

### Agenda item 3

For decision – whether to lease (with an option to buy) Badgers Hill to a private operator or consider the sale of the freehold of the site to the private operator on a payment plan

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#### Summary

This report follows the one that was presented at the 5 June Extraordinary Council meeting regarding the potential lease (with an option to buy) Badgers Hill to a private operator and the decision by councillors to keep the door open for the private operator to improve their offer in a number of areas, particularly in relation to guaranteed long term community benefit. It sets out the background to the negotiations around the lease of Badgers Hill and the private operator's response to various points that have been raised with them around access by women and youth, governance, community benefit and safeguarding the Council's interests, following the decision on 5 June. The report also considers the private operator's proposal to purchase the freehold on a payment plan which councillors must consider alongside their proposal to lease with an option to buy.

Councillors are asked to consider three options:

- Option A - lease (with an option to buy) to the private operator
- Option B - sell the freehold on a payment plan to the private operator
- Option C - neither of the above and FTC to lead engagement with all stakeholders to consider an alternative way forward.

#### 1. Background

In 2022, FTC paid off substantial debts owed by Frome Town Holdings (the former freeholder of Badgers Hill stadium and a current shareholder of Frome Town AFC) to remove the threat of imminent repossession. The cost including legal and other professional fees totalled £377k. In return FTC secured an option to acquire the stadium which was exercised in August 2023. This recognised the value and potential of the site to the local community. FTC's actions effectively saved the football ground and enabled football to continue to be played there. Since then, the Council has committed a further £63k in legal and professional fees to support operation of the stadium.

In 2022, FTC worked with the national Football Supporters Association (FSA) and others locally to establish the Frome Town Community Benefit Society (the CBS) to manage the stadium and begin to address the poor condition of various parts of the ground. The CBS with support from FTC, the FSA and Frome Town AFC secured grant funding totalling £514,114 from the Community Ownership Fund and Premier League Stadium Fund to enable repairs and improvements to be made. Since then, the clubhouse roof has been replaced and new changing rooms and heating system for both the clubhouse and changing rooms are close to completion. In total and if staff time and grant funding are accounted for, over £1m of public money has been invested in Badgers Hill in the last three years.

Whilst the market rent of the ground was assessed by our valuer, the firm Carter Jonas, to be £32,500, FTC agreed a discounted rent for the CBS as match funding for the Community Ownership Fund monies. The rent agreed was £8k (+ VAT) p.a. in 24/25 and 25/26, £12k (+ VAT) p.a. in 26/27 and £15k (+ VAT) thereafter subject to 5 yearly rent reviews. The community benefit alongside the repair project was a key consideration in agreeing to the discounted rent.

The period between February and December 2024 was a volatile period for the CBS characterised by high Board turnover, lack of governance and financial management resulting in increasing debts by the end of the year, declining community use of the Clubhouse and failing relationships within the wider football community. Since the CBS AGM in December, the new Board has introduced new governance and operational procedures and has succeeded in reducing CBS' debt. Relationships with Frome Town Women and Frome Town United have improved.

However, the current financial and operational arrangements are not sustainable and all stakeholders agree that change is needed. The CBS doesn't receive a rent from the football clubs and doesn't benefit from the revenue generated by football other than bar income on matchdays. But it has to cover the full cost of stadium and pitch maintenance and some utility usage. At the same time, the football club does not benefit from the revenue generated by the Clubhouse.

A private operator, introduced by Frome Town AFC, came forward to FTC with a proposal to takeover both the football club and the stadium earlier this year. Initially, councillors provided a steer that they wished to negotiate to sell the freehold. The private operator's response to this was that their preference was to acquire the freehold but pay in instalments (an arrangement akin to an interest free mortgage). The steer from councillors was that this was unacceptable and they wished to see negotiations evolve around the grant of a long lease. Negotiations were conducted in good faith and were subject to councillors' approval with advice from an RICS registered valuer at Carter Jonas and advice from legal advisors at Chubb Bulleid and Bevan Brittan.

Negotiations culminated in discussion at two Council meetings on 30 April and 5 June. A link to the report submitted to the 5 June 2025 Extraordinary Council meeting together with supporting documents (including the private operator's original proposal) can be found on the website [here](#).

