

Executive Shareholder and Trustee Committee Report

Ward(s) affected: Burpham

Report of Strategic Services Director

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Date: 26 May 2022

Sutherland Memorial Park - Cricket Pavilion

Executive Summary

Sutherland Memorial Park ("the Park") is a 6.53 hectare open space parcel of land. The Burpham War Memorial Trust ("the Trust") comprises a 2.17 hectare strip of land making up part of the Park. The Trust was donated as a charitable bequest in 1954 by the Duke of Sutherland as a memorial to residents of Burpham who were killed on active service during the Second World War. The adjoining land was developed and incorporated in the 1990s, including a car park. The Council is the sole trustee of the charitable trust for the Burpham War Memorial Trust.

The Cricket Pavilion at the Park forms part of the land included in the Trust and is currently used by Sunshine Nursery (Guildford) Limited ("the Nursery") and the Guildford City Cricket Youth Project ('GCCYP') who play cricket on the park.

On 24 August 2021, the Executive Shareholder and Trustee Committee had approved that GCCYP be permitted to continue to hire the pavilion when required using existing hire arrangements outside of the Nursery's operating hours. However, GCCYP's use of the pavilion falls outside of the terms of hire arrangements and therefore officers are seeking to regularise GCCYP's use by way of a licence in order to protect the Council's interest and a lease of an area withing the pavilion for storage of equipment.

Recommendation to Executive Shareholder and Trustee Committee:

- (1) That the Head of Asset Management be authorised to grant a licence, outside of the Nursery operating hours, to Guildford City Cricket Youth Project in respect of their use of the Cricket Pavilion at Sutherland Memorial Park as well as a lease of a storage area within the building.

Reasons for Recommendation:

- To regularise the usage of the pavilion, secure the ongoing community amenity and protect the Council's interests. Regularising the GCCYP's occupation will protect the Council as currently the responsibilities

between the Council as Landlord and GCCYP are not clearly defined and as such there are risks regarding liability should an accident occur.

- To fulfil the Council's charitable trustee duties.

Is the report (or part of it) exempt from publication? No

1. Purpose of Report

- 1.1 The purpose of this report is to inform the Committee of the current uses of the pavilion and to seek consent for the recommendations laid out above.

2. Strategic Priorities

- 2.1 Central to the Council's Corporate Plan is the Community theme and our strategic priorities to support older, more vulnerable, and less advantaged people in the community and enhancing sporting, cultural, community and recreational facilities. Allowing appropriate organisations to deliver such services using some of our buildings can be an effective way of achieving the outcomes we seek.
- 2.2 To ensure compliance with the requirements of the Charities Act 2011.
- 2.3 To secure a financial income for The Burpham War Memorial Trust.

3. Background

- 3.1 The Burpham War Memorial Trust comprises a 2.17 hectare strip of land making up part of Sutherland Memorial Park. The land was donated as a charitable bequest in 1954 by the Duke of Sutherland as a memorial to residents of Burpham who were killed on active service during the Second World War. The Cricket Pavilion forms part of the land included in the Trust.
- 3.2 It is a specific requirement of the charitable bequest that the land be used only for parks and recreational purposes. See appendix 1.
- 3.3 On 31 March 2008 the Charity Commission removed the original trustees and substituted Guildford Borough Council as the sole charitable trustee.
- 3.4 GCCYP have hired the pitches, including the pavilion, for over twenty years for cricket matches and training. The pavilion is managed by Parks and Countryside on behalf of the Trust, and they oversee the hire arrangements. Approximately 60% of the pitches are on charitable land. See Appendix 2.
- 3.5 Annual income from GCCYP hiring the pitches has been as follows:
- 2018-19 Income - £4,587
2019-20 Income - £2,416

Income from GCCYP for 2020-21 was nil due to COVID restrictions preventing their activities.

