

Appendix 3

Appendix AM-H ~ Granting of sports leases – An overarching strategy

July 2016

Introduction

In July 2011, a paper was submitted to full Council that recommended the Mayor authorise the then Executive Head of Commercial Services, in consultation with the Chief Executive of the Torbay Development Agency (TDA), to grant leases for up to 40 years to sports clubs on acceptable terms with each case being considered on its merits. There are a number of sports clubs within Torbay who have since completed leases with Torbay Council. However, there are also still a number outstanding, which is absorbing a significant amount of effort and resource.

This overarching strategy is therefore intended to help streamline the process. The strategy will set out the key terms of occupation that the Council is willing to grant. This will be clear and transparent from the outset. The strategy should be extended to all sports clubs within the Bay to avoid a claim that the Council is being selective. Care will however, have to be taken as to what premises are leased to the clubs. A large number of football clubs hire pitches along with the use of changing rooms from the Council. It would be impractical to lease out an individual pitch with changing facilities, as this would deny other clubs from using them at other times. In these instances it may not be possible to offer any type of lease, regardless of its length.

By offering long leases to local sports clubs the Council can provide the clubs with the confidence that comes with security of tenure. This new found confidence should serve as a catalyst for improvement whereby our sports clubs will positively engage with their communities and in particular with our young people. Some local clubs are already fully engaged with their communities but this new overarching strategic approach to sports leases will ensure that the tenant clubs are working with the respective national Governing Body for their sport. Not all clubs are optimising the opportunities that are available and there is an opportunity cost.

It is clear that the Council has an over-supply of poor quality, asset related, sports provision in the Bay. The Council needs to understand the issues with its facilities and have a better understanding of where the demand exists. It would then be better placed to invest in those facilities, improving quality, increase demand and ultimately increase income to sports funds. Adhering to the terms listed below will help ensure this happens.

The Council will work with the Torbay Development Agency and the Torbay Sports Council to provide support and advice to those clubs that need help to understand the issues surrounding these sports leases. This support will include a set of "Frequently Asked Questions" that can be provided to the clubs and kept under review as an ongoing resource.

Key Terms

- **Advertising the Opportunity** - Sports leases will normally be advertised to ensure that there is a competitive element to the selection of a tenant and that our communities will be rewarded with the best offer in terms of quality. The Council will use a combination of quality and cost to demonstrate best value, when scoring an applicant's bid for a long sports lease. It is important that a local sports club that wishes to become a tenant or is already a tenant; is discouraged from 'coasting along', not improving or reaching out to their local community.
- **Full Market Rent payable** - In February 2016 the Council's Corporate Asset Management Plan 2015 ~ 2019, latest revision, was agreed and adopted by the Council. The revision inserted the following statement, "*Due to the financial challenges facing the Authority and the possible future reductions in Revenue Support Grants, unless there is specific approval at Full Council to the contrary, the Council will always seek to maximise the full market receipt for their assets whether by way of freehold disposal or leasehold interest*". The securing of full Market Rent is therefore in accordance with the Corporate Asset Management Plan.

[The estimated market rent assesses the lease value against other similar leases (i.e. sports leases) across the South Devon area. An estimated market rent will take into account whether the landlord or tenant has the liability for the cost of maintenance and what income generating facilities are at the disposal of the tenant. i.e. a club house & bar, private car parking, etc. The estimated market rent would also reflect the restrictive nature (sports use only user clause) of the lease and the level of the security of tenure.]

- **Sports clubs must be affiliated to National Sports Governing Bodies** - For the purposes of this strategy a sports club must be affiliated to a recognised national governing body for that sport. i.e. recognised by Sport England. Examples include, the Football Association, the Royal Yachting Association, the Rugby Football Union, the England & Wales Cricket Board, UK Athletics or England Athletics, etc. This key term is included to ensure that a tenant organisation has an appropriate constitution with associated rules & regulations. It also means that the tenant would be required to follow best practice in such matters as safeguarding, protecting young children, inclusion and financial probity; it will also help to prevent discrimination and promote equality. Consequently, it is expected that the tenant organisation will have the relevant policies for such matters and can therefore demonstrate a corporate social responsibility.