Prior to the meeting on 5 June, representations were invited from the public reflecting the requirement under the Local Government Act 1972 for FTC to give public notice of the potential disposal of a public open space. The majority of respondents indicated their support for the private operator's proposal. Their comments mostly focused on football legacy, frustration with current governance, and financial views. A minority of respondents opposed the proposal with those respondents providing detailed arguments especially around gender equality, inclusion, accountability and alternative options. These representations were supplemented at the meeting by presentations from Danny Greaves of Frome Town AFC, Lester Silk of Frome Town Supporters Club, Max Hirst of the CBS, Tara Tomley of Frome Town Women FC, Lee Seviour of Frome Town United and Darren Bernstein of the FSA.

Before the meeting, FTC received legal advice from lawyers, Bevan Brittan in relation to the discounted rent that was on the table and the need to consider whether the proposal represented ‘best consideration’ as defined by the Local Government Act 1972. The consideration was whether there were sufficient obligations or commitments from the private operator to preserve and maintain community benefit to justify the discounted rent. The conclusion by Cllrs was that, as the private operator’s proposal stood, they considered that the legal criteria for best consideration had not yet been met. They indicated that they would like to leave the door open for the private operator to improve their offer in relation to a number of areas and particularly guaranteed long term community benefit.

Shortly after the meeting, councillors provided a steer on the ways in which they would like to see the offer improved and negotiations since have revolved around the following four points:

- Access for women and youth – at the time considered inadequate and not of a sufficiently long term
- Governance arrangements - which at that point did not give adequate voice to the community
- Community benefits – at the time, councillors considered that the community side of the original business plan was underdeveloped and there was not enough commitment to broader community benefit
- Safeguarding of the Council’s interests – at the time councillors didn’t feel that the asset was sufficiently safeguarded with no rent deposit being in place

## 2. Progress since 5 June

### a. Access for women and youth

What the Council asked for	What the private operator is proposing
Equitable and guaranteed access to the stadium as a whole, not just the pitch but the changing rooms, the club house and storage at no cost, and for the life of the lease between the private operator and FTC. The spirit must be that the three teams are considered and work together as equals. The Strategic Pillars and Board Covenant proposed by the private operator (see below under Governance and Community Benefit) must, therefore, be part of the agreement between them and Frome Town Women and Frome Town United. These agreements must be developed collaboratively and not on a “take it or leave it basis” and be signed at the same time as the lease with FTC	<p>The Under 18 Floodlit Team that was managed by Frome Town United and played at Badgers Hill midweek will now operate as part of Frome Town AFC. It is understood that this decision was made independently of current discussions regarding a lease to the private operator. Therefore, Frome Town United will not be entering into an agreement to play at Badgers Hill.</p> <p>In response to the request from FTC, the private operator has revised the agreement on offer to Frome Town Women FC (FTW) that converts a one-year agreement to an agreement for the life of the operator’s lease. The agreement provides for access not only to the pitch but also to the stadium and grounds, which is inclusive of the changing rooms. Storage is not explicit although the private operator is open to a discussion with</p>

	FTW about this. The current draft of the agreement is silent on the cost of access by FTW although the private operator has indicated that access would be free of charge in an email to the club. One of the conditions of this agreement is an FA partnership as a pathway to affiliation with Frome Town AFC.
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### Comments:

At the time of writing, whilst we understand that Frome Town Women FC are willing to engage in discussion around the revised agreement, there are some things that are currently holding them back from entering into such an agreement. They revolve principally around the requirement to enter into a FA Partnership and past behaviour towards the club that has led to them feeling marginalized. Currently, they do not feel that the terms of the proposed Community Covenant (see below) provide sufficient safeguards. They are also seeking assurances regarding access to the clubhouse on matchdays owing to the league requirement to provide refreshments for visiting teams.

The private operator has asserted that a binding, good faith, and reasonable usage agreement *offered* to the club shall be sufficient grounds for completion of the lease in contrast to FTC's requirement that the agreement *be signed* at the same time as the lease with the private operator. Councillors should consider whether the offer of an agreement to Frome Town Women FC is acceptable from the point of view of securing inclusive community benefit.

