



Hatfield Broad Oak Parish Council

Village Green Sublease **Review of Legal Advice Received**

Prepared by Cllr K. Artus collating and reviewing advice from
NALC, Birketts and additional information sourced.

This review, summaries and conclusions are the opinion of Cllr Artus
having considered the information available and presented here.

The parish council is to satisfy itself as to the accuracy of this review
and the resultant summary and conclusions

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Project

HBO PC has set in motion proposals to enter into a sublease with the HBO Sports & Community Club charity (HBOSCC), formerly HBO Village Green Co, for the operation, management and maintenance of the land known as the 'village green' for its 'authorised use' of "use for any sporting or recreational, or local community, or ancillary uses and associated parking and all activities ancillary uses thereto" (headlease clause 1.1.7).

The sublease is to be back to back with the headlease, subject to additional preambles and conditions which, where appropriate, are the subject of continuing legal advice and this review.

This review will be supplemented as any further advice is request and/or received.

EXECUTIVE SUMMARY

1. The proposed sublease is intended to fulfil the intentions and agreement with the Gosling family that the village charity (originally established by the parish council) should be responsible for the operation and maintenance of the village green.
2. The HBO Sports clubs surrendered their previous lease in return.
3. The sublease will guarantee a maximum liability for the parish council of £20,000 p.a. (indexed).
4. The existing headlease between the parish council and the landlord contains specific provision for the subletting of the village green under clause 3.10, which expressly acknowledges the right of HBO Village Green Co (renamed HBO Sports & Community Club) to receive a sublease.
5. Clause 1.1.7 of the headlease defines the 'authorised use' of the village green as "use for any sporting or recreational, or local community, or ancillary uses and associated parking and all activities ancillary uses thereto".
6. HBOSCC charitable objectives recorded on the Charity Commission website state "To provide, in the interests of social welfare, public facilities of a village green for the use of the clubs and inhabitants of Hatfield Broad Oak and surrounding areas for recreation and leisure time occupation."
7. To enable the village green to be managed by the charity HBOSCC for the benefit of the residents of Hatfield Broad Oak and the wider community and sports users, together with limiting the exposure of the PC to future unforeseen costs the parish council proposes to enter into a sublease with HBOSCC for the remaining period of the headlease and provide reimbursement for unfunded costs for the maintenance and management of the village green though a grant mechanism with an annual cap of £20,000, plus other responsibilities of the parties detailed in the agreed lease heads of terms.

8. Bidwells value of the leasehold interest of the Property to be £40,000 with an annual market sublet rent for local recreation, sporting or community use of £2,000 - £2,500. A figure of £2,200 is recommended for the usable area, index linked.
9. Legal advice was sought from National Association of Local Councils and the parish councils appointed Birketts to produce and conclude the sublease together with providing advice on matters of public law, being the power of General Consent and Subsidy Control Act.
10. Section 19 of the Local Government (Miscellaneous Provisions) Act 1976 empowers the council to make by way of grant or loan towards the expenses incurred or to be incurred by any voluntary (not for profit) organisation in providing recreational facilities.
11. Furthermore, when the parish clerk has completed the training the council achieves the General Power of Competence it can thenceforth act or make any grant that an individual could do, adding to the powers already possessed.
12. NALC advises that procurement legislation is not relevant as the council will not be obtaining a service or goods (see page 9).
13. Any grant entered into should be variable in nature.
14. The council should make payment by a grant under section 19 of the 1976 Act.
15. The Government Centre of Excellence for grants checklist confirmed grants rather than a contract was most appropriate.
16. **The above method of support via a variable annual grant complies with the parish council's Local Authority legal obligations.**
17. Section 127 of the 1972 Act (Circular 06/03) confers on the Secretary of State power to give a general consent for the purposes of land disposals by local authorities carried out under their powers in Part 7 of the 1972 Act
18. General Disposal Consent 2003 Act removes the requirement for authorities to seek specific consent from the Deputy Prime Minister and First Secretary of State ("the Secretary of State") for any disposal of land where the difference between the unrestricted value of the interest to be disposed of and the consideration accepted ("the undervalue") is £2,000,000 (two million pounds).
19. The sublease will be at the market rent of £2,200 p.a. with no undervalue on the rent.
20. The value of the lease has been confirmed as £40,000 hence the undervalue is less than £2m.
21. The parish council has obtained 'best consideration'.

22. Specific consent is not required for the disposal of any interest in land which the authority considers will help it to secure the promotion or improvement of the economic, social or environmental well-being of its area.
23. **The council can rely on the powers of General Consent and will not need to seek Specific Consent from the Secretary of State.**
24. The Subsidy Control Act 2022 sets out criteria for considering any payment by a local authority to be a subsidy and hence requiring to be designed according to established principles and registered.
25. To be a subsidy all four test limbs of the act need to be satisfied.
26. Limb A is satisfied in that funding is directly or indirectly provided from public resources by a Public Authority.
27. Limb B test requires the financial assistance to be conferred upon a 'Enterprise' undertaking an 'economic activity'.
28. Limb A is satisfied, but Limb B is not, hence there is no need to consider the other limbs.
29. Economic activity is defined as offering goods or services on a market or offering an economic advantage.
30. An example of non- economic activity being "[a] ringfenced grant to a charity for its non-economic activities (even if the charity also provides some goods or services on the market). If the activity is a non-economic activity, it will not be considered an "enterprise" for the purposes of Limb B.
31. The HBOSCC will pay the market rent of £2,200 p.a. and hence will not be receiving a subsidy on the sublease itself and hence cannot be considered to be receiving an economic advantage.
32. **The HBOSCC will not be engaging in economic activity in the marketplace and not acting commercially and hence cannot be considered an Enterprise under Limb B of the act and hence the Subsidy Control Act does not apply to this disposal.**
33. **This review concludes from the advice received from NALC, Birketts and the additional information gathered and assessed is that the parish council is entitled to dispose of the village green lease under the powers of General Consent and that the most appropriate method for the parish council to pay support to the HBOSCC for the continued maintenance of the public facility to enhance well-being would be via a variable annual grant dependent upon unfunded costs and that the Subsidy Control Act 2022 does not apply to the sublease itself or to the establishment of such an annual grant.**

34. **Furthermore, Grant agreements are not in scope of the procurement regulations and tend to be more ‘purpose’ focus, without dictating specific requirements and failure to deliver results in the suspension and/or return of the grant payment. Procurement legislation does not need to be considered further.**

Reviewed for HBO Parish Council

Background

The idea of creating a park in the centre of the village, to promote sports and recreation, and to be a focal point of outdoor activity was first discussed with the Gosling family (the landowners) in 2006.

Rupert and William Gosling were keen to help the community and provide a legacy that would benefit the residents of Hatfield Broad Oak and beyond.

With their considerable generosity it was agreed to make available the 12-15 acres of grazing land that we know as ‘the village green’.

Planning permission for the change of use from agricultural land to public amenity space was granted in August 2009, with subsequent permissions and satisfaction of conditions complete by 2011.

It was agreed (2009) that the parish council would incorporate a charity, the HBO Village Green Co, for the purposes of taking the lease from the Goslings, build the facility and manage it for the authorised use of a public park and sports facility.

