated in even higher levels of unplanned, council approved expense, hence the exceptional losses of £150,000 and circa £90,000. Clearly, these exceptional losses, over and above the budgeted losses, eroded the reserves. If you budget to make a loss, but do not hold a contingency for overspending, the overspend has to be taken from the reserves.

When Ebbsfleet left, with Dover, to go to K Sports (a decision dictated by linked ownership of K Sports), they left a large hole in the Sports Park revenues, and unpaid invoices. It took consider staff effort, and the threat of legal action, to eventually recover these costs, in full. It should be noted that this happened during a period of much confusion in parish council management operations, given that the Clerk at the time was summarily dismissed, the Sports Park Manager relied on the Clerk to produce the invoices for Ebbsfleet, and chase the debts, and the locum Clerk had no knowledge of any of it. It wasn't until the new Clerk arrive in October 2017 that normal operations resumed, the debt was chased and eventually paid.

However, maintaining the pitches to a high standard continued, as did the significant costs. As directed by the Sports Park Committee, the Sports Park Manager continued to focus on finding other professional clubs (Millwall, Maidstone United, etc..) to rent those same day time slots.... but to no avail. Most local professional clubs already had their own training facilities. It took the Sports Park Committee some time to recognise this fact, and change its focus, despite the assertions of the Sports Park Manager, and the Clerk, that they should resume marketing to schools and small hirers.

In the 2019-20 budget setting exercise, in order to contain the losses, the Sports Park Committee decided to remove all contingency expense provisions / budgets, to increase (stretch) income targets and to reduce staff costs. In this way, the budget had a more attractive bottom line, but was not representative of the probable outcome. During the financial year the actual performance was not able to mirror the budget for income or

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expense, and without the contingency provision safety net, again, the only backstop was to use the reserves, which took the hit.

### **Budget Setting for Apr 2020/ Mar 2021 Financial Year**

In September 2019, during the budget setting exercise, given the poor state of the finances and reserves, urgent action had to be taken to stem the losses, and to increase the Sports Park revenues. With a new council composition, and a new chairman, the previously ignored warnings of impending financial problems (since 2018) were heeded.

Working with the officers, the council agreed a series of unpopular measures including:

1. to scale back on pitch maintenance, which was outsourced,
2. to remove the 10% KHFC discount,
3. to remove the KHFC priority booking,

... and further actions to:

4. maximise grass pitches and 3G pitch hire revenues by introduce new clubs for the 2020/21 season (in accordance with the lease terms to maintain a diversified customer base),
5. increase the footfall in the Café and Bar, with existing and new customers,
6. introduce new sports to the park, namely rugby, netball and tennis, and
7. dispose of unnecessary equipment (tractors, mowers, etc..)
8. increase day time use of 3G and grass pitches

Clearly these necessary measures met a high level of resistance with KHFC, and exacerbated an already difficult relationship between the football club, the football club supporters, and the council. [Why was the relationship 'difficult' between the parish council and KHFC? The root cause seems to relate to promises made by individual councillors, promises that the council could not or would not deliver at committee.]

### **The Café and Bar Financial Performance**

In much the same manner, the Café and Bar has had a troubled gestation with sport park committee councillors suggesting various initiatives to provide a service to patrons of the Sports Park, often involving external 'known to councillors' contractors.

Unfortunately, again, the commercial terms that sports park committee councillors negotiated were not always advantageous to the PC, and the café and bar made significant contributions to the losses. The Café and Bar losses were £30k in financial year Apr 2017/ Mar 2018, £12k loss in FY 2018/19, and £41k loss in FY 2019/20 – financial performance that was exacerbated by a bad reputation and a boycott.

Throughout this period, councillor involvement in the day to day running caused issues of authority, hampered the enforcement of legislative requirements of the council, and ultimately undermined the sports park management and staff [adding to the 'difficult' relationship detailed earlier].

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## **The Role and Responsibility of the Parish Council**

The parish council consists of twelve councillors drawn from the community, either through an election process or co-option (where existing councillors co-opt new members, rather than via an election by residents).