### b. Governance

What the Council asked for	What the private operator is proposing
FTC wanted to see governance arrangements that give a voice to the community and that address the perception of a divisive culture at the football club	<p>The attached document 'Badgers Hill Community Benefit Business Plan 2025-26 (redacted)' submitted by the private operator (<a href="#">see Appendix 3.1 which can be viewed on the website here</a>) shows that both Frome Town AFC and the new Badgers Hill Limited (that will manage the site) will be subject to a new 'Community Covenant' grounded in the following principles:</p> <ul style="list-style-type: none"> <li>• Kindness and respect toward everyone</li> <li>• Working together for the good of the club</li> <li>• Acting professionally in meetings and communication</li> <li>• Being honest and clear, especially about any conflicts of interest</li> <li>• Speaking openly but kindly, even when we disagree</li> </ul>

	<ul style="list-style-type: none"> <li>• Taking care of the club for future generations</li> </ul> <p>In addition, it is proposed that Badgers Hill Ltd, the new company that will manage the site under the private operator's leadership, will form a new independent, volunteer-based 'Community Benefit Committee' whose role will be to monitor, report and advise on community activity at Badgers Hill, submit annual reports directly to FTC and publish recommendations publicly. It is understood that stakeholder groups will be invited to be part of this. The proposal is to reserve representation for youth, disability interests and underrepresented voices amongst others. Alongside that, the private operator proposes an online 'Open Forum' enabling local residents to submit feedback and ideas.</p>
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### Comments:

The private operator has made a clear commitment of intent towards ensuring that the community has a voice through the proposed new Community Benefit Committee (that will report to FTC) and the online forum. These structures may act as a useful scrutiny mechanism and sounding board but would have no executive power and as the plan stands don't guarantee the involvement of any particular stakeholder group. Control over what happens at Badgers Hill would rest with Badgers Hill Limited and Frome Town AFC under the private operator's leadership.

The Community Covenant appears to be a voluntary code only and there is no way of FTC enforcing the behaviour of directors of either Frome Town AFC or Badgers Hill Limited through the lease agreement. Councillors should consider whether the proposed governance arrangements go far enough in terms of giving true voice to the community.

### c. Community benefit

What the Council asked for	What the private operator is proposing
The steer from councillors was that the earlier business plan they had seen was underdeveloped when it came to community benefit – they wanted to see a greater commitment to the provision of community benefit as part of the private operator's plans in line with the legal advice received in relation to best consideration	<p>The Badgers Hill Community Benefit Business Plan submitted by the private operator sets out a number of 'Strategic Pillars' which appear to be community objectives that Badgers Hill Limited will seek to achieve. They include:</p> <ul style="list-style-type: none"> <li>• Access – facilities and events for all</li> </ul>

	<ul style="list-style-type: none"> <li>• Wellbeing – fitness and mental health programming</li> <li>• Belonging – shared celebrations and identity</li> <li>• Learning – youth and adult education</li> <li>• Joy – cultural and family events</li> </ul> <p>The document claims that Badgers Hill Limited will deliver approximately £51,500 per annum in measurable community benefit derived from:</p> <ul style="list-style-type: none"> <li>• Free matchday tickets for under 12s (midweek games) and recipients of Fair Frome hampers (£12k p.a.)</li> <li>• Community events open to the public (£20k p.a. in social value based on reduced hire rates and ‘inclusive participation’)</li> <li>• Provision of meals through Fair Frome Sunday lunches, youth programmes and food donation partnerships (£5k p.a.)</li> <li>• Facility hosting and utilities (£14.5k)</li> </ul> <p>The Community Benefit Business Plan indicates that Badgers Hill will be available for community hire 7 days a week and will offer a co-working/quiet café zone during weekday off-peak hours. A feasibility study is apparently in progress around re-establishing a gym and accessibility and sustainability upgrades are planned. A 3G pitch feasibility study is planned.</p>
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### Comments:

Clearly, the private operator has given further thought to the community benefits that they will deliver and has costed those out. This is an improvement. In some respects however, the Plan is still underdeveloped. The key points are:

- It is not clear how the Plan will be delivered or by whom. The budget shown in the Plan shows a spend of £20k on community programming but it is not clear whether this is to cover staffing or other resources. This is a conservative sum to be spent to deliver the wide-ranging programme that the Plan aspires to but it is a step in the right direction.