The original directors of the charity were Cllr Richard Broad, Cllr Keith Artus and Mark Strutt in 2010.

Whilst the agreed structure was for the lease to be directly with the charity, it was decided that parish council should procure the planning permissions (50% fee for local authorities) and the initial construction works (so as to recover VAT). Once this was completed the parish council was to enter into a sublease with the HBO Village Green Co.

The headlease for approximately 12 acres of agricultural land between William Gosling and the parish council is dated 19th January 2011.

The land was leased specifically for the purposes of constructing a public park and sports and recreation facility for the benefit of HBO residents and the wider community, particularly for the established and emerging village sports clubs whose existing facilities were to be surrendered.

An essential feature of the ‘deal’ was the surrender of the long lease for the existing sports field further North, off Dunmow Road. This was leased and managed by the sports clubs of Hatfield Broad Oak and it is they who anticipated becoming part of the charity and resuming management of the new space.

To this effect. the headlease contains specific provision for the subletting of the village green under clause 3.10, which expressly acknowledges the right of HBO Village Green Co (renamed HBO Sports & Community Club) to receive the sublease.

NOTE: The term 'Disposal' used throughout this review refers to the granting of a sublease to HBOSCC as according to local authority legislation it is technically described as such due to the sublease being for a period exceeding seven years.

Why a Sublease?

It was always the intended structure that the charity would develop, maintain and run the 'village green' for the people and clubs of Hatfield Broad Oak and surrounds.

The charity was established by the parish council for that purpose, with representatives of the sports and community clubs joining as trustees as the charity and the facility developed.

The sports clubs surrendered their existing lease on the understanding that they would be involved in the running and management of the new facility.

A lease directly with the charity was the original structure agreed with the Gosling family.

This project is to redress the obligation to enter into a sublease.

What Problem is a Sublease Solving?

The village green has been a political football ever since the composition of the parish council changed. Such a superb facility should not be hijacked by individuals or agendas.

The facility has taken up far too much parish council time and effort. It has also resulted in a string of unnecessary attitudes between rival councillors over the years.

Residents of Hatfield Broad Oak, quite rightly, pay for their public park through their council tax. However, the cost associated with the green does and can vary according to the requirements of its maintenance, everything from machinery to tree surgery and public safety. Costs have ranged from £8,000 per annum to £23,000 per annum, depending on the liability. The proposed sublease restricts or caps the parish council's expenditure on the village green to £20,000 maximum, giving comfort to the council and parishioners that they will not face unexpected bills.

Once the charity is left to run and manage the village green and the parish council has a fixed maximum cost, the council can focus on the rest of the village in a positive and constructive way, with more money available for individual projects and schemes.

Parish Council Decisions

Previous key resolutions:

Parish Council Meeting 9th December 2009

- 8.2 It was agreed, in principle, to proceed with setting up of a company limited by guarantee with charitable objectives to maintain and manage the village green for the benefit of the community. This company to take (in some way yet to be decided) the benefit of the lease of the land.
- 8.3 Richard Broad and Keith Artus were elected as the Council's representatives on the board of the company.
- 8.4 It was agreed to name the company the HBO Village Green Company.
- 8.5 It was agreed to grant £5,000/a to the HBO Village Green Co. *for a period of 5yrs to be reviewed annually* to maintain the village green subject to the company's structure being acceptable to the Council. Payment to be in equal instalments in May and October starting once the green is ready for use and the lease between the Company and the Council has been signed.

The current council has resolved to date to:

Establish a Heads of Terms Working Group of three representatives to negotiate and update suitable heads of terms with trustee representatives of the HBOSCC charity.

To agree the heads of terms for the granting of a sublease by HBO Parish Council to HBO Sports and Community Club Limited dated 20th May as amended 27th August 2024 and appended to the meeting agenda.

To appoint Birketts as the council's solicitors for legal advice and services on the proposed heads of terms, draft sublease and advice on the council's legal obligations regarding the disposal of land.

To appoint Bidwells to produce a valuation of the land for the purposes of the disposal.

Agreed to post an advertisement for the disposal of the land in accordance with the Local Government Act

To authorise the Heads of Terms Working Group to liaise with Birketts. This is to ensure the advice meets the parish council's requirements.

To hold a public engagement session, which by implication means to present or discuss with residents the advice received, canvass opinion, answer questions and to consider views.

To review the HBOSCC business case and seek additional information as required.

Heads of Terms

First Draft

The initial heads or terms a sublease back to back with the headlease, subject to subject to additional preambles and conditions.

The principal preambles were (using latest references for completeness):-

Preamble A:

The sublease should be at nil consideration (peppercorn).

Preamble D:

The PC will complete a schedule of outstanding maintenance works prior to handover.

Preamble G:

The PC would pay a support payment of £20,000 p.a., index linked to HBOSCC for the management, operation and maintenance of the village green for the public good.

Preamble H:

The PC would transfer all village green maintenance equipment and related assets to HBOSCC for nil consideration. It being recognised that the sports clubs affiliated to HBOSCC had sourced grants contributing 75% of the original purchase prices.

Preamble L:

HBOSCC would allow the PC to maintain the section known as the Nature Area on the village green.

Preamble M:

In addition, the heads of terms required HBOSCC to provide all the necessary insurances at a minimum of those maintained by the PC and to provide suitable indemnities to the parish council.

Final Draft

Further to negotiations with HBOSCC and legal opinion received to date the heads or terms principal conditions have been amended. These now reflect the Heads of Terms Working Group view to comply with public law and local authority responsibilities and to present a balanced value proposition for the parish council. The principal changes are as follows: (the full heads of terms are included in the Appendix)

Preamble A:

The sublease should now be at the reported market value rent of £2,200 p.a. rather than be at nil consideration (peppercorn)

Preamble G:

The PC now make annual grants to the HBOSCC for the management, operation and maintenance of the village green. The grants will have a cap of £20,000 and be payable on evidenced unfunded expenditure in maintaining the village green for sporting and recreational facilities and the public good, rather than a fixed fee of £20,000 p.a. (index linked).

Preamble H:

HBOSCC would now pay the PC the total depreciated value, less any previous contribution portion to the PC, for the purchase of all village green maintenance equipment and related assets, rather than a transfer to HBOSCC for nil consideration.

HBOSCC has acknowledged, accepted and in the case of the asset transfer suggested, these changes to the heads of terms.

The current heads of terms document is included in Appendix A.

Land Valuation

It is right and proper to obtain an official professional valuation of the land, firstly for the parish council audit trail but secondly for compliance with public law later referred to.

Bidwells has carried out a valuation of the land. Their letter dated 16th October 2024 refers. Appendix B

Bidwells reported, "Under the terms of the Lease, it would be possible for Hatfield Broad Oak Parish Council to charge a rent in this situation. With reference to comparable evidence, we consider that a sublet rent for a local recreation, sporting, or community use would be in the order of £2,000 - £2,500 per annum."

"We are therefore of the opinion that the value of the leasehold interest of the Property is £40,000 (forty thousand pounds)."

