

Cromer Tennis Hub

Summary:

This report sets out the current position in relation to the Cromer Sports Hub and gives options for Members to take the matter forward.

Conclusions:

The options identified give Members avenues to either take the project forward in its current form or to withdraw from it. Members should weigh the relevant factors, including the financial, community and reputational impacts before reaching a decision.

Recommendations:

That Members consider the options set out below.

- 1. To give delegated authority to the Head of Legal in consultation with the Portfolio Holders for Leisure and Finance to effect the necessary legal arrangements required in respect of the preferred option identified.**
- 2. If the decision is taken to stop the project, that delegated authority be given to the Head of Legal in consultation with the Head of Finance and Assets and the Portfolio Holders for Leisure and Finance to effect the necessary reserve transfers required in respect of the revenue funding requirements.**

Cabinet Member(s) Cllr Gay	Ward(s) affected: Cromer
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1. Introduction

This report sets out the current position in relation to the Cromer Sports Hub and gives options for Members to take the matter forward.

2. Background

- 2.1** Members will be aware of the Council's previous decisions in this matter as follows;

- 2.2 On 19 December 2017 Council (as the commitment of expenditure was outside the budgetary framework) resolved to approve the development of a Sports Hub for the District, centred in Cromer;

“1) To approve of the necessary capital budget for the project, subject to the external funding being made available, as described in the report:

a) The approval of the necessary capital budget to support the delivery of a Community Sports Hub at an estimated cost of £2.681m, and additional tennis facility improvements at an estimated cost of £250k, as detailed in this report, subject to the necessary external funding being in place.

b) That the provisional financing be agreed as follows;

Lawn Tennis Association Grant £733k (25% of tennis related cost)

Capital receipts/reserves £1.465m

Lawn Tennis Association Interest free loan £733k (25% of tennis related cost, to be funded from capital receipts)

c) That delegated authority is given to the Head of Finance and Assets to adjust the financing outlined above if required to maximise the value for the tax payer.

d) In developing the project proposal, priority is given to a comprehensive development plan for the wider use of tennis facilities across the District”

- 2.3 On 21 November 2018 the construction tender was awarded and the budget increased (necessitating a council decision) as follows;

“1. That Council provisionally awards the construction contract for the Community Sports Hub to Bidder X as per the attached confidential Tender Evaluation Report; with final award being subject to the LTA Grant Funding expected on December 6th.

2. That Council agrees to an additional capital budget of £118,000 to fund additional, unforeseen works as described in the report.

3. That, subject to the Community Sports Hub going ahead, delegation is given to the s151 officer to adjust the financing by £228,000 in respect of the funding for improving the satellite community tennis facilities at Fakenham, Wells and North Walsham as described in the report. These amendments to be funded from capital receipts.

4. That delegated authority is given to the Head of Finance and Assets to adjust the financing as outlined within the report if required to maximise the value for the tax payer.”

- 2.4 On 27 February 2019, following the Lawn Tennis Association changing its mind in relation to the proposed grant, the Council (as the additional expenditure was outside the budgetary framework) considered the Sports Hub again and resolved the following;

“1. That the business case for the Community Sports hub is reviewed to ensure it still represents value for money and is capable of still meeting the original objectives.

2. That Full Council approves additional capital budget of £672,000 required for the completion of the Community Sports Hub project

3. That if recommendation above is approved, authority to spend is then delegated to the Leader of the Council, Portfolio Member for Leisure and the s151 Officer, subject to a satisfactory review of the business case outlined in recommendation 1 above

4. That if recommendations 2 and 3 proceed, the s151 Officer is given delegated authority to arrange the additional financing requirements outlined above by the most cost effective means”

3. Linked land transactions

- 3.1 In order to facilitate the proposed scheme there needed to be a number of linked land transactions between: North Norfolk District Council, Cromer Lawn Tennis and Squash Association and Inspiration Trust (Cromer Academy).
- 3.2 In particular the Cromer Lawn Tennis and Squash Association is the current leaseholder of a protected 31 year lease of Cromer Lawn Tennis and Squash Courts (the Site) from 1 April 2005. The freehold of the site being owned by the Council. The lease has an option to renew for a further term of 14 years on such terms and conditions as shall be agreed between the parties. This includes an obligation to pay the CLTSA a subsidy (currently circa £25,000 pa).
- 3.3 The Association is a registered Community Amateur Sports Club. Its objects are to provide facilities for members of the Association to take part in and encourage the development of tennis, squash and other sports at the Site and an adjoining sports centre. Trustees are appointed by the General Committee of the Association, and the Trustee’s powers extend to adopt such measures as may appear to be necessary in the interests of the Association, subject to the approval of the General Committee. It currently has approximately 140 adult Members.
- 3.4 The Council agreed with the Inspiration Trust to build the Sports Hub on land which is currently in the Trust’s ownership (known as “the Red Land”). The

Trust's title, NK412287, registered at HM Land Registry includes a restriction on disposition that there should be, "No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the Secretary of State for Education". This means that the Trust had to approach the Secretary of State for consent before they could deal with the land.

