

## **BARNSELY METROPOLITAN BOROUGH COUNCIL**

**This matter is not a Key Decision within the Council's definition and has not been included in the relevant Forward Plan**

### **Report of the Executive Director Core Services**

#### **COMMUNITY ASSET TRANSFER; THE PAVILION, BRIERLEY PARK, BRIERLEY GRANT OF A 25 YEAR LEASE BY THE COUNCIL AS TRUSTEE OF THE MINERS WELFARE RECREATION GROUND, BRIERLEY, TO BRIERLEY PLAYMATES**

##### **1. Purpose of Report**

- 1.1 The purpose of the report is to consider the grant of a 25-year lease of the Community Pavilion and surrounding grounds at Brierley Park (shown edged black on the attached plan) by the Council, as Trustee of the Brierley Miners Welfare Scheme, to Brierley Playmates, so that they can continue to provide pre-school nursery places to the local community.

##### **2. Recommendations**

###### **RECOMMENDATION TO COUNCIL:**

- 2.1 That, subject to the statutory procedures under the Charities Act 2011 being complied with, the Council, in its capacity as Trustee of the Brierley Miners Welfare Scheme, approves the grant of a 25-year lease to Brierley Playmates.
- 2.2 That the Service Director Assets be authorised to finalise Heads of Terms for the proposed 25-year lease , in accordance with charity legislation.
- 2.3 That the Executive Director of Core Services be authorised to complete the lease to Brierley Playmates.

##### **3. Introduction**

- 3.1 Following the dissolution of Brierley Town Council and abolition of the Parish of Brierley in April 2016, the rights and liabilities of Brierley Town Council transferred to Barnsley Metropolitan Borough Council. The Council subsequently became trustee of Brierley Miners Welfare Scheme Recreation Ground originally having been created by the Department of Education and Science, in pursuance of Section 3 of the Open Spaces Act 1906 as deposited with the Secretary of State.
- 3.2 The Community Pavilion is situated on the eastern boundary of the Recreation Ground. It is a former sports changing facility that has undergone major refurbishment over time and is now the place of operation and headquarters of Brierley Playmates. Although they have occupied the pavilion for a number of years, they currently have no formal agreement detailing the terms of their occupation.

- 3.3 Brierley Playmates (registered charity 1036606) provide pre-school education and care to local children between the ages of 2 and 5. They are committee run, with parents of the attending children invited to become members. The Charity receives Early Years Education funding on a per-child headcount basis and currently employs 5 members of staff.
- 3.4 The Council are in receipt of approvals for the proposed lease from the Coal Industry Social Welfare Organisation (CISWO) and the Charity Commission.
- 3.5 Charities legislation allows for “charity-to-charity” transactions to be completed at less-than-best obtainable value, provided that the relevant authorisation can be obtained and the transaction is in-line with the objectives of the Trust.

#### **4.0 Proposal and Justification**

- 4.1 It is proposed that subject to the procedures under the Charities Act being adhered to, the Council as Trustee approve the granting of a 25 year lease of the Brierley Park Community Pavilion and grounds to Brierley Playmates in accordance with charity legislation.
- 4.2 The terms of the lease will make the tenants responsible for maintenance and any repairs to the property, along with all outgoing costs and utilities. The Council will continue to insure the building but recharge the premium to the tenant.
- 4.3 The proposed lease will contain a landlord or tenant break clause, subject to 6-months’ written notice. This will provide a degree of flexibility ensuring the Charity can terminate the agreement if the management of the facility becomes too onerous and allow the Council to take occupation in the event of continued and material tenant breach.
- 4.4 The proposal is in line with the Council’s Community Asset Transfer Policy (Cab 30.1.2013.6.3). However, this consent is not relevant to this transaction given this is a decision taken by the Council as Trustee, rather than Local Authority. Such an arrangement is permitted under Charities Legislation as a “charity-to-charity” transaction and will enable the Council’s charitable ambitions to be fulfilled as the Brierley Playmates will continue to meet the objectives of the Trust.
- 4.5 The continued operation of the facility as a nursery is an important factor in ensuring community wellbeing, not just in terms of the provision of pre-school education in the village (Brierley Playmates is the only current local provider), but also in the availability of a social interaction and community events for the parents or carers of the attending children.
- 4.6 Community groups or charities with observable vested interests in property are more likely to receive funding from external parties for the purposes of development, refurbishment or stock replenishment. The proposed lease would assist the Charity in undertaking any necessary repairs or redevelopment of the building and provide confidence in the Charity’s long term ability to sustain itself financially.

## **5. Consideration of Alternative Approaches**

- 5.1 If the proposal is not approved, the Council's obligations as Trustee and reasonable landowner will mean the management of the pavilion will revert back into the Council's remit. Due to budget pressures and limited resources, in such circumstances it is likely that the building would be closed, forcing the Charity to either suspend operations or relocate. In either event, the service would be lost to the community.
- 5.2 Transferring the freehold of the land in question to the Charity is not possible due to the Council's Trust obligations.

## **6 Impact on Local People**

- 6.1 The proposal would ensure the continued involvement, inclusion and empowerment of a third-sector organisation in the local community. It would also provide a sustainable location for the provision of pre-school education in the village, including a social hub for parents and carers of young children.
- 6.2 Central to Brierley Playmates structure is the encouragement for parents and carers to be involved in the management of the Charity at a committee level. The proposed lease would provide a long-term stability that would only serve to boost participation and thus increase social investment in the community.