- 3.6 On 24 August 2021, the Executive Shareholder and Trustee Committee had approved that GCCYP be permitted to continue to hire the pavilion when required using existing hire arrangements outside of the Nursery's operating hours. However, GCCYP's use of the pavilion falls outside of the terms of hire arrangements.
- 3.7 Officers are therefore seeking to regularise GCCYP's use of the pavilion.
- 3.8 GCCYP has agreed to enter into a licence to occupy the pavilion on the following key terms:
- (a) A five-year licence to occupy.
 - (b) Occupational hours are Fridays from 16:00pm to 20:00pm
Sundays between 1st April – 30th September in each year.
- 3.9 In addition, GCCYP wish to have exclusive use of a room within the pavilion for storage of equipment. GCCYP has also agreed to enter into a five-year lease of a storage area within the pavilion, which allows exclusive use and occupation.
- 3.10 Any other requirements outside of this will be dealt with by way of a hire agreement.

4. Key Risks

- 4.1 At present, GCCYP does not have a documented agreement to occupy and use the pavilion in the way they require. The Council's legal officers have confirmed that GCCYP does not have security of tenure. However, if the use and occupation of the pavilion is not formally documented, then the Council could be liable or deemed at fault if certain scenarios unfolded e.g. accidents, as the responsibilities of the licensor / landlord and user are not clearly set out, which may leave the Council exposed and liable.

5. Financial Implications

- 5.1 The Council currently subsidises the Trust's charitable expenses (2019/20 - £54,711). The GCCYP income contributes to the sustainability of the charity and therefore facilitates the delivery of its objectives.
- 5.2 An independent, Charities Act 2011 compliant valuation has been carried out, valuing the occupation and use of the facilities for the hours set out in para 3.8 at £1,300 per year. This represents best consideration.
- 5.3 Formalising the occupation would allow for better financial planning and minimise any losses to the Council.

6. Legal Implications

- 6.1 The Charity Act 2011 requires the Council, as charitable trustee, to take all steps to ensure the proper administration and financial management of Trust's charitable assets.
- 6.2 The Council is therefore required to administer the charitable land in accordance with the vesting document.

6.3 In terms of the lease for the storage area, the Council is required to meet the requirements for charitable disposals e.g.

(a) The lease will be subject to restrictions in sections 117 to 121 of the Charities Act 2011; and

(b) Valuation advice must be obtained and the Council must be satisfied that the terms for the lease are the best that can be reasonably obtained.

6.4 Officers are satisfied that the requirements set out in paragraph 6.3, in respect of the lease, as well as the proposed licence, have been met.

7. Human Resource Implications

7.1 There are no human resources implications as a result of this report. Any outcomes will be managed within existing resources.

8. Equality and Diversity Implications

8.1 A screening Equalities Impact Assessment has been undertaken. See Appendix 3.

9. Climate Change/Sustainability Implications

9.1 There are no climate change / sustainability implications from this report.

10. Summary of Options

10.1 The options available to the charitable trustees are:

10.1.1 Do nothing – this will not address the issues related to the use of the pavilion. The Council will also be in a position where it could be deemed liable in the event of an accident, for example, with no clear responsibilities defined.

10.1.2 Enter into a licence to regularise GCCYP's use of the pavilion and grant a lease of a storage area to GCCYP on the conditions outlined in this report as soon as practicable to mitigate the risks, also detailed in this report. This would regularise the occupation thus protecting the Council, as Landlord, should any incidents or accidents occur.

11. Conclusion

11.1 The Council has an opportunity to regularise arrangements with a longstanding hirer of the premises, protect a valued local amenity and charitable income in the short to medium term, as well as protecting the Council's interests, as the responsibilities between the Landlord and current user is not clearly defined and as such there are risks regarding liability should an accident occur.

11.2 The continued use of the charitable land and pavilion by GCCYP meets the charitable objectives of the Trust.

11.3 The grant of a licence for the pavilion and lease of a storage area is the preferred option.

12. Background Papers

None

13. Appendices

Appendix 1: Original Vesting Deed

Appendix 2: Plan – Extent of charitable land

Appendix 3: Equality impact assessment