The role of the councillors is to determine the strategy and policy of the council, as a collective using a majority voting system, and the officers' duties are to implement and manage the services thereafter.

The parish council has the responsibility to set a financially prudent budget for each year and then the councillors must subsequently manage the operation thereafter, within that budget. The budgeting exercise should also establish a sensible level of capital reserves, contingent sums for operational tolerances and future maintenance provisions, and a reserve to cover a minimum 3 months of operating expense, in the event of unforeseen problems (as the current Coronavirus lockdown has highlighted).

Unfortunately, strategic management by the Sports Park Committee evolved into operational interference, which, on many occasions, resulted in councillors overstepping their roles and taking short term decisions with customers and suppliers that altered the council policy, time and again, against the advice of staff, and fundamentally undermined the role of staff and parish officers. Councillors ended up having ongoing relationships with customers and suppliers, were often involved in determining the commercial terms, and therefore dictating the revenue and expense of both the Sports Park, and the Café and Bar. Despite the staff and officers providing performance information and revised budgets in the light of changes, there is little evidence of parish council changing course, or accepting such advice. It was these type of councillor interventions that created divisions between the officers managing these facilities and their customer base and supplier network. It also resulted in the councillors being used as a backdoor into the council, and for 'favours' to be asked and done. Clearly, a conflict of interest for those involved.

So, within the sports park committee, this interventionist policy evolved into a series of immediate responses to problems / customers' needs and lost sight of sensible commercial realities, budget management, cost management, and ultimately resulted in councillors overriding prudent fiscal management, recommended by the officers. These short-term decisions created the significant exceptional and unbudgeted losses, and ultimately led to the erosion of the reserves. The list of purchases detailed earlier, during the financial years 2016/17, 2017/18 and 2018/19, were significant and not planned or provided for in the respective budgets. They tell their own story, and show the significant costs that arose, plunging the PC into unplanned loss making. The only way the council had to cover these expenses was to take it from reserves and eventually from the provisions put aside for future known expenses, such as the anticipated cost of refurbishing the 3G pitch at the end of its life (c. 2023/24).

## **The Parish Council Decision Making Process**

It should be noted that no one councillor is permitted to make decisions on behalf of the council, not even the Chairman. All matters should be referred to the appropriate committee,

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and any decisions made at a sub-committee must be ratified by the full council, ideally with all councillors present. Obviously if some councillors are not present, then meetings can take place without their involvement. Meetings must be quorate, that is, they must have a minimum of one third of the councillor seats, which at full council is four, and at sub-committees is three. This is the process.

Given the breadth of council affairs a series of sub-committees (Amenities, Planning, Finance, etc..) were established to manage the various aspects and, for a number of years, the Sports Park had its own committee, appointed to oversee the original business plan, to bring the park to a breakeven position within the 5 years. These committees had devolved powers to make decisions on behalf of the full council, albeit that significant expenditure items should be reviewed and ratified at full council.

Appendix A to this paper details the composition of the full council and, more importantly the composition of the sports park committee, for the period from 2016 to 2019, when most of the expenditure decisions were made. Whilst it isn't possible to attribute decision making to any one individual, it is possible to determine that there was a pro-football leaning by a majority of councillors on the sports park committee and the full council during this period.

### Findings

There are a number of findings that can be drawn from this analysis:

1. The composition of the twelve councillors has a major impact on the strategy and direction of the council and, as councillors resign and are replaced, that direction can alter, month on month, year on year,
2. If like-minded types band together on the council, or any of the sub committees, they can influence the policy and direction of the parish in favour of their common goals. This appears historically to be the case, particularly in the context of the KHFC,
3. Strong minded councillors can persuade, or in some cases bully, other councillors, which again can distort the direction of the council, and there is some evidence of this behaviour,
4. Running complex commercial operations within the parish council is hard to do, and needs strong, commercially minded, officers to keep it on track and within budget. If councillors intervene in the day to day operation, and particularly if they intervene in the commercial relationship between customers and suppliers, it makes it extremely hard for the officer to carry out their roles and to manage the facility within their budget guidelines, as set by the council,
5. If councillors are seen to override officers or dictate commercial terms or conditions, then in the eyes of customers and suppliers they become 'business owners', and a focal point for customers to subvert the normal communication lines, undermine the officers' status, and puts the councillors involved in a position of operational influence – thwarting the normal council committee approach to decision making,

