
Subject: CHARITY OF FREDERICK FRANKLIN FOR A PUBLIC PARK (CHARITY NO. 1092171) - MARKE WOOD RECREATION GROUND: LEASE OF TENNIS COURTS

Meeting and Date: Cabinet – 3 April 2023

Report of: Frank Thompson, Head of Property Assets

Portfolio Holder: Executive – Charity

Decision Type: Non-Key

Classification: Unrestricted

Purpose of the report: To reach a decision as to whether a lease can be granted for the future operation and maintenance of Marke Wood Tennis Courts.

Recommendation:

1. That the grant of a lease of the Marke Wood Tennis Courts to Marke Wood Tennis Hub CIC for a term of 10 years be approved.
2. That the Strategic Director (Place and Environment) be authorised to agree the detailed terms for the lease.

1. Summary

Cabinet, acting as trustees for the Charity of Fredrick Franklin for a Public Park, is required to decide whether it is in the best interests of the charity to permit a lease for the future operation and maintenance of Marke Wood Tennis Courts under the Marke Wood Tennis Hub CIC, operated by board members of the Walmer Lawn Tennis & Croquet Club.

2. Introduction and Background

2.1 An initial report was brought to the attention of the Trustees in December 2022 detailing a proposed refurbishment project for the tennis courts funded by the Lawn Tennis Association (LTA) comprising of the following work: (I) to fully resurface all four tennis courts with new porous asphalt surface, (II) to add new posts, nets, and court lines, (III) to install a new lite gate system to replace existing entrances.

2.2 The initial report also outlined initial engagement with Walmer Lawn Tennis & Croquet Club (WLTCC) for the future operation and maintenance of the tennis courts to meet the conditions of the initial funding agreement once the refurbishment works have been complete during spring 2023. This report details the proposed terms and conditions for the lease.

2.3 In order to effectively manage the tennis courts including the future administration of court fees, maintenance charges, organisation of communal coaching programmes and fees relating to the lease/sinking fund; the WLTCC have created a community interest company under the Marke Wood Tennis Hub CIC (company number 14611341). This will ensure the courts remain independent and separate from the tennis clubs own private administration.

2.4 The tennis courts in Marke Wood have been available to the community free of charge for several years, primarily as collection of court fees were no longer a sustainable option without a full time parks keeper being on site. As a result, maintenance has been kept to a suitable standard to ensure they remain operational and safe to use, however the current tarmac playing surface is showing signs of wear and tear that will continue to deteriorate & reduce the quality of play.

- 2.5 On completion of the refurbishment works and in line with the proposed lease, it is intended to reintroduce communal court charges as per the following subject to annual review (I) a standard rate of £6.00 per court per hour, (II) £50.00 'season ticket' which provides an immediate family of four restrictive use of 5 hours per week of the courts all year round. A 20% discounted rate is proposed for members of the public for the first year who sign up to the season ticket on site during free sessions and programmed community coaching events or activities undertaken by the CIC.
- 2.6 The 5 hours per week restriction is implemented to reduce the possibility of ticket sharing with those outside the immediate family and provides more accurate statistical data of court use. However, these restrictions still provide a significant saving of over 90% per year based on the standard rate per hour and maximum use of 5 hours per week. There will be a restriction of 250 season tickets made available per year.
- 2.7 Communal court charges will be administered through ClubSpark, a simple to use online booking platform provided by the LTA, an initiative allowing members of the public to access the courts via the use of an access code through the newly installed lite gate system. Voluntary assistance will be provided by the Marke Wood Tennis Hub CIC for those who may not be able to access the booking system or having issues with accessing the courts.
- 2.8 All income generated from these court charges will automatically be transferred through ClubSpark to a dedicated account under the control of the Marke Wood Tennis Hub CIC for the tennis courts for the purpose of (I) assisting costings relating to regular ongoing management and scheduled maintenance of the courts as outlined in Appendix C (II) assisting with organisation of communal coaching programmes and activities where required, (III) sinking fund who will be responsible for this as part of the lease.
- 2.9 Future maintenance under the CIC with assistance from the income generated from bookings through the ClubSpark bookings system will increase quality of maintenance provision through their specialist knowledge whilst ensuring longevity of the courts. The private facilities at WLTC are also within walking distance of the communal courts within Marke Wood.
- 2.10 In line with the LTAs funding terms and conditions, the CIC will organise regular community coaching activities and free court sessions which will require roughly 2 hours per day per week to book out all the courts through the ClubSpark online booking system. At the same time, there will be at least one court available at all times for general public bookings.
- 2.11 The lease fees have been agreed with the Marke Wood Tennis Hub at £1200 per court per year, however to support the hub to build a strong operational foundation, DDC have offered to subsidise the sinking fund in year one & year two, via a sliding scale increase i.e., £400 per court p/a year one, £800 per court p/a year two.
- 2.12 Trustees should consider all scenarios, including if the Clubspark booking system does not generate enough income to cover all those items listed at paragraph 2.8. If there is a shortfall in the income generation, the proposed Tenant may not be able to meet its rent liability to the trustees, nor the other liabilities mentioned at clause 2.8, or those outlined in the LTA funding agreement. The proposed tenant is a newly incorporated CIC company and as such, has no assets available to it, should a shortfall situation arise, nor are they being asked to fund such a shortfall. Trustees should therefore consider seeking authorisation from DDC, for any future shortfall that is required to be borne by DDC.
- 2.13 The value of the lease has been checked and verified as the most suitable market value by a council certified RICS surveyor as outlined in Appendix D. The lease fees itself will act as a sinking fund for investment into future refurbishment of the courts once the initial funding terms and conditions have expired. This programme is outlined in Appendix B