Local Authority Legal Advice From National Association of Local Councils

Whilst public law advice is being obtained from Birketts, the National Association of Local Councils (NALC), through our county EALC, was tasked with specific questions relating to the role, obligations and legal practicalities of the disposal for local authorities, i.e. our parish council.

The questions asked were:

1. Are there any other acts that would affect the granting of the sublease and the support payment of £20k per annum for the duration of the lease (86 years)? Such as the Procurement Act etc.
2. Is the support we are proposing compliant with NALC financial regulations (we are simply transferring the cost to the council to the charity)?

3. To ensure compliance, is it better to have a legally binding annual grant (say subject to proof of costs etc.) or through a payment upon invoice?
4. For either of the above, to ensure compliance, would it be better to specify the amount or not? If not, could this be paid by either method above.

The response from NALC Legal was as follows:

Question 1

Section 19 of the Local Government (Miscellaneous Provisions) Act 1976 empowers the council to make a grant to any voluntary (not for profit) body that provides recreational facilities which seems to be the case here. The procurement legislation is not relevant as the council will not be obtaining a service or goods.

Question 2

The financial regulations allow for grants to appropriate bodies such as this appears to be. However, it is unwise to enter into a legal obligation to make a specific grant for a number of years as circumstances may change and make the size of the grant inappropriate.

Question 3

Payment by invoice is not appropriate as the council is not obtaining goods or services. It is not legal to claim back VAT on an invoice where the council is not the ultimate recipient of the goods or services concerned. The council should make payment by a grant under section 19 of the 1976 Act.

Question 4

If it wishes the council can require evidence of how the previous grant has been spent before making a further grant.

Furthermore, this report has considered the advice of the Government's Grants Centre of Excellence checklist. The GCoE is responsible for all financial reporting and grant application processes within the Cabinet Office.

Government's Grants Centre of Excellence checklist

#	Question	Grant	Contract
1	Do you wish the participating organisations to make a profit or retain a surplus?	No	Yes
2	Do you have clear volumes for outputs that can be profiled?	No	Yes
3	Do you want the agreement to be legally enforceable (beyond just clawback)?	No	Yes
4	Is the output likely to be defined during delivery?	Yes	No
5	Do you wish to pay by results as opposed to just payment in arrears?	No	Yes
6	Do you wish to only cover costs?	Yes	No
7	Will the scheme provide a direct economic benefit to the department?	No	Yes
8	Is the scheme aimed towards non-profit making activities rather than more obviously commercialised for-profit activities?	Yes	No
9	Will the scheme be delivered primarily by commercial entities?	No	Yes
10	Will delivery be via small organisations in the civil society sector?	Yes	No
11	Do you consider VAT is applicable - are goods/services being bought?	No	Yes
12	Is the scheme an extension of departmental policy delivered externally due to internal capability and/ or capacity limits?	N/A	N/A
13	Do you wish the department to retain the funding/ delivery risk?	Yes	No
14	Will the scheme deliver tangible/ measurable outputs?	No	Yes
15	Will the scheme provide the department with direct access to specialists available via a market, such as management consultants?	No	Yes
16	Does the applicable legislation specify grant powers?	Yes	No
17	Do you expect to claw-back surplus funding?	N/A	N/A

It is clear from the advice from NALC that a variable grant, rather than a contract (or grant) for a fixed sum, is preferable.

The option of a grant rather than a contract is supported by the GCoE questionnaire, with the majority (14 out of 16 questions) positive for a grant.

A further checklist is included in Appendix C

Public Law Legal Advice from Birketts

Councillors will recall the backgrounds papers to the motion to appoint solicitors. During the 'beauty parade' it was established that there were a number of potential hurdles to the disposal which would require further legal advice, in addition to the drafting and completion of the sublease.

1. The granting of a sublease to a third party counts as a 'Disposal' under the terms of the Local Government Act 1972 where the subletting is for a period longer than seven years.
2. In this situation, under the act, the disposer (parish council) is required to obtain the permission of the Secretary of State for the disposal and also to publish a notice of its intention to dispose.
3. Section 128(1) of the 1972 Act confers on the Secretary of State power to give a general consent for the purposes of land disposals by local authorities carried out under their powers in Part 7 of the 1972 Act. The Secretary of State's sole statutory function in respect of the exercise by local authorities of these disposal powers is to give or withhold consent to a proposed disposal in cases where his consent is required.
4. However, the General Disposal Consent 2003 Act removes the requirement for authorities to seek specific consent from the Deputy Prime Minister and First Secretary of State ("the Secretary of State") for any disposal of land where the difference between the unrestricted value of the interest to be disposed of and the consideration accepted ("the undervalue") is £2,000,000 (two million pounds) or less. It therefore offers authorities greater freedom than previously to exercise discretion in the disposal of their land.
5. The terms of the (General) Consent mean that specific consent is **not required** for the disposal of any interest in land which the authority considers will help it to secure the promotion or improvement of the economic, social or environmental well-being of its area.
6. The parish council also has to consider the Subsidy Control Act 2022 with reference to the proposed support to the charity to maintain the village green for public access as well as for sporting and recreational activities.

7. The Subsidy Control Act is to ensure that market competition is not distorted by any subsidy. Whilst this is more applicable to Government subsidies to companies or industry, local authorities may fall within its remit.
8. Advice would need to test if the support is paid by means of a variable annual grant falls under the Subsidy Control Act and that to apply, the 'subsidy' must meet the four 'limbs' of the act.
9. The parish council needs confirmation advice that as the charity does not offer 'economic activity' nor operate in 'the market' it does not fall within the remit of the act. Likewise, the payment does not have an effect on competition or investment within the UK and again, does not fall within the act.

As far as the public law advice required, Birketts were instructed to review the following:

1. Review of whether there is a specific or general consent requirement for the Parish Council to conduct a disposal in relation to the proposed Lease under the Local Government Act 1972;
2. Review of whether there is a risk of a Parish Council providing a subsidy (under the Subsidy Control Act 2022) to the Charity which the Parish Council intends to grant a sublease to.
3. A written note of the high-level review in respect of the public sector elements above.

Birketts Client Care Instruction Letter states "We are not reviewing or advising on your headlease terms save to check for any requirements on subletting", that is, they are not reviewing the commercial aspects.

This means that the commercial, transaction arrangements included in the heads of terms are not for Birketts to provide advice as they have been agreed between the parties, save for the need to provide advice in the course of producing the sublease and subletting. Birketts will incorporate the commercial terms into the draft sublease notifying the PC if any are unsustainable in law.

Extracts of Birketts Executive Summary and Detailed advice are presented below.

Grant of a Lease:

Reference numbering has been taken from Birketts full advice report (see Appendix)

Birketts Exec Summary

- 2.1.1 If the Lease is in scope of the provisions of s.127 of the LGA 1972, **the Parish Council has a duty to obtain best consideration** or seek specific consent from the Secretary of State for disposing of its interest at 'less than best consideration than can be reasonably obtained'.