- 3.5 The Secretary of State granted consent to the disposal of the Red Land to the Council, subject to a condition that the Council transfers land of equal amenity value to the Trust to enable the Trust to continue to deliver the full curriculum to its students.
- 3.6 The Council and Trust agreed two tennis courts forming part of the Association's lease of the Site (known as "the Green Land") would be of sufficient use and amenity to the Trust to enable them to satisfy the Secretary of State's requirements and ultimately transfer the Red Land to the Council.
- 3.7 The Council approached the Association by email on 13 April 2018 to outline the Council's proposal and to seek agreement in principle. Formal Heads of Terms were then sent to the Association with a covering letter by email dated 25 May 2018. The Council issued formal Heads of Terms to the Trust by email on 10 May 2018.
- 3.8 The Council would not be in a position to be able to transfer the Green Land to the Trust until it had been removed from the Association's lease, by way of a Deed of Surrender of Part and Re-grant. The simultaneous transfer of the Red Land to the Council and Green Land to the Trust being completed once the Deed of Surrender of Part and Re-grant had been entered into with the Association. Because the project was dependent on funding and acquiring the relevant consents, and in order to ensure that any expenditure by the Council would not be wasted in the event that either the Association or Trust pulled out late in the day, it was agreed the Council would enter into binding contracts with both the Association and the Trust (each subject to their own conditions).
- 3.9 Accordingly, the Council, Trust and Association agreed to enter into the following series of linked land transactions:
 - a) Agreement to enter into a Deed of Surrender of Part and Re-grant and Variation (the Agreement) of the Association's existing lease conditional on:
 - i. External funding of up to £712,500 being granted from the Lawn Tennis Association, representing approximately 25% of the total funding for the provision of the project, or in the alternative, internal funding being granted by the Full Council committee of the Council;

- ii. Education and Skills Funding Agency (ESFA) consent given pursuant to section 77 of the Schools Standards and Framework Act 1998 and Schedule 1 of the Academies Act 2010;
 - iii. Conditional contract entered into between the Council and the Trust for the transfer of the Green Land in an agreed form and satisfaction of the conditions thereunder; and
 - iv. Licence in agreed form annexed entered into between the Trust and the Association for use of the Green Land following the transfer to the Trust
- b) Contract entered into between the Council and the Trust for the simultaneous exchange of the Red Land to the Council and Green Land to the Trust conditional on:
- i. A planning permission acceptable to the Council
 - ii. Deed of Surrender of Part and Re-Grant and Variation being completed between the Association and the Council.
- c) Deed of Surrender and Re-Grant of Part and Variation entered into between the Council and Association to remove the Green Land from the Association's lease
- d) Simultaneous transfers of the Red Land to the Council and Green Land to the Trust.

3.10 All of the documents above were agreed with the relevant parties and on 28 March 2019, the Council exchanged the Agreement with the Association. The conditional Contract entered into between the Council and Trust was later exchanged on 4 April 2019.

3.11 The Council were made aware on 8 April 2019 by a member of the Association that a motion of no confidence had been presented in the current Chairman and Committee, with most members of the present Committee not standing for re-election in any event.

3.12 On the 15 April 2019 (PM), following the motion of no confidence, the Association held a Special General Meeting. The previous General Committee was replaced by newly appointed members, who do not share the same opinion as the previous Committee regarding the development of the Hub and are concerned about the removal of the Green Land from their lease.

3.14 The Council has been in discussions with the CLTSA to understand whether the Association are willing to execute the agreement.

- 3.15 To date the Deed of Surrender of Part has not been completed and consequently as the Green Land cannot be transferred to the Trust, the terms of consent to disposal by the Secretary of State cannot be complied with, the Red Land cannot be transferred and the scheme cannot be built out.

4. Spend on the scheme to date

- 4.1 The Council's total expenditure on the Project to date is - £554,863.50. The Council also has committed sums of £132,540 yet to be paid.

- 4.2 A breakdown on the sums paid appears below;

Professional and Consultants fees (Architect, Quantity Surveyor, Project Management, Employer's Agent, Building Services, Civil, Structural, Geotechnical services, demolition costs etc)

Other professional and consultants fees already paid to date: £498,358.50

Legal fees

The Council has paid the legal fees of both the Association (Hayes + Storr) and Trust (Stone King) in relation to this matter. To date, the total expenditure on those external legal fees: £ 56,505

This does not include any time spent by eastlaw on the matter, or any final legal invoices yet to be received from Hayes & Storr and Stone King.