- The accessibility and sustainability upgrades identified in the Plan are aspirations only at this stage. For the 3G pitch idea to be delivered requires strong working partnerships to ensure equality of access but these are not referred to. It is not clear what the timescale is for these improvements or what resources will be devoted to planning or implementation.
- The private operator has said that they will pay £23k p.a. in rent although they are prepared to pay the full market rent at £32,500 (as assessed by our valuer, Carter Jonas) should councillors consider that there is insufficient community benefit generated by the proposal. As noted at the meeting on 5 June, Section 127 of the Local Government Act 1972 grants the Council the power to dispose of land "in any manner they wish", provided that 'best consideration' is obtained, for any interest for a term exceeding 7 years (or an assignment which still has more than 7 years to run). Should the private operator pay £23k p.a. as they propose, the site would be leased at below market value (an 'undervalue'). The advice that we have received from our legal advisers, Bevan Brittan is that where the Council considers it will further the promotion or improvement of economic, social or environmental well-being of the whole or any part of its area, or of all or any persons resident or present in its area, it may utilise the General Consent 2003 of the Secretary of State to dispose of the land at an undervalue. This is supported by Circular 06/2003.

Therefore, councillors will need to consider whether there is sufficient community benefit now proposed by the private operator to warrant agreeing to a discounted rent in line with the legal advice received from Bevan Brittan.

**d. Safeguarding of the Council's interests**

What the Council asked for	The private operator's response
<p>Following advice from FTC's legal advisors, Chubb Bulleid, councillors provided a steer that Badgers Hill as a publicly owned asset that had over £1m of public money invested in it needed more security to protect it.</p> <p>FTC therefore proposed:</p> <ul style="list-style-type: none"> <li>• Rent to be £32k p.a. quarterly in arrears (the market rent)</li> <li>• A deposit of £64k (2 year's rent) be paid by the private operator and held in trust for the private operator and to be governed by a rent deposit deed. FTC has offered to have this deed drafted. A UK guarantor</li> </ul>	<p>The private operator's responses in the form of a final offer were as follows:</p> <ul style="list-style-type: none"> <li>• A rent of £23k p.a. paid quarterly in arrears. Should councillors consider that insufficient community benefit is generated by the proposal, the private operator would be prepared to pay the market rent</li> <li>• Deposit requirement rejected as they say that the capital needs to be available for further investment</li> </ul>

<p>(Frome Town AFC) had been offered but FTC was concerned this provided insufficient security because it doesn't hold any assets and has had a difficult financial history</p> <ul style="list-style-type: none"> <li>• Option to buy the site to be at any time within 5 years of the date of the completion of the lease and not any longer</li> <li>• Site to be leased to the private operator in the condition as it is now (to avoid any public liability for future repairs) and for it to be returned to FTC in the same or better condition.</li> <li>• It was also indicated that FTC would not be responsible for contributing to any work that maybe required to enable the completion of the repair and improvement project and would not be liable for any debts of the CBS (also to protect the public purse)</li> </ul>	<ul style="list-style-type: none"> <li>• Proposal to limit option to five years rejected – they propose that option to purchase would remain for the entire lease term</li> <li>• They agree that in principle, the site will be returned in a similar or better condition than received subject to a full record of the existing condition being appended to the lease</li> <li>• The private operator accepts that FTC is not responsible for the repair and improvement project or the CBS debts and the private operator is not prepared to take on these liabilities either</li> </ul>
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### Comments:

As things stand, in the absence of a deposit of rent (held in escrow), FTC would only be able to rely on the mutual break clause should the private operator get into rent arrears. Our lawyers, Chubb Bulleid advised strongly that a rent deposit should be put in place.

Whilst the advice we have received from Chubb Bulleid is that the Council has no legal liabilities to the grant funders (the liabilities rest with the CBS and Frome Town AFC as parties to the grant funding agreements), there may be reputational risks associated with the disposal of a community owned asset to a private individual, particularly with regard to the Community Ownership Fund.

Councillors should consider whether these are acceptable risks.