- 2.1.2 The grant of a sublease by a parish council is considered a disposal under section 127 of the LGA 1972.
- 2.1.3 As the Lease is for more than seven years, a disposal under section 127 LGA 1972 requires that the Council seek consent from the Secretary of State.. The Secretary of State provides for a 'general consent' under 'Circular 06/03'1.
- 2.1.4 Generally speaking, the Council may be able to rely on the general consent under Circular 06/03 where:
 - 2.1.4.1 the undervalue does not exceed £2M. The undervalue is calculated in accordance with Circular 06/03 and broadly, it is the difference between the unrestrictive value (i.e. the value the Council could have sublet the VG on the market) and the restricted value (i.e. the value at which the Council has decided to sublet the VG); and
 - 2.1.4.2 the Council considers that the disposal will help it to secure the promotion or improvement of the economic, social or environmental well-being of its area.
- 2.1.5 If the conditions of the general consent are not met, the Council must seek specific Secretary of State consent for the disposal.

Birketts Detailed Advice

- 3.2.2 A parish council entering into the Lease with the Charity must seek the best consideration for the rent that is reasonably obtainable on the market. If the rent is less than the best reasonably obtainable, consent from the Secretary of State for the disposal must be sought.
- 3.4 We assume that the Lease granted to the Charity is at a preferential rate and therefore below-market rate. Consequently, on the above analysis, Secretary of State approval for entering into the Lease is required.

However...

- 4.2 Circular 06/03 provides that the Council may have a general consent to proceed with the Lease and the Council would not need to obtain specific consent if:
 - 4.2.1 the Council considers that the disposal will help it to secure the promotion or improvement of the economic, social or environmental well-being of its area; and
 - 4.2.2 the difference between the unrestricted value and the restricted value does not exceed £2 million.

- 4.3 We understand that the sublease of the VG to the Charity is so that the Charity can manage and maintain the VG for the benefit of the general public. Further that the Charity will be able to deliver sports and clubs (including cricket and football) and organisations associated with Hatfield Broad Oak and to potentially develop a pavilion on the VG.....

For these reasons, it is likely that the Council will have good objectively justified arguments to support that the disposal is to secure the promotion or improvement of the economic, social or environmental well-being of its area. The Council's reasoning behind determining whether the disposal will secure promotion or improvement of the economic, social or environmental well-being must be properly documented to evidence the decision making procedure.

- 4.5 **If following the Council's valuation, the difference does not exceed £2,000,000 and the Council are satisfied that it has good objectively justifiable reasons that the sublease to the Charity will assist with the "*promotion or improvement of the economic, social or environmental well-being of its area*" then the Council will be able to rely on the general consent. It will not therefore need to seek specific consent from the Secretary of State to enter into the Lease.**

Review Summary

Firstly, it can clearly be illustrated that the objectives of the HBOSCC and the parish council are unified in their desire to provide and continue to provide (secure) the promotion or improvement of the economic, social or environmental well-being of its area.

Remember, clause 1.1.7 of the headlease defines the 'authorised use' of the village green as "use for any sporting or recreational, or local community, or ancillary uses and associated parking and all activities ancillary uses thereto".

Remember, the HBOSCC charitable objectives recorded on the Charity Commission website state "To provide, in the interests of social welfare, public facilities of a village green for the use of the clubs and inhabitants of Hatfield Broad Oak and surrounding areas for recreation and leisure time occupation."

On this basis the criteria for General Consent for well-being has clearly been satisfied.

Secondly, further to the Bidwells professional valuation of the land at £40,000 the disposal meets the undervalue criteria of being considerably less than the £2m limit for General Consent.

Furthermore, it has been agreed with the HBOSCC that they will pay a rent to the parish council of the market value of £2,200 p.a. (Preamble A in the heads or terms).

As parish council has identified a rent that is reasonably obtainable on the market, specific consent from the Secretary of State for the disposal is not required and the council can rely on the powers of General Consent.

In addition, preamble H now requires the HBOSCC to pay to the parish council the depreciated (market) value of transferable assets (less original contribution). Thus, the market value will have been achieved, further eliminating the need for specific consent on any aspect of the disposal.

All three strands of the criteria (well-being, undervalue, market rent/value) for adopting the powers of General Consent have been satisfied.

Subsidy Control Compliance

Birketts Exec Summary

- 2.3 We assume that the Lease to the Charity is at a less than market rate. As the Lease to the Charity is at an undervalue, it is an unlawful subsidy unless it complies with the provisions of the Subsidy Control Act 2022 (“SCA 2022”).
- 2.4 To be a subsidy in scope of the SCA 2022, all four limbs of the test under s.2 of the SCA 2022 must be met. The second limb of the test requires that the financial assistance is conferred on an economic undertaking. This is determined by the activity that is being undertaken and ultimately whether the entity is selling goods or services on a market. The legal status of the entity, e.g. whether it is a charity, is not taken into account.
- 2.5 On our initial assessment, we consider that the Council has good arguments that the Lease at an undervalue is not a subsidy provided that the charity does not undertake any economic activities in the property, i.e. selling goods or services.
- 2.6.3 On the basis of the Heads of Terms provided, the Council intends to provide each year a guaranteed minimum of £10,000 up to £20,000 (exc. of VAT) in each year of the Lease for the operation, management and maintenance of the VG for the Lease’s duration (less one day than the term of the Headlease).
- An initial payment of £5,000 will be made on 28th February 2025. We would strongly recommend that the Council considers procurement law and commercial implications for the Council of the maintenance of the VG for this payment and that this is legally documented separately from the Lease.

Contracts for services by the public body are in scope of procurement law whereas land transactions are out of scope.

Where there is both a services contract and a land transaction such as a lease, it is the 'main subject matter' of the arrangement which determines whether the arrangement is caught by procurement regulations. The main subject matter is typically determined by what part of the arrangement has the highest monetary value. If it is a grant, then Council would need to ensure it has considered its powers to provide the grant and documents its decision making.

Birketts Detailed Advice

- 6.1 Where a public authority provides financial assistance (either in money or benefit in kind) to a recipient that meets the definition of a subsidy (as set out in Section 2 Subsidy Control Act 2022 ("**SCA 2022**")), the public authority must comply with SCA 2022. Failure to comply with the SCA 2022 will result in the subsidy being considered unlawful.
- 6.2 Attached is a note that contains a brief overview of the Subsidy Control Act (the "**Subsidy Note**"). Paragraph 1.2 of the Subsidy Note sets out the test for determining whether a Subsidy has occurred. All four limbs of the test must be satisfied in order for financial assistance to be considered as a subsidy.

Definition of a Subsidy (from Subsidy Note and Government Website)

Section 2 of the SCA 2022 defines a subsidy as the provision of Financial Assistance which:

- 1.2.1 Limb A is given, directly or indirectly, from public resources by a Public Authority;
- 1.2.2 Limb B, confers an economic advantage on one or more Enterprises
- 1.2.3 Limb C is specific, that is, is such that it benefits one or more Enterprises over one or more other Enterprises with respect to the production of goods or the provision of services; and
- 1.2.4 Limb D has, or is capable of having, an effect on: competition or investment within the United Kingdom, trade between the United Kingdom and a country or territory outside the United Kingdom, or investment as between the United Kingdom and a country or territory outside the United Kingdom.

