

Title of Report:	Facility Management Agreement for Outdoor Pitches – Strategic Outline Case
Committee Report Submitted To:	The Leisure and Development Committee
Date of Meeting:	20 th April 2021
For Decision or For Information	For Decision

Linkage to Council Strategy (2019-23)	
Strategic Theme	Resilient, healthy & engaged communities
Outcome	Citizens will have access to Council recreational facilities and protected natural environments which help them to develop their physical, emotional and cognitive health.
Lead Officer	Head of Sport & Wellbeing

Budgetary Considerations	
Cost of Proposal	n/a
Included in Current Year Estimates	n/a
Capital/Revenue	n/a
Code	n/a
Staffing Costs	n/a

Screening Requirements	Required for new or revised Policies, Plans, Strategies or Service Delivery Proposals.		
Section 75 Screening	Screening Completed:	Yes/No	Date:
	EQIA Required and Completed:	Yes/No	Date:
Rural Needs Assessment (RNA)	Screening Completed	Yes/No	Date:
	RNA Required and Completed:	Yes/No	Date:
Data Protection Impact Assessment (DPIA)	Screening Completed:	Yes/No	Date:
	DPIA Required and Completed:	Yes/No	Date:

1.0 Purpose of Report

The purpose of this report is to seek Members approval of a Strategic Outline Case which assesses the various legal options available in the event that Council is approached by a Borough based Sports Club or Community Association to take on responsibility for the management and maintenance of a Council pitch and associated changing pavilion.

This paper develops the initial proposal for the potential development of a Facility Management Agreement for shared responsibility of outdoor sports pitches presented to the Leisure & Development Committee on 19th January 2021.

2.0 Current situation

Council has been approached by two local Football teams and asked to consider the potential for a Facility Management Agreement at two sites across the Borough – McCamphill Park / Dunloy FC and Mullaghacall / Portstewart FC.

Currently McCamphill Park is managed by Council and booked primarily by Dunloy FC for home matches in their local Football League. Council maintains the surface and surrounding grounds and provides a caretaker for all bookings.

Dunloy FC play in Ballymena & Provincial Intermediate League and qualified for promotion in the 2019/20 season and are therefore eligible to participate in the NI Football League's Premier Intermediate League subject to compliance with the new regulations regarding ground specification as set out by the IFA. These new regulations will require a level of investment in ground(s) which Council was not in a position to be able to complete within the original timeframe proposed by the IFA for implementation of the new standards. In an attempt to ensure they progress into the Premier Intermediate League, Dunloy FC have been proactive and proposed that the club make the required investment and in return take on responsibility for the management and upkeep of the site.

Mullaghacall is currently leased to Portstewart FC and they are responsible for all maintenance at the site and operate the pavilion / clubhouse without any input or support from Council.

Portstewart compete in the Premier Intermediate League and are well established at that level. However, as a Club they struggle to maintain all aspects of the current lease agreement and have approached Council to request a review of that arrangement to see whether a more effective system can assist the club to maintain their current standard of football and remain sustainable as a thriving local Club which contributes much to the local community in terms of sporting participation and community efforts.

3.0 Strategic Drivers

Facilities Strategy: Council's Sports & Leisure Facilities (2015) highlights the potential benefits of working collaboratively with others in the provision of accessible and quality facilities which operate in an effective and efficient manner. The strategy highlights several "wider considerations" which help in considering how services can be delivered including:

- The Council is not the sole 'supplier'; clubs, sports associations and community groups will play an increasingly important part.
- Revenue savings need to be delivered to help fund investment.
- More effective and 'joined up' programming and management of all facilities can help meet demand.

Pitch Strategy: the Council's Pitch Strategy and Investment Plan (2020) offers further options for the development of the pitch infrastructure in the Borough in a way that is affordable, sustainable, inclusive, high quality and consistent with current best practice in public pitch provision and recognises the value in providing services in collaboration with the community.

The strategy also highlights for example that of the 50 full size grass pitches owned by Council only one is currently leased (Portstewart FC).

IFA Intermediate Ground Criteria: One of the long-term objectives within the Irish FA’s 5-year strategy 2017-2022 is to reinvigorate the everyday game. Specifically, within this objective is a proposal for the restructure of Intermediate Football. The restructure aims to raise standards and continue the development of the game at Intermediate level by seeking to improve the standard of football on the pitch, introducing a more standardised league format and enhancing the quality of facilities/spectator experience. The proposed ground improvements including pitch, changing accommodations, spectator stands and associated access/boundaries were to come into effect from 2021-22 playing season. However, the IFA has recently confirmed that due to the impact of Covid-19 on the financial viability of clubs and budgets of local councils (as significant providers of intermediate football facilities) the planned restructure of intermediate football will be discontinued at this time.

DfC Sub Regional Programme for Soccer: The ‘New Decade, New Approach’ Deal published on January 10th 2020 to underpin the restoration of the NI Executive committed to advancing with plans to ‘complete both the Regional and Sub Regional Stadia Programmes’. The Department for Communities (with the support of the SIB) has recently completed a ‘refresh and re-engagement’ exercise to gather a robust evidence base on the challenges, strategic priorities and needs of soccer in NI with a view to drafting recommendations to DfC Minister/NI Executive on the future implementation of the Programme and significant investment in facility infrastructure.

