

ANGUS COUNCIL

SEPCIAL MEETING OF THE POLICY & RESOURCES COMMITTEE

THURSDAY 1 OCTOBER 2020

COMMUNITY ASSET TRANSFER APPLICATION – DECISION – SKILZ ACADEMY, ASTROTURF PITCH AND GROUND, ARBROATH SPORTS CENTRE, KEPTIE ROAD, ARBROATH

JOINT REPORT BY DIRECTOR OF LEGAL & DEMOCRATIC SERVICES AND DIRECTOR OF FINANCE

ABSTRACT

This report seeks approval for the Director of Legal and Democratic Services to issue a Decision Notice to reject the CAT application by Skilz Academy to take ownership of the Astroturf pitch and ground at Arbroath Sports Centre, Arbroath and seeks approval for the Council to enter into a lease with Skilz Academy for the pitch and ground. This matter was previously considered by the Special Arrangements Committee and, due to ongoing progression and development of the issue as detailed in this report, further recommendations are being put to Committee for consideration.

1. RECOMMENDATION(S)

It is recommended that the Committee:

- (i) notes that on 23 June 2020 the Special Arrangements Committee considered a Community Asset Transfer (CAT) application by Skilz Academy to take ownership of the Astroturf pitch and ground at Arbroath Sports Centre, Arbroath, and agreed to approve this application subject to conditions 1-7 set out in Paragraph 7.4 of Report [151/20](#) and the additional conditions (vii) and (viii) set out in [Article 4](#) of the minute of that meeting being agreed between the parties;
- (ii) notes that Standing Order 26(3) applies in these circumstances and states that Standing Order 26 (Alteration or Revocation of Previous Decision) shall not apply to the ongoing progression or development of an issue on which a decision is required;
- (iii) based on the information and advice contained within this report, delegate authority to the Director of Legal and Democratic Services to issue a Decision Notice to reject the application by Skilz Academy to take ownership of the Astroturf pitch and ground at Arbroath Sports Centre, Arbroath giving reasons for the rejection;
- (iv) if recommendation (iii) is approved, delegate authority to the Director of Infrastructure, following consultation with the Director of Legal and Democratic Services, to remove the pitch from Angus Alive's licence to occupy and thereafter, enter into a non-CAT 99-year lease with Skilz Academy for the Astroturf pitch and ground at Arbroath Sports Centre, Arbroath at a rent of £1 a year, if asked, subject to the following being conditions in the lease: -
 - (1) the conditions 1-7 set out in Paragraph 7.4 of Report 151/20 and the additional conditions (vii) and (viii) set out in Article 4 of the minute of the meeting of the Special Arrangements Committee of 23 June 2020; and
 - (2) the Council's standard CAT lease conditions, set out in Appendix 1; and
 - (3) such other conditions as the Director of Legal and Democratic Services may determine necessary to secure the services/outcomes set out in Skilz Academy's CAT application.
- (v) note that if (iv) is agreed it will be necessary to conclude formal legal agreements before the lease transfer to Skilz Academy formally takes place.

2. ALIGNMENT TO THE ANGUS LOCAL OUTCOMES IMPROVEMENT PLAN/CORPORATE PLAN

The proposals set out in this report will contribute to the outcomes outlined in the Local Outcomes Improvement Plan, Locality Plan and Council Plan, which focus on the economy, people and place. Community Asset Transfer is a core part of Community Empowerment and it is important that the Council support community groups in a manner which delivers best value.

3. BACKGROUND

Reference is made to Article 4 of the minute of meeting of the Special Arrangements Committee of 23 June 2020 and Report 151/20.

4. CURRENT POSITION

Following the Special Arrangements Committee decision, council officers fully considered the long term implications of the proposed conditions 1-7, set out in Paragraph 7.4 of report 151/20 and the additional conditions (vii) and (viii) set out in Article 4 of the minute of meeting of 23 June 2020. They looked at how these could work, bearing in mind that the intention was for these to apply in perpetuity. Officers also took account of the fact that the area of ground is situated within a secondary school. This followed upon the issues highlighted in report 151/20 in terms of the operational challenges of the sale and the loss of control of a central part of the school site. This involved considering technical legal points.

Under the Title Conditions (Scotland) Act 2003 conditions in a disposition (sale deed) require to meet certain characteristics. Conditions must directly benefit the adjoining land owned by the council. It is not clear that proposed conditions such as replacing the Astroturf surface, providing changing facilities and holiday coaching courses, while beneficial, would meet that test.

Report 151/20 mentioned the approval would be a conditional approval subject to the conditions in 7.4 being met. It said there was no guarantee that if the CAT was approved it would be possible to find workable solutions acceptable to all parties (Skilz Academy, the council and Angus Alive). Officers were keen to find a solution so that a sale could proceed notwithstanding the issues. Despite full consideration, officers have concluded that there are risks to the Council in terms of a sale in being able to ensure that the conditions imposed by committee will remain in place and be valid in the longer term. Officers have concluded that a lease rather than a sale is how these risks in terms of the validity of the conditions can be assured for the longer term. This would be a very long-term lease – 99 years with a notional rent of £1 a year, if asked. A lease can include conditions which do not relate directly to the land, so would not meet the test for a sale disposition. An owner or tenant can apply to the Lands Tribunal to have title conditions varied or discharged. This covers all valid conditions in a sale disposition but would only cover lease conditions which relate directly to the land. Lease conditions rarely come before the Lands Tribunal. Officers are consulting Skilz Academy on this and at the time of preparing this report are waiting to hear from them.

