



Report of the Cabinet Member for Investment, Regeneration & Tourism

Special Cabinet – 7 January 2021

Proposed Lease of Underhill Park to Mumbles Community Council under the Community Asset Transfer Policy

Purpose:	To obtain approval to grant Mumbles Community Council the necessary legal interest to enable up to £1.7 million pounds of funding for the development of improved community facilities at Underhill Park.
Policy Framework:	Asset Management Plan 2017-2021 Community Asset Transfer Policy 2017 Creating an Active and Healthy Swansea.
Consultation:	Legal, Finance, Property and Access to Services.
Recommendation(s):	It is recommended that: 1) The Director of Place is to negotiate and settle the terms of the proposed lease / appropriate agreement and to instruct the Chief Legal Officer to finalise the legal documentation.
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1. Background

- 1.1 In November 2014 Cabinet granted approval for an Agreement for Construction and 125 Year lease of Underhill Park to be granted to Mumbles Community Association (MCA) to enable the improvement of facilities at Underhill Park whilst also providing Swansea Council with a small financial saving.

- 1.2 This Agreement for Construction and Lease has been agreed and was completed in July 2018.
- 1.3 Since completion of the Agreement Mumbles Community Association have obtained planning permission to develop improved sport and community facilities at the park and have also secured, in principle, circa £1.7 million to fund the improvements. However a large proportion of this funding is to come from Mumbles Community Council (MCC) who require a legal interest in the land to enable provision of the money.

2. Proposal

- 2.1 The Agreement for Construction and Lease between Swansea Council and MCA essentially gives MCA 5 years to carry out all necessary pre-construction exercises, such as obtain planning, obtain funding and obtain approval of their business plan from Swansea Council amongst other things.
- 2.2 Once these conditions have been met they have a further 12 months to begin construction. Once construction has started it must be completed within a reasonable period. Once completed they are then bound to enter into a lease of the park which to very briefly summarise is at a peppercorn rent, requires that the land remains as a public park, the nature of the facilities provided are not altered without prior consent from Swansea Council and that they maintain and run the park and associated sports facility to a high standard.
- 2.3 MCA have very nearly completed all necessary pre-construction conditions apart from formally obtaining appropriate funding.
- 2.4 MCC have agreed to underwrite £1.2 million towards the project but require a legal interest in the land before they can release any money in order to protect their investment and to allow them to take over the running of the park if MCA were to cease to exist at some point in the future.
- 2.5 MCA have also been granted circa £500,000 from the National Lottery towards the project, but, this funding is subject to the confirmation of the funding from MCC. There is a time limit on the funding from the National Lottery hence the urgency of this approval.

3. Property Implications

- 3.1 MCC's legal interest could take the form of an assignment of the lease to MCA, in circumstances where it might cease to exist, or in the form of a lease and lease-back arrangement from MCC to MCA on essentially the same terms as already agreed with MCA.

- 3.2 MCC would prefer a lease and lease-back arrangement but approval is sought for the Director of Place to negotiate the most appropriate terms which allow funding and best protect the interests of Swansea Council.
- 3.3 As MCA already have a completed Agreement to Lease in place, any proposed documentation to agree a lease with MCC, will be agreed with MCA before being sent to MCC for approval and completion.
- 3.4 Any agreement entered into with MCC will be very similar to the agreement already in place with MCA which appropriately protects Swansea Councils interests.
- 3.5 So, to enable the Community Council and its partners to confidently invest in the facilities without fear of the useful life of those investments being cut short and to give the parties involved the ability to apply for grant funding for the maximum number of grants available a circa 125 year lease is considered appropriate in this case.
- 3.6 Any agreement will require the Park to remain as a public open space, maintain the current facilities to a high standard, forbid any changes to the current lease / licence agreements that are already in place without the Local Authority's permission and also not allow any alterations / changes to the facilities at the Park without Local Authority consent.
- 3.7 Given the above terms a peppercorn rent for the length of the term is considered appropriate and to be best value given the proposed use. The current use of the land makes any more financially viable use of the land extremely unlikely and, even if it were possible, it would probably be outweighed by the well-being benefits of the current proposal. Furthermore, the land is subject to a covenant in favour of the Duke of Beaufort which restricts and development of change of use further restricting any commercial value.

4. Equality and Engagement Implications

- 4.1 The Council is subject to the Public Sector Equality Duty (Wales) and must, in the exercise of their functions, have due regard to the need to:
 - Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
 - Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - Foster good relations between people who share a protected characteristic and those who do not.

Our Equality Impact Assessment process ensures that we have paid due regard to the above.

An EIA Screening Form has been completed with the agreed outcome that a full EIA report was not required. The reasons for this were:

This lease will help to improve and enhance the facility provision at Underhill Park and enable further development opportunities for the local community. There will be no change in provision or opportunity than at present as the Park will remain fully open to the public as it is now. Casual usage will not change or be adversely affected and in the long term is anticipated to increase.

5. Financial Implications

- 5.1 There are no financial implications associated with this report as any agreement to MCC will be on very similar terms as already agreed with MCA.

6. Legal Implications

- 6.1 Section 123 of the Local Government Act 1972 and the Council's Land Transaction Procedure Rules set out in the constitution apply to this disposal. Under s123 LGA 1972 a local authority has the power to dispose of land held by it in any manner it wishes provided that the local authority achieves the best consideration that can reasonably be obtained except where the disposal is for a short tenancy (less than 7 years) or the local authority has the consent of the Welsh Ministers. Under the Council's constitution the responsibility of determining in what manner the land will be disposed of in order to obtain best consideration lies with the Director of Place.

Under the General Disposal Consent (Wales) Order 2003 the Welsh Ministers have issued a general consent for disposals of land under s123 for less than best consideration. This allows a local authority to dispose of land for less than best consideration if it considers that the disposal will contribute to the promotion or improvement of the economic, social or environmental well-being of its area and the extent of the undervalue is no more than £2m.

- 6.2 The property has not been advertised on the open market. The Council's constitution specifies that if there has been no marketing of the Land or only one person has indicated an interest to purchase there can be no such disposal of land except where it is determined by the Director of Place or his nominee that there is only one party who could acquire the interest because of the physical, legal or other characteristics of the land and that it is appropriate to sell by private treaty. In this particular case the land is public open space/playing fields for community use and is subject to a covenant in favour of the Duke of Beaufort which restricts any development or change of use, consequently the land is of limited interest to the market generally. Therefore, the Director of Place is satisfied that the characteristics of the land dictate that there is realistically only one party in this situation who would be interested in acquiring this land on the terms offered and that it is prudent and appropriate to lease without advertising on the open market.

- 6.3 Any lease documentation will contain all the relevant provisions to protect the Council's interest.
- 6.4 As the land is deemed open space, the disposal of the property was previously advertised in accordance with s123 and any objections were given full and proper consideration.

Background Papers: None.

Appendices: None.