4.0 Rationale for Intervention (and ‘policy position’ on this issue)

Potential demand: as indicated above there is total of 75 full size grass association football pitches suitable for adult, youth and small sided games matches, and 6 full size 3G pitches. In addition there is 10 youth pitches as summarised below:

Ownership	Full and Youth Match Pitches			Training Pitches – varying sizes			
	Grass Full	3G Full	Youth Grass + 3G	Grass	Astro Turf	3G	Shale
Clubs/Community	9	1	1 x grass	3	0	2	1
Education	15	1	5 x grass 2 x 3G	9	0	3	0
CC&G	50	4	2 x grass	5	3	4	1
Leased from CC&G	1	0	0	-	-	-	-
Total	75	6	10	17	3	2	4

There is therefore significant potential for clubs to come forward with pitches under Council ownership and make requests to make ground improvement to meet new Governing Body standards (e.g. IFA Intermediate Criteria when re-introduced) or to avail of external funding opportunities (e.g. Sub-regional Programme for Soccer) and also require security of tenure in the process. Ground improvements could be significant with costs in the region of £50k+ (as evidenced by Dunloy FC).

Benchmarking against English FA Asset Transfer Guidance: Local Authorities have the general power to dispose of land, including the sale of freehold interest and granting a lease. When dealing with outdoor space, the general professional advice is to retain the freehold interest in the site so that a level of control is maintained. Any such disposals are usually done on a purely commercial basis because there is a general legal requirement that the authority must achieve ‘best value’ for the site. However, the government has recognised that there may be circumstances where it is appropriate for a local authority to dispose of land at below market value. These circumstances are when such a disposal will secure a benefit to the community which can be measured by an improvement in economic, social and environmental

wellbeing. This is known as ‘community asset transfer’. In some circumstances it means that an asset can be disposed for very little or even no consideration. Local authorities are not obliged to undertake community asset transfer but many do as they recognise it is likely to increase investment and sustainability of the asset.

Drivers for ‘Community Asset Transfer’: the drivers are summarised below:

Drivers for the local authority	Drivers for a club
<ul style="list-style-type: none"> • Response to legislation and guidance • Focus for community-led service provision • Opportunity for new funding and partnerships • More efficient and effective use of assets • Potential capital receipts • Unlocking latent enterprise and volunteer commitment • New approach to a long-standing problem • Reduce liabilities • Cost savings. 	<ul style="list-style-type: none"> • Freedom to operate and security of tenure • Improving the quality of experience for users • Opportunities to increase its membership • Opportunities to increase its facilities and progress through the league system • Strengthen community relationships and support the development of new partnerships • Provide a solution to a failing site or a site at risk of closure • Strengthen the operational, legal and governance structure of the club • Develop skills/knowledge base of club.

Benchmarking against other NI Local Authorities: examples of various forms of legal agreements between voluntary clubs and Councils (Belfast and Newry, Mourne & Down) as facility/land owners have been reviewed. These range from long term lease (20+ years), license agreements (10+ years), facility management agreements (5+ years) and service level agreements (1+ year). There would appear to be a move away from medium-term facility management agreements/license agreements into either short term service level agreements or long term leases depending upon the circumstances. Council also has in-house examples of well-established Shared Management Agreements with community groups which on review appear to work well in practice for both parties.

Dunloy FC case study (request for security of tenure): as referenced above the club formally approached Council last year regarding a request for a lease of McCamphill Park and officers have met the club representatives on a number of occasions in recent months. Whilst the immediate pressure to develop the grounds and meet the IFA Intermediate Criteria has been removed for now, the club are proposing to develop plans to install a covered spectator stand, fencing and turnstiles at an estimated capital cost of £60k. To make this investment the club proposes a 25 year lease of the lands and will assume responsibility for shared community use, insurance, utility costs, maintenance etc.

Portstewart FC case study (request for variation to existing lease arrangement): as referenced above the club have formally approached Council regarding a waiver of agreed rental payments in 2020/21 resulting from the financial impact of Covid-19 along with a review of lease terms. Officers have met the club representatives on a number of occasions in recent months to review this request and they have also been informed of a ‘Master Plan’ for the development of Mullaghacall Park to potentially avail of external funding opportunities, including the Sub Regional Programme for Soccer in the future.

5.0 Options Appraisal

High level options available: the high level options available to address the needs above include: 1. Council direct investment (demand undetermined and unaffordable within current Capital Programme priority projects); 2. Council indirect investment via Grants Programme (currently suspended and again potentially unaffordable within Capital Programme); and 3. Club investment with ‘Community Asset Transfer’ (which would appear to be the only preferred way forward in the short to medium term).