Committed sums

These sums are owed to contractors. These total £132,540 as follows;

Saunders Boston Chartered Architects; (as Principal designer) - £2,000.00 outstanding;

Real Consulting (Project Management/Employer's Agent): £10,240.00 outstanding;

Real Consulting (Quantity Surveyor): £6110 outstanding;

Conisbee (civil, structural and geotechnical services): £5850.00 outstanding;

MLM (building services): £5328 outstanding;

Pentaco (building contractor): £103,012.00 outstanding (due in accordance with the Letter of Intent, above). There is additionally a storage charge of £2,500 per week for the prefabricated frame, for which officers have sought justification.

- 4.3 If the Council were to withdraw from the project it would be necessary for officers to negotiate with the contractors already engaged (where there are sums outstanding and due to be drawn down), whether those contracts can be terminated early and at what cost to the Council. The earlier a contractor is

notified would provide them with more opportunity to find alternative work and mitigate their loss.

5. Options

5.1 Consequently the Council is in a position where it has expended considerable sums on the set up costs of the Cromer Tennis Hub Projects but does not currently have ownership of the land to build out the scheme.

5.2 The options for Members to consider are set out below.

5.3 Specific Performance of the Agreement

The Agreement with the Association is now binding on both parties, so either the Council or the Association could force the other to complete the Deed of Surrender of Part and Re-grant through specific performance under the contract, necessitating an application to the High Court. This is an equitable remedy, available at the Courts discretion and would enable the scheme to be implemented in full.

Any claim would be made against the current Trustees of the Association personally and individually as it is an unincorporated association.

Whilst the legal basis for the Council's claim is sound, any application to Court, is a process not without risk of failure and expense and clearly there would be a considerable delay in any build process which would potentially see the Council having to renegotiate the build contracts in any event.

Pursuing a remedy against an individual in this way could have significant impact on the Council's reputation and has the potential to undermine community cohesion. It would also make the Council's ongoing contractual relationship with the CLTSA very difficult.

5.4 Recover the sums expended

As an alternative to specific performance the Council could seek to recover damages against the individual trustees for expenditure to date.

As identified above, this cause of action would again be made against individual Trustees of the CLTSA. This would again have the reputational and relationship risks set out above but would have the potential benefit of recovering a proportion of the Council's expenditure on the scheme to date.

5.5 Renegotiation with the Secretary of State to remove the restriction on the consent and purchase the Red Land

It may be possible to renegotiate the terms of the consent granted by the Secretary of State to not transfer the Green Land. However this would further delay the scheme, and it is unlikely that the school would release the land at no cost if there was no "land swap". Any requirement to purchase the land

would require a further capital allocation, outside the budgetary framework. This could undermine the viability of the scheme and would change the business case previously considered by Council.

5.6 Negotiate with the parties to unwind the agreements.

If Members consider that the options identified above present too much of a risk to the Council and its communities then it is potentially possible to have a negotiated exit from the agreements.

In terms of financial implications of the project proceeding any further, the Council would need to write off the costs of the project to date, together with any contractual costs identified at para 4 above along with any additional costs associated with unwinding agreements, dealing with the steel frame etc and these are currently estimated at c5% of the total costs to date (spent and committed of just over £687,000) at around £34,000.

There would however be no further commitment of any capital resources, the opportunity cost of which is just under £70,000 based on the balance of funding and using the Council's investment interest return rate as per the 2018/19 outturn.

There would be a consequential cost in terms of the leisure contract that had assumed a saving of £65,000 although this has not as yet been assumed within the budget.

If this is the preferred option then the final project costs will need to be transferred back to revenue and funded from reserves as it will not be possible to capitalise these costs as the project will be ceasing.

7. Risk

The risk of each option is assessed within the body of the report.

8. Equality and Diversity

No implications

9. Summary:

This report sets out the current position in relation to the Cromer Sports Hub and gives options for Members to take the matter forward, following the Cromer Lawn Tennis and Squash Association intention not to complete the land transaction, meaning that the project can no longer be delivered.

10. Conclusions:

The options identified give Members avenues to either take the project forward in its current form or to withdraw from it. Members should weigh the

relevant factors, including the financial, community and reputational impacts before reaching a decision.

11. Recommendations:

That Members consider the options set out below.

- 1. To give delegated authority to the Head of Legal in consultation with the Portfolio Holders for Leisure and Finance to effect the necessary legal arrangements required in respect of the preferred option identified.**
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