Assuming the lease proposal is agreed by elected members, the conditions mentioned above would still require to be progressed and agreed among the Skilz Academy, the council and Angus Alive. Accordingly this would still be a conditional approval subject to that. Officers would endeavour to make progress on these as quickly as possible, mindful that there has already been a delay in progression as these complicated title issues were considered.

Skilz Academy's CAT application was for a purchase, not a lease. If, as this report recommends, their purchase application is rejected they could apply for a CAT lease but that would cause further delay as the statutory procedure would start from scratch. Instead officers propose a non-CAT lease on the terms which would have applied had their original application been for a CAT lease. That would not be subject to the CAT consultation process so should allow matters to progress quicker than would otherwise be the case.

Once the council issues a decision notice on the CAT purchase application, either approving it with conditions, or rejecting it and offering a lease, Skilz Academy could request a review of the decision within 20 working days of the Decision Notice being issued by the Council.

5. PROPOSALS

For the reasons detailed in paragraph 4, officers recommend that elected members: -

- (i) reject Skilz Academy's application for a CAT purchase; and
- (ii) as an alternative, offer Skilz Academy a 99-year non-CAT lease at a notional rent of £1 a year, if asked, subject to:
 - (a) the conditions 1-7 set out in Paragraph 7.4 of report 151/20 and the additional conditions (vii) and (viii) set out in Article 4 of the minute of meeting of 23 June 2020; and
 - (b) the council's standard CAT lease conditions; and
 - (c) such other conditions as the Director of Legal and Democratic Services may determine necessary to secure the services/outcomes set out in Skilz Academy's CAT application.

In summary, officers recommend to members a lease rather than a sale, to ensure that the conditions the Special Arrangements Committee wished to be agreed among the parties shall remain enforceable on an ongoing basis. A 99 year lease should not affect Skilz Academy's proposal for the site as such, nor any external funding that may be on offer from funding bodies because the lease term would exceed the life of the replacement pitch, lighting and changing facilities which Skilz Academy propose to put in place.

As mentioned in report 151/20, Angus Alive has a licence to occupy the pitch (but not the ground around it). If members agree the lease to Skilz Academy, the pitch can be removed from Angus Alive's licence on giving three months' notice, or such shorter time as Angus Alive may agree.

We have updated Angus Alive on these new proposals and have informed the Education and Lifelong Learning Service.

6. FINANCIAL IMPLICATIONS

Rejecting the CAT purchase application, without offering a lease

The financial benefits outlined in 6.4 of report 151/20, would be lost but the financial dis-benefits, outlined in 6.5, would be avoided.

Rejecting the CAT purchase application, but agreeing a non-CAT lease instead

The financial benefits, outlined in 6.4 of report 151/20, and the financial dis-benefits, outlined in 6.5, would still apply during the 99-year lease period, except as follows:

The market rent is estimated at £1,600 per annum. As mentioned in the report Skilz Academy will need to secure significant funds to replace the existing pitch. The nominal rent of £1 a year, if asked, would equate to a total rent of £99, just £1 below the proposed CAT sale price, although in practice it would not be economic, in terms of officer time, to collect this.

The CAT Officer Group's financial assessment CAT purchase proposal scored 26 out of 52 and the community benefit scored of 55 out of 90. The CAT purchase proposal was assessed as likely to represent best value. The community benefit for a 99-year lease would be the same during the period of the lease. The Disposal of Land by Local Authorities (Scotland) Regulations 2010 allow the council to agree a below market rent where it has carried out an appraisal to consider the financial implications, benefits and disbenefits and determined that the lease for that rent is reasonable and likely to contribute to the promotion or improvement of economic development or regeneration; health; social well-being or environmental well-being.

7. RISKS

	Option	Advantages	Disadvantages
1	Proceed with the CAT sale in terms of the earlier decision.		<ol style="list-style-type: none"> 1. Several conditions would not be enforceable, eg Skilz replacing the Astroturf surface, providing changing facilities and holiday coaching courses. The aim of these was to secure the community benefit on which the proposal was assessed and to protect the council's position. 2. The council could not take action if Skilz Academy breached conditions which were unenforceable. 3. Skilz could request a review of the conditions.
2	Reject the CAT sale and offer a non-CAT 99 year lease.	<ol style="list-style-type: none"> 1. The proposed conditions can be validly inserted in the lease, protecting the community benefit. 2. Conditions in a lease are easier to enforce than conditions in a sale disposition. 	<ol style="list-style-type: none"> 1. Skilz could reject the lease and walk away, leaving the council in its current position. 2. Skilz could request a review of the rejection of their CAT purchase.

8. CONSULTATION

Angus Alive has been consulted in the preparation of this report.

NOTE: The background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) which were relied on to any material extent in preparing the above report are:

- Report 151/20 submitted to the Special Arrangements Committee on 23 June 2020
- Minute of meeting of the Special Arrangements Committee of 23 June 2020

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List of Appendices: Appendix 1 - the Council's standard CAT lease conditions