- **Lease length of up to 40 years** – The sports club should demonstrate the need for the lease length required. It is known that a number of funding bodies do not require clubs to hold leases for longer than 21 years to obtain funding. When granting medium to long term leases the Council should always ensure outputs and outcomes are monitored. If this is not monitored the Council risks losing control over the provision of sporting facilities at that leased area. The Council should not consider granting a lease, which is longer than 40 years as Upper Tribunal (formerly the Lands Tribunal), under s84 of the Law of Property Act 1925 may on certain grounds, after 25 years into the term, discharge or modify restrictions as to user or buildings on the land affecting the leasehold interest. Granting leases to a maximum lease of 40 years therefore prevents clubs applying to the Upper Tribunal thus safe guarding the Council's position. Where there is no existing lease in place any new sports lease granted will be contracted outside of Sections 24-28 (security of tenure provisions) of the Landlord and Tenant Act 1954.
- **Break Options** – The Council will look to insert mutual break options whereby in the event a sports clubs doesn't secure funding / grants, either party can bring the lease to an end on the service of a notice period. If a clubs takes a lease and did not apply, or were unsuccessful, in obtaining grant funding then the land might not be used to its full potential for the length of the lease with the Council being unable to use it for the same or any other purpose. For example, a club's membership may fall significantly over time and it may not be able to provide the same level of activities with the Council being unable to make use of the land.
- **Grants** – Sports clubs may make an application for a grant to offset market rent (a grant in lieu of rent) by following the procedure contained in Appendix AM-G of the Council's Corporate Asset Management Plan. If a decision is made to provide a grant it is likely to be a short period before it is reviewed and it will probably be linked to appropriate outputs and outcomes set out in the grant agreement. There will also be a clearly defined process for monitoring outputs.
- **Maintenance of Land & Buildings** – The leases will pass onto the sports clubs the full liability for the maintenance of the land and buildings. However, many sports pitches are currently maintained by TOR2 and this is expected to continue until at least 2019. The Council cannot make savings by individually removing certain playing pitches from the contract. Therefore, the Council may need to take account of this responsibility when assessing the appropriate market rent.

- **Adverse costs** – It is recognised that by passing the maintenance of the land and the buildings to the sports clubs this could represent a significant risk and liability that is unacceptable to the Clubs. To offset this risk where a significant item of disrepair manifests itself the sports club will be required to meet the first £1,000 of any costs and then an additional 10% of any costs associated with any repair needed above this ceiling. If the Council deems it is unable to meet the cost of the remaining 90% of repairs needed, it will have the ability to bring the lease to an end. Neither the Council nor the sports club should be required to bear an unacceptable level of liability, particularly where no budget exist to meet these costs. The Council’s decision shall be final in this regard.
- **Limit the use of lease restrictions** – If the Council is seeking to obtain market rent from a sports lease then it should also limit the use of lease restrictions which inhibits the clubs/tenants from maximising income. An exception will be to exclude telephone masts from the standard lease. Any consent to permit the erection of telephone masts will need to be agreed by the Council as the landlord in a separate agreement.
- **Identification of periphery land in sports leases** – The granting of sports leases will often cover a large area of land. It is possible that some land, most likely on the periphery of the demise area, may have some future development use/value. It is the intention that this land is identified on a lease plan at the commencement of the lease and reserved within the sports lease with rights for the Council to take back this land on the service of a suitable notice period.
- **Multiple Applications** – It is possible when considering future sports leases that the Council receives a number of Expression of Interests for one specific sports ground. Where this is the case the Council will apply a tender process for determining the outcome.
- **Standardised Lease** – The Council will look at all times to incorporate all of the above terms in a standard lease template. Any departure from the above will only be agreed in an exceptional circumstance.

Protocol for dealing with outstanding Sports Leases

1. Write to all sports clubs where negotiations are ongoing informing them of the new overarching strategy that will be applied on all new sports leases granted.
2. Propose new terms of occupation that adhere to the new strategy.

3. Consider any new requests against the criteria of this strategy and forward them to the Executive Head of Business Services and Assistant Director – Community & Customer Services for a steer about whether the request is agreed ‘in principle’.
4. Consult with Ward Councillors and the relevant community partnership about the proposed Sports Lease.
5. Take a report to Council for their consideration with the views of the Ward Councillors and the community partnership being incorporated into the report.
6. The following are the principal terms to be considered for all future Sports Lease and any variation must be agreed with the Executive Head of Business Services in consultation with the Assistant Director – Community & Customer Services :-
 - i) The sports club pays a full market rent for the premises.
 - ii) The sports club is responsible for the insurance and maintenance of the land and buildings with the club taking the facilities in their existing state.
 - iii) Where there is no existing lease (within the provisions of the Landlord & Tenant Act 1954) in place, the lease is to be excluded from the security provisions of the Landlord & Tenant Act 1954.
 - iv) The sports club to adhere to the agreed sports development plan (if required by the Council).
 - v) The sports club pays the Council’s reasonable legal and surveyor costs associated with the granting of the lease and, if applicable, the surrender of the existing lease.
7. The granting of any lease of open space is deemed to be a disposal of open public space and therefore the proposed granting of the lease will need to be advertised in accordance with the Local Government Act 1972.