and these future fees will be solely dedicated to the tennis courts and will not be used for any other council resource.

- 2.13 In the event where there is a small deficit within the Clubspark account per annum to cover sinking funds as detailed in 2.11 (i.e. a deficit by less than £200 per court per year) the resulting invoice will be revised with the intention to make up the deficit the following year. A larger scale deficit will be reviewed by the Marke Wood Tennis Hub CIC, DDC and the LTA appropriately. The scale increase in the sinking fund has been adopted to reduce the possibility of this happening.
- 2.14 WLTCC have an ever-increasing waiting list for private membership for which they are at full capacity; alongside general public interest, it is intended to provide the opportunity for those waiting on this list, the season ticket option at Marke Wood Tennis Courts. Current private members of the club will be required to purchase a season ticket or a standard rate to also use the communal facilities at Marke Wood.

3 Identification of Options

- 3.13 Option 1: To offer the Marke Wood Tennis Hub CIC a 10-year lease.
- 3.14 Option 2: Not to offer the Marke Wood Tennis Hub CIC a lease.

Cabinet is reminded that, in discharging functions in relation to charities the law requires Members to put aside their aspirations for the Council in a corporate sense and to act solely in the best interests of the Charity. The Cabinet (acting as trustee) is required to act reasonably and prudently in all matters relating to the charity and to act with the same degree of care and skill as a prudent person or business would exercise in the management of his or her own affairs or those of someone else for whom they had responsibility.

4 Evaluation of Options

- 4.1 According to the Charity Commission's website the aims and activities of the Frederick Franklin Charity are:

“Provides sport and recreational facilities for the general public/mankind in the form of building, facilities and open space”.

In addition, it also lists the objective of the charity as:

“The object of the charity is, in the interests of social welfare, the provision of, or to assist in the provision of the facilities for recreation or other leisure time occupation to improve the conditions of life for the inhabitants of the area of benefit without distinction of political, religious or other opinions.”

- 4.2 The Cabinet, acting as trustees, are required to decide which of the options are in the best interests of the Charity.
- 4.3 The charity is governed by a scheme dated 22nd April 2002 (the "Scheme"). The Scheme provides authority for the trustees to let the land provided the restrictions on disposal given in both the Scheme and the Charities Act 2011 are adhered to, unless the disposal is excepted from those restrictions.

The Scheme

- 4.4 The Marke Wood Recreation Ground is identified in part 2 of the schedule to the Scheme and as such, the letting of it, or any part of it, is permitted during such periods as it is not occupied for its purposes. The tennis courts are currently under used (even though they are free of charge), primarily as there is no current provision for a permanent groundskeeper on site to collect fees or do this via an electronic system. As

a result, the maintenance is kept to a basic standard.