## **7. Financial Implications**

- 7.1 There are no direct financial implications associated with this proposal as the transaction is being dealt by the Council as Trustee as opposed to the Local Authority.
- 7.2 The grant of a 25 year lease to Brierley Playmates will ensure that the building is maintained and continues to be used by the community in line with the Council's Community Asset Transfer Policy ref Cab.30.1.2013/6.3.
- 7.3 The grant of a 25 year lease will allow Brierley Playmates to make applications for funds to support their operation and funds towards the premises that the Council as Trustees is unable to access.
- 7.4 The proposal to award the lease ensures the best use of the asset and will have significant benefits to the local community as outline within section 6 of this report.
- 7.5 The Brierley Playmates will pay the councils reasonable legal and surveyors fees in respect of the lease.
- 7.6 There are no undue VAT implications arising as a result of this report.
- 7.7 For the purpose of IFRS the lease will be classified as an operating lease.

## **8. Employee implications**

- 8.1 There are no implications for BMBC employees as a result of this recommendation

## **9. Communications implications**

- 9.1 The grant of the new lease will be subject to complying with the Charities Act and where required the necessary public notices will be posted.

## **10. Consultations**

- 10.1 Local ward members have been consulted on the proposed lease and support the proposals as detailed in this report.
- 10.2 The Service Director Stronger, Safer & Healthier Communities (Parks Services) support the grant of a 25 year lease.
- 10.3 Financial services Manager and the insurance and Taxation Manager on behalf of the Service Director of Finance (S151 Officer), has been consulted and details are shown in Item 7 of the report.
- 10.4 Legal Services have also been consulted in the creation of this report in respect to the grant of a lease in relation to land and property subject to Trust.

## **11. The Corporate Plan and The Council's Performance Management Framework**

- 11.1 The Charity's mission statement emphasises the importance of community involvement and is in alignment with the continuing development, consolidation and expansion of community resources as detailed in the Council's Corporate Plan. Moreover, the Charity is committed to developing attending children's social relationships and community awareness as part of the Early Years Foundation Stage Framework, which will foster long-term emotional investment in the borough.

## **12. Promoting Equality and Diversity and Social Inclusion**

- 12.1 The continuation of free childcare in the village will assist families with young children, teenage parents, and families on low income. There are no foreseeable negative effects arising from this report.

## **13. Tackling the Impact of Poverty**

- 13.1 The presence of a reliable and sustainable free childcare provider in the village enables families with young children to feel confident pursuing other vocations. The service provides a welcome respite to parents you would otherwise be full-time carers and gives them the time to enter or continue employment or to pursue further education.

- 13.2 Longer-term, the presence of a pre-school education facility in the village will increase communication and connectivity with local schools and academies for mutual academic benefit.

#### **14. Tackling Health Inequalities**

- 14.1 The continuation of the community nursery facility will provide a source of advice and information about many issues that impact on children's health including diet, exercise, and healthcare.
- 14.2 The Charity has adopted the Early Years Foundation Stage learning framework. A central theme of this document is the promotion of children's physical development, including detailed emphasis on the importance of physical exercise, basic hygiene, and self-care. Moreover, the framework encourages regular and consistent discourse with health professionals throughout child development.

#### **15. Reduction of Crime and Disorder**

- 15.1 Vacant or under used buildings and land can attract vandalism and unauthorised uses such as fly-tipping, substance abuse and other anti-social behaviour. The proposed transfer will keep the property in use, helping to prevent such problems.
- 15.2 A thriving pre-school service will encourage more use of the park by local residents, thereby increasing the potential participation in the use of the land by other community organisations, including the existing neighbouring football club.

#### **16. Risk Management Considerations**

- 16.1 The granting of a lease to the Brierley Playmates would see a continuation and potential development of the nursery facility that had been under the management of the Charity for a number of years, keeping the asset at the heart of the community and in a productive use for the benefit of the local population. That being said, it is possible during the 25 year term that the Charity disbands, either through financial hardships or possible changing priorities of the personnel.
- 16.2 To mitigate the ramifications of this, the lease will include both landlord and tenant break clauses, allowing both parties to terminate the agreement subject to 6 month's written notice. This will ensure that the Charity is not entering into an agreement that is potentially too onerous to fulfil and will give the council the opportunity to terminate the agreement in the event that the tenants fail to remain in accordance with the terms of the lease.

#### **17. Health, Safety and Emergency Resilience Issues**

- 17.1 The proposal to lease the property will be carried out giving full considerations to current Health and Safety legislation.

**18. Compatibility with European Convention on Human Rights**

- 18.1 This report recognises the promotion and importance of equality, diversity and human rights for all members of the local community and the wider borough.

**19. Conservation of Biodiversity**

- 19.1 There are no issues arising from this report.

**20. Glossary**

- 21.1 CISWO - Coal Industry Social Welfare Organisation

**21. List of appendices**

- 21.1 Appendix A – Site plan

**22. Background Papers**

- 22.1 Correspondence regarding this matter is held on the files in Asset Management – not available for inspection, contains exempt information.

**Office Contact: Tim Hartley Telephone No: 774615 Date: 11th December 2017**

Financial Implications/Consultation



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*(To be signed by senior Financial Services officer where no financial implications)*