All four limbs of this above test must be satisfied for Financial Assistance to be considered a subsidy and subject to the SCA 2022.

2. LIMB A
 - 2.1 The assessment of Limb A is divided into two parts:
 - 2.1.1 The first part determines if the granting body is a Public Authority. A Public Authority is defined as a person who exercises functions of a public nature. If the granting body exercises mixed public and private functions or if its functions are attributable to a Public Authority, further analysis is required.
 - 2.1.2 The second part of this Limb assesses whether the Financial Assistance is granted from public resources. Public Authorities must be aware that if they have influence over the granting body and can direct the use of the body's resources, those resources will be considered as public resources.
3. LIMB B
 - 3.1 Limb B of the SCA 2022 assesses whether: (1) the recipient is an Enterprise; and (2) the Financial Assistance confers an economic advantage.
 - 3.2 An Enterprise is defined in the SCA 2022 as a person (or group of persons under common ownership or control) engaged in an Economic Activity, to the extent that the person (or group) is engaged in such an activity. Economic Activity is the offering of goods or services on a market.
4. LIMB C
 - 4.1 Limb C is focused on the specificity of Financial Assistance. This Limb is satisfied when Financial Assistance benefits certain Enterprises over others in a comparable position. Common specificity factors are where a Public Authority provides Financial Assistance to an Enterprise with specific characteristics in certain geographical areas or even where it has discretion in deciding which Enterprises can benefit from the Financial Assistance.
5. LIMB D
 - 5.1 A Public Authority will need to carry out its own commercial analysis to ascertain whether this limb has been fulfilled. We cannot specifically assist in this limb's assessment but can broadly advise on the legal implications of fulfilling the limb. The determination as to its fulfilment will ultimately be up to the Public Authority's internal analysis.

More complex subsidies may require economists/market-specific financial consultants to support you in your analysis.

6.3 For the purposes of our analysis, we consider that **Limb A** is met.

The Council is subletting its interest in the Lease to the Charity. **Limb B** is met if the funding '*confers an economic advantage on one or more enterprises*'.

Our advice is on the basis that we are informed that the Council is providing grant funding in the Lease for up to £20,000 for the upkeep of the VG.

We have not been asked to provide advice on the analysis of the grant payment of up to £20,000 in the context of the delivery of the maintenance services. To flag for further consideration, there is a legal distinction between a grant and a contract.

A contract could fall under the procurement regulations and can typically take the form of payments made for a service to a specification required by the Council.

Grant agreements are not in scope of the procurement regulations and tend to be more 'purpose' focus, without dictating specific requirements and failure to deliver results in the suspension and/or return of the grant payment.

6.4 For **Limb B**, the key aspect is whether the Charity meets the definition of an 'Enterprise'.

An "enterprise" means a person who is engaged in an economic activity, that is offering goods or services on a market. The Statutory Guidance gives an example of non-economic activity being "[a] ringfenced grant to a charity for its non-economic activities (even if the charity also provides some goods or services on the market) (at para 2.17 of the Statutory Guidance). If the activity is a non-economic activity, it will not be considered an "enterprise" for the purposes of Limb B.

6.5 Providing the Lease at a preferential rate could confer an economic advantage to the Charity therefore **the Council should check that the Charity is not undertaking any economic activity (based on the permitted use of the Lease)**. The Council will need to assess whether the Charity is an Enterprise; if the Charity are acting commercially it will be considered an Enterprise.

- 6.6 The Statutory Guidance sets out that when determining whether economic activity is being undertaken, the public authority should consider how the activities are financed i.e. through or public resources or through commercial payments such as by visitors (entrance fees).

Where the activity is funded by the latter the activity will likely be considered economic in nature. **In contrast, a sports club for example can set reasonable membership fees without being considered an enterprise.**

Provided that the Council can demonstrate that the Charity is not an enterprise as it does not undertake economic activity, then the Council would have arguments to support that the Lease at a preferential rate and grant funding will not be considered a subsidy within the meaning of the SCA 2022. For more guidance as to the application of this limb please see paragraph 4 of the Subsidy Note.

- 6.7 **We have not considered Limbs C or D of the test under the SCA 2022 on the basis that the Council can demonstrate Limb B is not met.**

Review Summary

Section 19 of the Local Government (Miscellaneous Provisions) Act 1976 states...

- (3) A local authority may contribute—
- (a) by way of grant or loan towards the expenses incurred or to be incurred by any voluntary organisation in providing any recreational facilities which the authority has power to provide by virtue of subsection (1) of this section; and
 - (b) by way of grant towards the expenses incurred or to be incurred by any other local authority in providing such facilities; and in this subsection “voluntary organisation” means any person carrying on or proposing to carry on an undertaking otherwise than for profit.

The parish council’s structuring of the support grant complies with the criteria of section 19.

Referring to the Subsidy Control Act 2022, assuming from Birketts advice we are only considering Limb B of the Act, the Government website “Subsidy Control Rules: A quick Guide to Key Requirements for Public Authorities”, states...

2. Does the financial assistance confer an economic advantage on one or more enterprises?

The recipient must be an ‘enterprise’: any entity engaged in an economic activity, which means offering goods and services on a market.

The financial assistance must confer an economic advantage, meaning that it is provided on favourable terms. Financial assistance will not confer an economic advantage if it could reasonably be considered to have been obtained on the same terms on the market.

3. Is the financial assistance specific? That is, has the economic advantage been provided to one (or more than one) enterprise, but not to others?

This covers financial assistance that is provided to specific beneficiaries determined on a discretionary basis by the government, as well as assistance that benefits (directly or indirectly) only enterprises in a particular sector, industry or area, or with certain characteristics.

4. Will the financial assistance have, or is it capable of having, an effect on competition or investment within the UK, or trade or investment between the UK and another country or territory?

To constitute a subsidy, the assistance must have a genuine effect that is more than incidental or hypothetical on competition or investment in the UK, or on international trade or investment.

The Act itself states...

“Enterprise”

In this Act, “enterprise” means (subject to subsections (2) and (3))—

(a) a person who is engaged in an economic activity that entails offering goods or services on a market, to the extent that the person is engaged in such an activity, or

(b) a group of persons under common ownership or common control which is engaged in an economic activity that entails offering goods or services on a market, to the extent that the group is engaged in such an activity.

For the purposes of this section, an activity is not to be regarded as an economic activity if or to the extent that it is carried out for a purpose that is not economic.

The Government advice also states the act provides for exemptions to the subsidy control requirements to be permitted. This review has not considered these in detail; however, one exemption is where the financial assistance is less than £315,000 over a three year plan period is considered an MFA (minimum Financial Assistance). Such an exemption would have to be considered against the other subsidy control criteria and there are a number of notifications that would need to be given and applied.

Likewise, if the proposed support were to be considered a subsidy then the subsidy would have to be designed according to subsidy design principles, which are not discussed here, suffice to say that a subsidy must not distort the market.