1.1 'Community Asset Transfer': the legal options available are assessed as follows:

TYPES OF TENURE		
Description	Advantages	Disadvantages
<p>FREEHOLD Buying the property as full owner through a legal document entitles a 'conveyance'</p>	<ul style="list-style-type: none"> • Security of ownership • Creates a sellable asset • Independence • Can use asset to help raise debt and equity funding • Not subject to service charges • Freedom to improve or redevelop the asset and to attract grants to do so 	<ul style="list-style-type: none"> • Expense of purchase • Cost of repairs and insurance • May not be sellable if in poor condition or deeds forbid it • Much harder for Local Authority to restrict future use of the premises than other forms of tenure
<p>LONG LEASEHOLD Buying a lease of 22 years or more and paying a 'premium' (initial capital payment) then a low annual ground rent; lessee has all the responsibilities of a freehold owner</p>	<ul style="list-style-type: none"> • Security of ownership • Creates a sellable asset • Independence • Can use asset to help raise debt and equity funding • Local Authority can restrict future use of the premises using covenants placed on any lease 	<ul style="list-style-type: none"> • Expense of purchase • Cost of repairs and insurance • May not be sellable if in poor condition or deeds forbid it
<p>LEASE Taking a lease for a fixed period of years at annual or 'rack' rent</p>	<ul style="list-style-type: none"> • Security of tenure (usually) rights under The Landlord and Tenant Act 1954 • Local Authority can restrict future use of the premises using charges placed on any lease. • In some cases rent may be low or peppercorn • In some cases maintenance costs may be shared with landlord • The local authority may be better disposed to granting discretionary rate relief 	<ul style="list-style-type: none"> • Expense of rent and service charges (which may increase regularly) • Cost of repairs and insurance although LA can retain some responsibility • Shorter leases limit a group's ability to improve premises and to raise funds for improvement
<p>TENANCY AGREEMENT A verbal or written open ended agreement with a monthly, quarterly or annual rent and which can be terminated by either side giving notice</p>	<ul style="list-style-type: none"> • Easily terminated by the tenant • Rent may be cheaper • Often less responsibility for repairs and insurance • May have security of tenure • More likely to have discretionary rate relief 	<ul style="list-style-type: none"> • Normally little security of tenure especially if verbal or for a period of less than six months • May be restrictions on use of premises • Makes fundraising more difficult
<p>LICENCE TO OCCUPY Permission (verbal or written) to occupy for a short period (usually up to one year); can be terminated by either side giving notice.</p>	<ul style="list-style-type: none"> • As with a tenancy agreement, except no security of tenure • May be exempt from business rates • May allow a new group a chance to demonstrate its capacity to operate and its case for occupying the premises on a more secure basis 	<ul style="list-style-type: none"> • May be restrictions on use of premises • Local Authority may often need to give only a short period of notice
<p>TENANCY AT WILL A licence to occupy at the will of the owner/ landlord; tenant may be evicted at any time on as little as 24 hours notice</p>	<ul style="list-style-type: none"> • As with Licence To Occupy 	<ul style="list-style-type: none"> • As with Licence To Occupy

Source: 'Managing risks in asset transfer, Department for Communities & Local Government

6.0 Conclusions

The essential learning from this Strategic Outline Case is to reduce the risks in asset transfer. Asset transfer is not new and whilst there are many successful examples, there are equally many poor examples where insufficient research and preparatory work can result in certain issues being overlooked which ultimately turn the asset into a liability:

- Historic lack of investment in facilities;
- Poor location of an asset and/or hidden structural problems;
- Lack of strategic alignment and capacity within the club;
- Limited market demand for an asset due to changing needs of user groups;
- Restrictive leases for clubs and community use;
- Failure to explore all current and anticipated costs (management and maintenance);
- Costly environmental liabilities such as contaminated land or asbestos; and
- Unrealistic expectations by all parties leading to disputes and failure to meet obligations.

Therefore in taking the initial decision to pursue an asset transfer Council should follow the English FA Guide to Asset Transfer¹ (specifically the 'Ten Steps to a successful asset transfer'.)

In adopting this approach and reducing the risks above, Council will achieve best value for money from community asset transfer and ensure long term facility provision for the benefit of the local community.

The choice of legal agreement will clearly depend upon the individual circumstances and risks associated with the request for asset transfer. However the in the case of ground improvement proposals the preferred option is long term lease arrangements (10-20 years) in line with the economic life of investment with all other proposals agreed on short term license to occupy or service level agreement (1-2 years) which allow Council to terminate if arrangements are not working.

7.0 Recommendations

7.1 Members to approve the 'policy position' of adhering to the best practice guidance issued by English FA and reviewing the legal options available on a case-by-case basis in line with the risk based approach summarised in Section 6 above.

7.2 Members to approve the community asset transfer of McCamphill Park to Dunloy FC under the terms of a new lease arrangement subject to: officers risk appraisal of the business case for ground improvements and confirmation of the club's investment; and approval by the Land & Property Committee in due course.

7.3 Members to approve a review for the waiver of rental payments due in 2020/21 from Portstewart FC on the existing lease of Mullaghacall Park for approval by the Land & Property Committee in due course; and to note the potential for future ground improvement works and future request for a renewed lease and security of tenure.

¹ <https://www.thefa.com/-/media/cfa/northamptonshirefa/files/funding/capital-funding/asset-transfer-guide.ashx>