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6. Finally, decisions that are made within a sub-committee, particularly expenditure decisions, do not always get highlighted and ratified at full council. Often full council approves the minutes of subcommittee meetings without directly acknowledging the expenditure item, or identify the budget it should come from.

The overall conclusion from these findings point to the need for the Sports Park to be run independently, with a commercially minded management that is at arm's length from the council, and councillors. Operated under the parish council, it will always be at the mercy of councillors that may wish to direct it to suit their own purposes.

### Recommendations

As a result of my personal examination of the last three years, I would make the following recommendations to council, and particularly in the light of the low reserves and the depleted revenues due to the virus / lockdown measures (some of this may repeat the Clerk's recent advice, too):

1. That the council does not approve any unplanned / ad hoc expenditure(s) without a clear understanding of under which budget heading the expenditure will be classified, and with a clear explanation as to what existing planned expenditure will be foregone to enable the council to afford this new expense item.
2. That all such expenditure items arising from sub-committees or full council are detailed in their associated minutes, are recorded with the names of councillors voting for and against, are presented to full council separately (unless arising in full council), and then reviewed, ratified / or not, and recorded in the full council minutes, showing budget headings and councillor voting.
3. That councillors should be reminded that they should not intervene in the day to day running of the Sports Park or the Community Centre, without a specific, agreed and documented remit from full council, recorded in the full council minutes.
4. That the commercial management and the commercial decision making should be the responsibility of the manager of the facility, and that they and only they can make such decisions. Where the council feel it is necessary to intervene, for whatever reason, then they should seek the authority of full council before doing so.
5. That all councillors should refer to the Clerk all contact with the public, customers of the council, or suppliers to the council, in order that it is recorded and routed to the most appropriate officer or committee,
6. Given the major funding shortfall, and the lack of sensible reserves for the upkeep of the 3G facility, that the council should seek alternative, independent management of the Sports Park, independent management that may have access to funding to both maintain the Sports Park, but also to develop it further with other sporting disciplines.

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### Appendix A Full Council and Sports Park Committee Composition, from 2016 to 2019

Full Council Composition for the Civic / municipal years	May 2016 – May 2017	May 2017 – May 2018	May 2018 – May 2019	May 2018 – May 2019
Chairman	A Petty	A Petty	D Hurring	S Barker
Councillors	R Ayling	R Ayling	R Ayling	A Board
	S Barker	S Barker	S Barker	C Bridger
	S Beal	S Beal	S Beal	R Cassidy
	A Board	A Board	A Board	M Colman
	C Brown	C Brown	C Bridger	A Petty
	R Cassidy	R Cassidy	C Brown	D Waller
	D Hurring	L Faulkner	R Cassidy	
	T Steel	D Hurring	A Petty	<b>Joined July 19</b>
	D Waller	A Kilvington	T Steel	A Lewis
	S Woodcock	T Steel	D Waller	C Finlay
		D Waller		A Russell
			<b>Joined Nov 18</b>	N Sherlaw
			M Colman	R Zahidi
				<b>Resigned</b>
				A Board
				R Cassidy
				A Lewis
				A Russell

Sports Park Committee	May 2016 – May 2017	May 2017 – May 2018	May 2018 – May 2019
SP Financial Performance (losses)	<b>c. £71,000</b>	<b>c. £26,000</b>	<b>c. £150,000</b>
Chairman	A Petty	A Petty	S Beal
Councillors	A Board	S Barker	R Ayling
	D Hurring	S Beal	S Barker
	T Steel	A Board	A Board
		L Faulkner	D Hurring
		T Steel	A Petty