“These subsidy control principles are intended to improve the design of subsidies. Together, they ensure that subsidies:

- have defined policy objectives and create a change in the behaviour of beneficiaries
- are as small as possible while still achieving the policy objective
- avoid unnecessary harm to fair competition and trade
- do not create harms that outweigh the likely benefits of the subsidy”

Advice sourced concerning the definition of ‘economic enterprise from Browne Jacobson (lawyers) website states...

“The question as to whether or not an entity is carrying out an economic activity is, in many cases, one of the deciding factors in determining whether providing public support to that entity gives rise to a subsidy. If it can be said that the entity is not carrying out economic activity, then it is not an ‘Enterprise’ and no subsidy will arise.

This is very clear in some cases — most businesses are clearly enterprises, and many other organisations, such as community groups, are not. But in the case of entities carrying out a mix of activities, notably local authorities, voluntary sector organisations and charities, the position is less clear.

The Act introduced a new provision — s.7(2) — which provides that “an activity is not to be regarded as an economic activity if or to the extent that it is carried out for a purpose that is not economic.”

“However, the provisions of s.7(2) of the Act appear to go further than this and suggest a different approach, which could be interpreted as meaning that where any entity does something for a purpose which is not economic, even if the wider activities of the entity are economic and the activity itself is profit making, then it will not be acting as an enterprise and may therefore receive public support without a requirement to consider the subsidy control rules....”

Also... “s.7(2), in that the Draft Guidance provides that where support is provided in relation to non-economic activity, this would not amount to a subsidy, provided that the support is ring-fenced so that it cannot cross-subsidise economic activities.”

Birketts has given the opinion that the sublease would not fall under the definition of a subsidy due to the Charity not being an enterprise engaging in economic activity.

However, the advice was provided before the agreement with the charity had agreed to pay a market rent. It is suggested then this further confirms that the sublease itself does not fall under any criteria of the Subsidy Control Act.

This review does however feel that Birketts’ advice does not specifically conclude if the proposed annual grant would be considered a subsidy, regardless of whether it was provided to an Enterprise or not.

If Birketts advice is taken that the HBOSCC is not an enterprise engaging in economic activity then the proposed annual grant does not meet the criteria of the act and therefore does not need to follow the establishment principles of a subsidy.

It is also clear that the HBOSCC is not performing any economic activity in the market and hence, even if the support grant were considered a subsidy, it would not be for an enterprise or be for an economic activity

This review concludes from the advice received from NALC, Birketts and the information gathered that the best way for the parish council to pay support to the HBOSCC for the continued maintenance of the public facility to enhance well-being would be via an annual grant and that the Subsidy Control Act 2022 does not apply to the sublease itself or to the establishment of such an annual grant

In all aspects of granting a sublease and establishing a grant mechanism the parish council needs to record and document its every action and decision.

The parish council also needs to consider if it requires additional advice from Birketts detailed in their email of 21st October in response to that from Cllr Artus of same inst. (Appendix F)

NOTE:

Prepared by Cllr K. Artus collating and reviewing advice from
NALC, Birketts and additional information sourced.

This review, summaries and conclusions are the opinion of Cllr Artus
having considered the information available and presented here.

The parish council is to satisfy itself as to the accuracy of this review
and the resultant summary and conclusions

APPENDIX

- A. HEADS OF TERMS**
- B. BIDWELLS VALUATION**
- C GCoE CHECKLIST**
- D. NALC ADVICE**
- E. BIRKETTS ADVICE**
- F. Birketts email 21st October 2024**
- G. HEADLEASE (W. GOSLING / HBO PARISH COUNCIL)**
- H. INFORMATION REQUESTED OF HBOSCC BUSINESS CASE**

APPENDIX

- A. HEADS OF TERMS**
original version
(Subject to the alterations details in the report commentary).

Heads of Terms for Granting of a Sub Lease by
HBO Parish Council to HBO Sports and Community Club Limited.

SUBJECT TO CONTRACT

Conditions to be included as Preambles to the Sub Lease.

- A. This agreement and sub lease is to relieve the Parish Council of its responsibilities under the lease between the Parish Council (the PC) and William Gosling (the Landowner) dated 19th January 2011 (the Head Lease) and transfer the responsibility and liability for the land known as the Hatfield Broad Oak Village Green (the VG) to the HBO Sports and Community Club (the Charity) to enable the Charity to manage operate and maintain the VG for the benefit of the general public and sports clubs and organisations associated with Hatfield Broad Oak as defined in these presents.
- B. The Charity will ensure that with the exception of the sports pitches when in use and the cricket square the VG remains open to the public at all times excluding during periods of maintenance and management for public safety and that the Charity shall prioritise the use of the VG for major events such as the village 10K race.
- C. The PC and the Charity will cooperate fully and transparently and collectively councillors will be supportive of the efforts of the Charity to operate and maintain the public space and to construct a Pavilion for the benefit of the sports and activity clubs users and community of Hatfield Broad Oak in accordance with the lease so granted.
- D. The PC will present to the Charity the VG in a good state of repair and in safe condition and in furtherance of such shall complete the following works prior to occupation by the Charity.
 - 1. Accessibility upgrades to the pedestrian entrance
 - 2. Complete remedial work from the 2024 tree survey
 - 3. Provide concrete bases to the existing oak seating / benches
 - 4. Repair fencing
 - 5. 25% contribution subject to a maximum of £8,300 for the Installation of the catch/ring drain to the pitch area.
 - 6. VG and PC combined Noticeboard

Should any of these works not be completed by occupation the PC and Charity shall agree and permit a suitable timescale for completion not to exceed six months.

- E. The PC will seek grants for the restoration of the village green footpaths to meet accessibility criteria and will endeavour to complete the works by 1st January 2025. Should the restoration works not be completed by occupation the PC and Charity shall agree and permit a suitable timescale for completion not to exceed six months.
- F. The Charity shall advise the PC prior to occupation of any material omissions to presenting the VG in a good state of repair and in safe condition and the PC shall rectify such omissions.
- G. The PC will make grants to the Charity for the duration of the lease to enable it to manage, operate and maintain the VG for recreational facilities and the public good. The grant will vary according to unfunded expenditure incurred each year which the charity will evidence by estimates invoices and receipts and will be a minimum of £10,000 and a maximum of £20,000 per annum with cap and collar index linked to the median of the RPI and CPI indexes. An initial grant of £5,000 will be payable by 28th February 2025 with further grants as submitted subject to the above limits. The Charity should be permitted to build a contingency for unforeseen expenditure within its grant applications with such contingency to be expended only with the agreement of the parties not to be unreasonably withheld.
- H. The PC shall grant transfer of ownership of the tractor and associated maintenance machinery together with the storage containers to the Charity for the total depreciated value of the assets less any previous contribution by the Charity of sports clubs and the Charity shall keep such assets in working order and good condition.
- I. The Charity agrees to allow the PC to use its grass cutting equipment at no cost to the PC to mow the grass on the lands known as Barnfields and Recreation Ground and School Playing Field and Broad Street Green and High Street with any damage to the asset to be at the cost of the PC.
- J. The PC shall make available to the Charity all documents surveys reports and other information the Charity considers necessary to fulfil its obligations under this Sub Lease.
- K. The PC acknowledges and supports the Charity's objective of constructing the Pavilion and associated roadway and parking and

storage facilities in accordance with planning permissions obtained by the PC together with such ongoing permissions and any that may become necessary to fulfil the Charity's legal and business requirements where in such cases the PC may assist by submitting the applications.