### 3. Other key heads of terms of a lease

Item	What the Council asked for	Agreed by private operator?
Term of lease	23 years	Yes
Rent review	5 yearly subject to RPI (or its replacement index) increases with	Yes



	a cap of 4% and a collar of 2% per annum	
Repair	Lessee's full repairing responsibility	Yes
Alienation	The lessee will be allowed, under the terms of the lease and subject to lessor's consent to assign the lease subject to lessor's approval and a right of first refusal in favour of the lessor where the lessee is contemplating an assignment of the lease.	Yes
Break clause	A mutual break clause subject to a 1-year notice period without cause. Following service of the break clause notice, the lessee has 3 months to implement the Option to Purchase.	Yes
Overage	Should the private operator exercise their option, FTC will have the right to recover additional receipts under an overage provision that would be triggered in the event of any subsequent sale, agreement to lease, grant of a lease, grant of an equitable interest in the property, grant of shares in the purchasing company or a change in the control of the purchasing company. In such circumstances, the Council will share in the profit from any uplift in the value of the stadium on a sliding scale over time.	Yes

Both parties have also agreed that the termination of the CBS lease would occur on completion of the lease with the private operator.

#### 4. Purchase of the freehold

On a number of occasions and following a steer from councillors, FTC has indicated that it would be prepared to consider selling the freehold of Badgers Hill to the private operator. The consistent response has been that the private operator is willing to purchase the freehold on the basis of a payment plan although an earlier steer had been provided by councillors that they were not prepared to entertain this as an option. The private operator would like councillors to formally consider this offer as an alternative to the proposal to lease with an option to buy.

In summary, the proposal from the private operator is to acquire the freehold of the Badgers Hill site through a structured payment plan totalling £600,000, to be paid over 15 years without interest. The details are as follows:

Period	Annual payment	Years	Total for period
Years 1-5	£32,500	5	£162,500
Years 6-10	£41,250	5	£206,250
Years 11-15	£46,250	5	£231,250
Total		15	<b>£600,000</b>

This arrangement takes no account of interest on the 'loan' nor the likely uplift in value of the site over a period of 15 years and councillors will need to consider whether the principle is acceptable. In addition, it is strongly advised that further legal and financial advice is taken before supporting such a proposal.

5. What costs has FTC incurred in taking legal/valuation advice to date?

Item	Cost (ex VAT)
Valuation advice (Carter Jonas)	£4,500
Negotiation agency on the Heads of Terms	£9,000
Legal advice (Chubb Bulleid)	£4,000
Expert opinion on best value (Bevan Brittan)	£4,000
	<b>Total £21,500</b>

These costs have been funded from the General Reserve and would be replenished by the rental income from the tenant should FTC proceed.

6. What costs will FTC incur if the Council proceeds to lease Badgers Hill with an option to buy?

Item	Estimated Cost (ex VAT)
Due diligence on new company and liaison with solicitor (Carter Jonas)	£2,500
Conditions survey – cost shared with lessee	£1,000
Legal advice (Chubb Bulleid)	£5,000 quoted for lease
	<b>Total: £8,500</b>

These costs would be funded from General Reserve and would be replenished by the rental income from the new tenant.

7. Conclusions

The decision facing the Council is whether to:

- Option A - lease (with an option to buy) to the private operator
- Option B - sell the freehold on a payment plan to the private operator

- Option C - neither of the above and FTC to lead engagement with all stakeholders to explore an alternative way forward.

In considering these options, Cllrs should note that the private operator considers their latest proposals to be ‘a line of finality based on extensive good-faith efforts from both sides.’ In these circumstances, it may not be possible to return to the negotiating table.

In considering the proposal for the sale of the freehold on a payment plan, Cllrs should note the strong advice that further legal and financial advice is taken before supporting such a proposal.

In considering the leasehold option and as highlighted above, it is suggested that Cllrs:

- Consider whether the offer of an agreement to Frome Town Women FC is acceptable from the point of view of securing inclusive community benefit
- Consider whether the proposed governance arrangements go far enough in terms of giving true voice to the community
- Consider whether there is sufficient community benefit now proposed by the private operator to warrant agreeing to a discounted rent in line with the legal advice received from Bevan Brittan
- Consider whether there is sufficient security provided by the deal and whether the residual risks are acceptable

There will be a structured discussion in the public session around these questions.

The proposal is for councillors to discuss the commercial aspects of the deal in confidence after which a proposal will emerge on which councillors will vote.