- 4.5 The trustee has previously submitted a similar question to the Charity Commission on whether, disuse of part of the land, substantially amounts to a period of no occupation, thereby permitting the trustees to go ahead and consider letting the land under clause 8(2) of the Scheme. The Charity commission did agree with the interpretation and trustees, if satisfied that there is disuse, may then move on to consider the statutory requirement relating to disposals.

Statutory Requirements – Charity Act 2011

- 4.6 The trustees are provided with further powers in the Charities Act 2011 (s117) to dispose of land but again must ensure they have considered any restrictions.
- 4.7 The restrictions are that the disposal of the land is not to a connected person as defined in s118 of the Charities Act or a trustee for, or nominee of, a connected person.
- 4.8 Furthermore, section 119 of the Charities Act 2011 sets out the requirements to be considered for leases, which are to be granted for more than 7 years, which is the case here, as the lease term being proposed is 10 years. Under section 119, trustees must:
- obtain and consider a written report on the proposed disposition from a qualified surveyor instructed by the trustees and acting exclusively for the charity (*section 119(1)(a), CA2011*);
 - the report must contain the information and deal with matters that are prescribed by regulations. The applicable regulations are the *C(QSR)R 1992*. (Charities (Qualified Surveyors' Reports) Regulations 1992/2980). The Council's valuer has had sight of these regulations and considered them when preparing his report;
 - trustees should advertise the proposed disposition for such period and in such manner as the surveyor has advised in their report (unless the report states that it would not be in the best interests of the charity to advertise the proposed disposition) (*section 119(1)(b), CA 2011*); and
 - decide that they are satisfied, having considered the surveyor's report, that the terms on which the disposition is proposed to be made are the best that can reasonably be obtained for the charity (*section 119(1)(c), CA 2011*).

These steps must be taken before trustees enter into any agreement for the sale, lease or other disposition of the land (*section 119(1), CA 2011*).

- 4.8.1 The implementation of the lease will provide organised, regular communal coaching programmes, plus public court bookings made from the LTA rally system. As a result, this will provide enhanced maintenance and upkeep of the tennis courts in line with the LTAs funding terms and conditions. The community will therefore benefit from having a proactive facility.
- 4.8.2 Option 1 would be the preferred option as it helps to provide opportunities to facilitate community use/promotion of tennis development programmes and provide a regular annual income for the charity of Frederick Franklin for future investment on the tennis courts. Furthermore, the lease will provide an integral maintenance programme ensuring regular upkeep and longevity of the facilities.
- 4.8.3 Option 2 would not be the preferred option as a lease agreement for Marke Wood Tennis Hub CIC, or the WLTC is the only viable option available once the refurbishment works are complete to ensure compliancy is kept with the LTAs funding terms and conditions which includes meeting standards for regular maintenance and

communal coaching programmes. Refusing the lease will result in finding alternative measures to ensure the terms and conditions are met, however keeping the operation and management of the courts internally within the council will likely result in being uncompliant with the terms and conditions due to staffing capacity; therefore there is a high risk that the grant funding will not be released on completion of the refurbishment works to the courts.

5 Resource Implications

- 5.1 The lease would result in a regular income for the charity of Frederick Franklin courtesy of the annual sinking fund (referenced in 2.9) and reduce the liabilities in relation to the tennis courts.

6 Climate Change and Environmental Implications

There is little Climate Change or Environmental Impacts. However, non-toxic solutions/ environmentally friendly alternatives to algae killer will be implemented as an annual treatment by the CIC as referred in the proposed maintenance schedule.

7 Corporate Implications

- 7.1.1 Comment from the Section 151 Officer: "Accountancy has been consulted on the report and have no further comments to add. (LS)"
- 7.1.2 Comment from the Solicitor to the Council: The Solicitor to the Council has been consulted in the preparation of this report and has no further comments to make (BD).
- 7.2 Comment from the Equalities Officer: 'This report relating to the Marke Wood Tennis Courts lease does not specifically highlight any equality implications, however in discharging their duties members are required to comply with the public sector equality duty as set out in Section 149 of the Equality Act 2010 <http://www.legislation.gov.uk/ukpga/2010/15/section/149>'
- 7.3 Other Officers (as appropriate):

8 Appendices

- 8.1 A - Location Plan
- B – Proposed Investment Programme
- C - Proposed Maintenance Schedule
- D - Rental Valuation
- E – Scheme dated 22 April 2002

9. Background Papers

Relevant papers on file

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