- L. The Charity shall allow the PC to manage maintain update and develop the nature area on the VG as defined on the plan ref VG/NA/001 as a nature and wildlife area for the benefit of the general public. The charity shall make its maintenance equipment available to the PC as necessary.
- M. The Charity shall provide all insurances required by the headlease for public liability and property and shall provide details to the PC at renewal. The Charity shall save harmless the PC from any claims arising from the Charity's management and occupation through the sublease and shall provide evidence of such indemnity.

Lease Terms

1. The Term

The term shall be for 1 day less than the term for the Head Lease.

2. The Parties

Hatfield Broad Oak Parish Council (PC) and the HBO Sports and Community Club (Charity)

3. The Property Demised

The land known as the Village Green as detailed on Bidwells drawing reference HBO1 dated 17/11/2010 and as subsequently amended by the PC and the Landlord subject to no diminution of the existing demise. For the avoidance of doubt the extent of the demise shall be the existing perimeter fence.

4. Commencement Date

To be agreed. (The date of occupation is proposed 1st January 2025)

5. Purpose of Lease

To enable the Charity to manage operate and maintain the VG for the benefit of the public and sports clubs and organisations associated with Hatfield Broad

6. The Rent

As for Head Lease, payable upon execution of this sub-lease.

7. Authorised Use

For use as a public space and sports facility including outdoor and indoor and community activities that are deemed by the Charity to be consistent with the provision of facilities for the local community and achieving its funding objectives.

8. Health and Safety

All essential Health and Safety precautions and provision will be the responsibility of the Charity such that no liability will fall to the PC in the event of a claim for negligence.

9. Child Protection

The responsibility for child protection including the vetting of coaches and helpers will be with the groups that use the facilities as is required by law. The Charity will require those groups to annually confirm such policies and practices are in place.

10. Service of Notices

Addresses and named persons or title holders to be agreed.

11. Right of Entry

As for Head Lease plus.

The Charity will allow to the PC a right of vehicular and pedestrian access to and across the demise for the purposes of inspection to ensure fulfilment of the terms of the lease such right to be exercised giving three working days' notice and such inspection shall be accompanied by the representative of the Charity

12. Access to services

The PC grants unrestricted rights of access routing and passage for underground services to supply the Pavilion and other facilities (power water sewage telephone etc.) and passes all responsibility for payment of VG services to the Charity.

The PC grants rights to collect and store rainwater or grey water residual etc.)

13.Repair and Redecoration

As for Head Lease

If the PC resolves the Charity has not complied with any head lease requirement to repair and redecorate the PC shall serve notice upon the Charity and the Charity shall prepare and advise the PC of a programme of remedy.

14.Access of Landlord

As for Head Lease

15.Environmental Protection

As for Head Lease

16.Alterations

As for Head Lease

17.Statutory Requirements and Health and Safety

As for Head Lease

18.Grants

As for Head Lease

Insurance

As for Head Lease

The Charity shall maintain all public liability insurances for the Demise and shall maintain insurances for the Pavilion.

19.Assignment and Sub-letting

The PC will subject to approval not to be unreasonably withheld permit the Charity to sub-let any part of the VG to its sports club members for the purposes of maintenance or seeking grant funding.

20.Yielding Up

As for Head Lease

21.Indemnity

As for Head Lease

22.Costs

As for Head Lease

23.Landlord's Covenant

As for Head Lease

24.Notices

As for Head Lease

25.Rights and Easements

As for Head Lease subject to items 11 and 12 above.

26.Break Clauses

As for Head Lease. By voluntary mutual agreement only. However the PC reserves the right to enact a break in the sublease should the Charity repeatedly fail for six times in any one calendar year to remedy in accordance with clause 13 any individual failure to comply with the terms of the sublease with such a proposed break be subject to external review for accuracy and reasonableness by an independent assessor of the RICS. Should this right be exercised the PC shall pay the charity its costs and improvements.

The PC will not terminate the Head Lease without the express permission of the Charity.

27.Sports Courts

The Charity will consult with the PC on any need or proposal to build any additional sports courts beyond the current specified use of the VG.

28.Liaison Channels

To ensure good communication and aid cooperation the Charity and the PC will maintain a representative to ensure the operation of the sub lease.

29. Annual Review

The Chairty will submit and present an annual report to review what has been achieved at the PC's Annual Parish Meeting such report to have been submitted to the PC two weeks in advance and any issues and concerns not resolved in the year or likely to arise in the next year can be raised in public.

30. Water Rates including sewage/ Electricity/ Business Rates

The Chairty will assume responsible for all costs associated with utility services it uses.

31. Pest Control

The Chairty will maintain a regime that keeps pests from damaging the sports pitches, sports courts and pavilion and the Charity shall maintain the demise in a way that does not encourage pests.

32. Litter Bins and Removal of Waste after events.

The Charity will maintain at least fortnightly collections of litter and weekly during the period April to September inclusive.

33. Other Potential Sports Users

All sports and community group wishing to use the facilities of the VG regularly will be invited and they have the right to join the HBO Sports and Community club provided their membership is open to anyone within the village that is able to partake in that activity.

Groups not wishing to join the HBO Sports and Community club will be able to hire the facilities or use other parts of the VG provided their activities do not impact those of the Charity .

34. Complaints Procedure

Any complaints received by the PC about activities of the Charity shall be forwarded to the Charity for consideration and the Charity shall report the outcome of the complaint to the parish council.

35. Constitution and Objects of the HBO Sports and Community Club Charity

The PC shall be kept informed of any proposed changes to the structure or constitution of the Charity provided that one member of the trustees of the Charity shall be a parish councillor

36. Notices Displayed on the Green

The Charity will provide space on a noticeboard at the entrance to the VG for PC notices and information

37. Sponsorship and Advertising

Temporary boards and banners etc. may be displayed during activities at the VG and also the Charity is granted permission to display event promotional material outside the entrance to the VG at the established position.

The Tenant will be allowed to permanently incorporate sponsors or donors names and emblems on the Pavilion where required to do so (e.g. Sport England etc.)

38. Legal Fees Associate with the Lease

Each party shall pay their own costs associated with the preparation of this agreement and sub lease.

OTHER IMPORTANT CONSIDERATIONS

1. The Charity is to take legal advice to ensure that either party does not incur or suffer and tax cost or charge as a consequence of this agreement and sublease and transfer of equipment and benefits and obligations and payments referenced herein.
2. The Charity needs to consider its VAT position to ensure that it can recover VAT on its operational expenditure but also should take advice to ensure that registering for VAT whilst below the income threshold and reclaiming VAT on the pavilion build would not be considered to be evasion of VAT by HMRC.

