

Agenda item 4

For decision – legal charges to unlock grant funding at Badgers Hill stadium

Authors: Peter Wheelhouse, Economic Development & Regeneration Manager and Deputy Town Clerk and Sarah Williams, Business Manager

Summary

This report seeks approval of legal charges on the leasehold asset at Badgers Hill stadium and a restriction on the Council's freehold asset at Badgers Hill. These provisions are a requirement of funders of the repair and improvement project at the site and once arranged will enable capital funding to be drawn down.

1. Background

Councillors will be aware that last year, it was confirmed that grant funding had been secured for a repair and improvement project at Badgers Hill stadium that would enable the installation of new changing and meeting facilities as well as essential repairs to the Clubhouse and other parts of the ground. £364,114 was awarded by the Government's Community Ownership Fund (COF) of which £50k is revenue funding for architectural work and which is already being drawn down by the CBS. This is matched by £150k from the Premier League Stadium Fund (PLSF) administered by the Football Foundation.

Both funders had indicated that they wished to see a legal charge in place against the asset in their favour to secure their investment. It has only recently been confirmed that those legal charges would be against the 25-year lease entered into by the Frome Town Community Benefit Society (CBS). In addition, both funders require a restriction on the Council's freehold asset and a deed of variation to the lease held by the CBS.

The Council's approval of these measures is essential to enable the CBS to draw down the capital funding necessary to proceed with the works.

2. What do the legal charges and restriction on the freehold asset mean for the CBS and the Council?

The legal charges will be a legal interest in the leasehold asset held by the CBS in favour of the funders. The charges will be registered against the property at the Land Registry. What those charges will mean is that if the CBS defaults, the funders will be able to have a say in reassigning the lease to another party in order to either complete the funded project as applied for, or to recover part or all of the grant funding including interest and the funders' costs. Examples of default include:

- Use of the grant funding for a purpose other than the funded project
- Failure to comply with the CBS' obligations under the Grant Funding Agreements
- Poor progress

- Cessation of CBS operations or insolvency

The two funders will negotiate a Deed of Priority to determine which legal charge takes precedence.

The restriction on the freehold asset required by the funders means that the Council could not sell its freehold interest in the stadium without the prior approval of the funders. This will also be registered at the Land Registry.

These measures will be in place for a minimum of 7 years in the case of the Community Ownership Fund and 10 years in the case of the Premier League Stadium Fund.

It is important to note that these measures do not put the Council's interest in the freehold asset at risk. However, the associated amendments to the lease would mean that:

- In the event that FTC had to exercise the break or forfeiture clauses in the lease, it would enter into a deed of covenant with the funders committing FTC's adherence to the terms and conditions of the grants – essentially FTC would have to take responsibility for completing the repair and improvement project to the satisfaction of the funders (currently a responsibility of the CBS) or repay the grants and costs.
- In the event of default of the CBS, FTC would enable assignment of the lease subject to our prior approval.

3. What other support is needed from the Council?

Councillors will be aware that the Deputy Town Clerk was involved with the preparation of the grant funding bids together with the Council's consultant, Johannes Moeller and a nominated member of the CBS Board. Since then, the Deputy Town Clerk, Business Manager and the Leader of the Council have worked to secure confirmation of the requirements of the funders when it comes to the legal charge and take the necessary advice from our lawyer. We have also had to agree to pay the legal costs of the Premier League Stadium Fund in this matter. Bates Wells are their solicitors.

Assuming that Council approves the recommendations set out in this report, it will be necessary to commission the further legal work to finalise the legal charge documents and the deed of variation to the lease. The legal fees to finalise the grants processes and legal charges are expected to be in the region of £9k and it is requested to fund these costs using budget available in the New Projects R&D budget (code 900-7977).

The Deputy Town Clerk has also been providing advice to the CBS' architect in terms of the specification of works and other project management support to the CBS and that work will continue. This is alongside the work that both he and the Leader of the Council continue to do as FTC's representatives on the CBS Board, to observe and advise the CBS in its early days of operation in areas such as operations and facilities management, the recruitment of directors and work to engage the wider community in the use of the stadium's facilities.

Recommendations

That Council approve:

- Legal charges on the leasehold asset held by the Frome Town Community Benefit Society in favour of the Community Ownership Fund and Premier League Stadium Fund for a maximum period of 10 years
- A restriction on the freehold asset for a maximum period of 10 years meaning that any sale of the Badgers Hill freehold within that time would be subject to the prior approval of the Community Ownership Fund and Premier League Stadium Fund
- A deed of variation to the lease with the Frome Town Community Benefit Society requiring FTC to adhere to the terms and conditions of the funders should FTC exercise break or forfeiture clauses in the lease and enabling assignment of the lease should the CBS default with the assignment being subject to FTC's prior approval
- Delegation of authority to the Business Manager in consultation with the Deputy Town Clerk to instruct the Council's lawyer to complete the necessary legal documentation at a cost of £9k to be funded from New Projects code 900-7977.