

ANGUS COUNCIL

POLICY & RESOURCES COMMITTEE

THURSDAY 27 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 Community Asset Transfer application by Skilz Academy to take ownership of the Astro turf 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:
 - (a) on 23 June 2020 the Special Arrangements Committee considered a Community Asset Transfer (CAT) application by Skilz Academy to take ownership of the Astro turf 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 (attached as Appendix 3) and the additional conditions (vii) and (viii) set out in Article 4 of the minute of that meeting (attached as Appendix 4) being agreed between the parties; and
 - (b) as mentioned in Report 151/20 (and taken into account by the CAT Working Group when scoring the CAT purchase application) Skilz Academy need to secure significant funds, and although they have identified funding sources they have not yet confirmed to the Council that funding is in place, but the previous approval of the CAT purchase and current proposal are conditional upon funding.
- (ii) notes that Standing Order 26(3) applies in these circumstances as it is the ongoing progression or development of an issue on which a decision is required;
- (iii) notes that, taking on board the Special Arrangements Committee's decision of on 23 June 2020 to sell the site to Skilz Academy and based on the information and advice contained within this report, officers are recommending that the transfer of the Astro turf pitch and ground at Arbroath Sports Centre, Arbroath be facilitated through a lease rather than a sale, and consequently;
 - (a) 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 Astro turf pitch and ground at Arbroath Sports Centre, Arbroath giving clear reasons for the rejection, which may include either or both of the following:
 1. Due to issues concerning the enforceability of conditions (as outlined below as CAT Conditions) which were necessary in terms of the sale given (i) the

area of ground is situated in a secondary school and (ii) the operational challenges that exist relating to the nature of the proposed use for the site;

2. Skilz Academy did not apply for a CAT lease, under which such conditions might be more easily enforced;

- (b) if recommendation (iii) (a) is approved, delegate authority to the Director of Infrastructure, following consultation with the Director of Legal and Democratic Services, to remove the pitch from ANGUSalve'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 conditions being agreed among the Skilz Academy, the council and Angus Alive and included in the lease documentation as appropriate, namely: -

(1) THE "CAT CONDITIONS", being

(a) conditions 1-7 set out in Paragraph 7.4 of Report 151/20, being:

- (i) Agreement being reached between the Council, ANGUSalve and Skilz Academy on school use arrangements and costs, i.e. so as to ensure there is no detriment or negative impact on school access and costs compared to retaining the asset;
- (ii) Safe and workable plans for public access to the facility being agreed by the Council / ANGUSalve and suitable legal agreements being put in place for rights of access being established for Skilz Academy. This would cover both construction and operational phases;
- (iii) Agreement being reached between the Council, ANGUSalve and Skilz Academy on access to Changing Facilities in a manner which ensures the safety and wellbeing of all users of facilities;
- (iv) Agreement being reached with the Council / ANGUSalve on how Skilz Academy will ensure adequate community access and fair pricing will apply to usage of the facility;
- (v) Skilz Academy securing the full funding package required and commissioning the works to replace the existing astroturf surface and fencing to industry standards and if required provision of an access route; and
- (vi) Agreement that the Skilz Academy will meet the cost of changes to the energy supply arrangements (currently through the school and will need to be separated).
- (vii) Agreement being reached on any other requirements which the Council, ANGUSalve and Skilz Academy need to put in place to operate the facility in a manner which ensures compliance with relevant laws and regulations. This includes applying the Council's standard CAT terms and conditions; and

(b) 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, being:

- (i) that the applicant must reach agreement with ANGUSalve and Angus Council on the question of, and terms and conditions of, public access and school access as required to the new proposed facility on an equivalent basis of current usage including provision of term time and holiday coaching courses.
- (ii) toilet facilities, including suitable disabled access, are to be provided by the applicant as agreed with Angus Council in accordance with the phases of the applicant's business plan.

(2) THE FOLLOWING ADDITIONAL CONDITIONS, required to secure the services/outcomes set out in Skilz Academy's CAT application:

- (i) Within 1 year from the date of entry Skilz Academy will replace the existing floodlights with new low energy LED lights.
- (ii) Within 3 years of the date of entry Skilz Academy will secure funding for the provision of a community building adjacent to the pitch for the use of the community.
- (iii) Skilz Academy to complete the community building within 1 year of securing funding.
- (iv) Such other conditions as the Director of Legal and Democratic Services may determine necessary to secure the services/outcomes in Skilz Academy's CAT application.

and

- (3) **THE COUNCIL'S STANDARD CAT LEASE CONDITIONS** set out in Appendix 1.

- (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 CAT Conditions. They looked at how these could work, bearing in mind that the intention was for these to apply in perpetuity. This involved considering technical legal points. 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, in particular with reference to future development, all as outlined in paragraph 6.2 of the said report. Committee were made aware of the said operational challenges and by agreeing to the sale of the site were willing to accept the loss of control of a central part of the school site provided the CAT Conditions could be met.

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 CAT Conditions 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 ANGUSalve). 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. Mindful that the committee's decision was to provide Skilz Academy with occupation and use of the Astroturf pitch on a long-term basis, officers considered if there was some other way that this could be done. Officers have concluded that a lease rather than a sale is how these risks in terms of the validity of the conditions can be

better 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, unlike the restrictions on a sale disposition conditions under the Title Conditions (Scotland) Act 2003. 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 new proposal for a lease and its implications and at the time of preparing this report are waiting to hear from them. Consequently, having taken on board the Special Arrangements Committee's decision of on 23 June 2020 to sell the site to Skilz Academy, officers are recommending that a transfer be facilitated through a lease rather than a sale for the reasons outlined above. Members should note that the loss of control of a central part of the school site would still exist for the duration of the lease.

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 ANGUSalve. 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 a CAT lease. It should be noted that of course the CAT consultation process has already been followed in terms of the CAT purchase application. This resulted in 36 representations, all 36 approving the sale and none objecting to it (a copy of these is attached as Appendix 5).

Once the council issues a decision notice on the CAT purchase application, either approving it with the conditions mentioned in recommendation 1(i), or rejecting it and offering a lease on the conditions mentioned in paragraph 5, Skilz Academy could request a review of the decision within 20 working days of the Decision Notice being issued by the Council.

When scoring the CAT purchase application, the Community Asset Transfer Officer Group took into account that Skilz Academy will need to secure significant funds to replace the existing pitch. Report 151/20 mentioned this and members agreed that the CAT conditions should include the requirement for Skilz Academy to secure the full funding package needed. Skilz Academy have identified funding sources but have not confirmed that funding is in place. As mentioned in point 7 of Appendix 2 of this report, the lease would be conditional on the community group securing funding for replacing the Astroturf surface, fencing and, if required, the provision of an access route, and the provision of a community building.

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, following on from the Special Arrangements Committee's decision of 23 June 2020 to sell the site to Skilz Academy, offer Skilz Academy, instead of ownership of the site, a 99-year non-CAT lease at a notional rent of £1 a year, if asked, subject to:
 - (a) the CAT conditions; and
 - (b) the council's standard CAT lease conditions; and
 - (c) the additional conditions (Additional Conditions) set out in Recommendation 1(iv) (2) to secure the services/outcomes set out in Skilz Academy's CAT application.

The CAT conditions and Additional Conditions are set out in the Heads of Terms (Appendix 6) and the standard CAT lease conditions are set out in Appendix 1.

In summary, officers, taking on board the Special Arrangements Committee's decision of on 23 June 2020 recommend to members a lease of the site 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 and is normally acceptable to lenders.

As mentioned in Report 151/20, ANGUSalve 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 ANGUSalve's licence on giving three months' notice, or such shorter time as ANGUSalve may agree.

We have updated ANGUSalve 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. These are:

- The Council/ANGUSalve could avoid the cost of replacing the existing astroturf pitch. Estimated saving would be £220,000.
- The Council would avoid future maintenance costs for the facility and ongoing energy costs of the floodlights and associated carbon footprint.
- Even with investment in a new pitch it is by no means certain that the Council/ANGUSalve would generate sufficient income to cover those investment costs and then ongoing running costs. The risk of the facility being loss making to the Council/ANGUSalve would be removed if the CAT is approved.

The financial dis-benefits, outlined in 6.5 of Report 151/20, would be avoided. These are:

- The purchase sum offered for this asset is £100. The market value is estimated at £40,000 to £50,000 including the land. It is not unusual for CAT offers to be below market value given the community benefit which is intended and it must also be borne in mind that the applicant will need to secure significant funds to replace the existing pitch.
- ANGUSalve would lose income from use of the facility. While this is very low presently if investment in a replacement pitch was made that income forgone is likely to be more significant. Such investment is, however, not inconsiderate.
- Costs for school access may increase – at present school use is covered through a dual use agreement with ANGUSalve and covers all school use of facilities operated by ANGUSalve. Negotiations on reduction in the dual use payment and access to the new pitch through Skilz Academy would be required. It's possible this may result in a net increase in cost to the school so this is covered in the CAT CONDITIONS.
- It may be necessary to create a dedicated access route to the new pitch to be operated by Skilz Academy which would mean an additional cost burden to the project.

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 of the report, both detailed above, which members accepted in terms of Report 151/20, 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 151/20 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 the rent

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. Details of the appraisal are set out in Appendix 2.

7. RISKS

The table below outlines the risks in proceeding with a CAT sale as opposed to a lease in terms of both enforcement of the CAT Conditions and options available to Skilz in terms of not accepting Committee's decision.

	Option	Advantages	Disadvantages
1	Proceed with the CAT sale in terms of the earlier decision.		<ol style="list-style-type: none"> 1. Several conditions may not be enforceable in the longer term and could be challenged eg 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 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

The Chief Executive, Director of Education and Lifelong Learning, Director of Infrastructure and the Director of Strategic Policy, Transformation and Public Sector Reform have been consulted in the preparation of this report. ANGUSalve has also 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

Appendix 2 – appraisal under the Disposal of Land by Local Authorities (Scotland) Regulations 2010

Appendix 3 – Report 151/20

Appendix 4 – Article 4 of minute of meeting of the Special Arrangements Committee on 23 June 2020

Appendix 5 – responses to public consultation on CAT purchase application

Appendix 6 – Heads of Terms for proposed 99 year lease