APPENDIX

B. BIDWELLS VALUATION

Subject to Review

Your ref:
Our ref: AJP/HatfieldBroadOak
DD: 07741 247999
E: Alex.Porter@bidwells.co.uk
Date: 25 October 2024

Mr Keith Artus
Hatfield Broad Oak Parish Council
2 Lea Hall Bungalows
Dunmow Rd
Hatfield Heath
Bishop's Stortford
CM22 7BL

HATFIELD BROAD OAK VILLAGE GREEN, HATFIELD BROAD OAK

Instructions

We have received instructions from Mr Keith Artus on behalf of Hatfield Broad Oak Parish Council in an email dated 4 September 2024 to prepare a market appraisal for Hatfield Broad Oak Village Green, Hatfield Broad Oak (the Property).

We carried out a desk-based appraisal of the Property with no site inspection. Therefore, the content of this report is based on the information available from desk-based research and our experience of dealings with similar property.

We understand you do not require a formal Red Book valuation. We are obliged to confirm that the advice provided is an exception to the mandatory valuation practice statements VPS1 to VPS5 as stated within the RICS Valuation - Global Standards (2021). Accordingly, this letter does not constitute an RICS "Red Book" Valuation Report.

The information below is specifically for internal purposes and should be used only in that context. It is not to be used and is not commissioned for any other purpose.

We have no conflicts of interest in undertaking this work. This information has been prepared by Alex Porter MSc MRICS FAAV, who is a Partner of this firm.

Location



The location of the Property is shown above and on the plan enclosed.

Description

The Property comprises approximately 6.1 hectares (15.06 acres) and is used as a village green and recreation area for Hatfield Broad Oak. Of this, approximately 5.15 hectares (12.71 acres) is used for the recreation area, with remainder as access and ancillary car parking. Please refer to the enclosed site plan, which has been taken from the lease dated 19 January 2011.

The Property is a fully enclosed community sports ground with associated car parking, located in the village of Hatfield Broad Oak. Situated to the north and west of the Property is agricultural land. To the south and west are public highways (High Street and Broad Street), beyond which lie residential properties forming part of the settlement of Hatfield Broad Oak itself.

The majority of the land is classified on the former Ministry of Agriculture Land Classification Series as Grade 2. The Soil Survey of England and Wales classifies the soil within the Stretham Series. The Stretham Series are characterised deep, well drained calcareous soils are suitable for growing cereals and other arable crops.

Access

Access to the property is directly from the B183 (Broad Street) towards the northern extent of the Property.

Services

We have not received a report on the services and have assumed that there are no services providing utilities connecting to the land.

Condition

Due to not physically inspecting the Property for this appraisal, it has been assumed the Property is generally in a good state of repair and is well maintained in accordance with the Lease terms. We

assume that the boundary fences, trees, and hedgerows are adequately maintained, particularly along the roadside.

Planning Policy

The Property is located within Uttlesford District Council. The Uttlesford Local Plan, which was adopted in January 2005 ("the Local Plan"), sets out the planning framework for the district alongside the National Planning Policy Framework (NPPF).

Under the Local Plan, the Property is designated as historic parkland, parks and gardens, under policy ENV9. This restricts development where proposals will harm the historic landscape.

Planning History

We have checked Uttlesford District Council's online planning records and have identified the following planning applications. The below excludes applications for tree works.

Planning Ref	Application	Decision & Date
UTT/18/2449/FUL	Single storey storage facility/shed type building	Approved with conditions – 24 October 2018
UTT/18/0884/FUL	Erection of shed for sports equipment/machine storage	Approved with conditions – 20 June 2018
UTT/17/1894/FUL	Provision of a new sports pavilion (identical scheme to approved scheme UTT/14/1792/FUL and UTT/1136/12/FUL)	Approved with conditions – 25 August 2017
UTT/17/0358/FUL	Provision of new pavilion to match the approved scheme granted approval under Application Numbers UTT/14/1792/FUL and UTT/1136/12/FUL	Refused – 11 May 2017
UTT/16/0803/FUL	Erection of a sports and community pavilion	Refused – 3 November 2018
UTT/14/1792/FUL	Variation of condition 2 of planning permission UTT/1136/12/FUL (erection of community pavilion) to allow redesign of the pavilion for use as changing facilities for cricket/football and meeting room.	Approved with conditions – 30 July 2014
UTT/1136/12/FUL	Erection of new community pavilion with associated parking area and driveway	Approved with conditions – 6 August 2012
UTT/1210/11/FUL	Change of use of open pasture land to public amenity area including new vehicular access and parking area	Approved with conditions – 25 August 2011
UTT/1150/11/DOC	Application to part discharge condition 6 (C.4.2) & C.90A Newt Mitigation attached to UTT/1477/10/FUL	Discharge of Condition in full – 10 June 2011
UTT/0862/11/DOC	Discharge of conditions 5(details of earthworks), 9(Details of construction traffic) & 10(Details of wheel clean equipment) on application UTT/1477/10/FUL	Discharge of Condition in full – 2 June 2011
UTT/1477/10/FUL	Alterations to ground levels to form village cricket and football pitches and amenity area.	Approved with conditions – 9 November 2010
UTT/1611/09/FUL	Alteration of ground levels to form village cricket and football pitches and amenity area.	Withdrawn – 3 March 2010

Planning Ref	Application	Decision & Date
UTT/0535/09/FUL	Change of use of open pasture land to public amenity space.	Approved with conditions – 18 August 2009

We have not identified any Enforcement Notices in relation to the Property.

Business Rates

We have made enquiries via the Valuation Office Agency website and no business rates were identified for the property.

Environmental Issues

We have not undertaken any investigations into past uses of the Property to establish whether there is any potential for contamination from such uses of the site and have assumed that none exist. In the event of contamination being discovered further specialist advice should be obtained. Should it be established that contamination does exist this might reduce the value now reported.

Flooding

We have consulted the Environment Agency data and can confirm that the Property is not identified as within an area at risk from flooding.

Tenure and Possession

The land is subject to a lease to Hatfield Broad Oak Parish Council dated 19 January 2011 (“the Lease”) for a 99-year term expiring on 18 January 2110. The passing rent is £1 (one pound) per annum and the use of the land, as specified in the Lease, is for the means of sporting, recreation, local community or ancillary use with associated parking.

The Lease, at clause 3.10, permits assignment or subletting to HBO Village Green Co without requiring Landlord’s consent, and allows assignment or subletting to other organisations providing the Landlord has provided consent which shall not be unreasonably withheld or delayed.

Report on Title

The Property is registered with HM Land Registry, with the Freehold registered under Title No EX831641 and the leasehold registered under EX862312. We have not made any further investigations into title and have assumed good and clean title with no onerous conditions, charges or liabilities, restrictions or obligations.

We advise that Hatfield Broad Oak Parish Council obtain legal advice from their solicitor on title matters given that we have had to make assumptions. The legal advice may have an impact on the valuation now provided.

Market Commentary

The “KPMG Economy Forecast – September 2024” states, in respect of the UK economy:

“Following a rebound at the start of the year, UK GDP growth is expected to have slowed again in the second half of 2024, with the economy on course to grow by 1% this year overall. This could pick up slightly

to 1.2% in 2025 as a less restrictive monetary policy and continued improvements to real wages could support stronger consumption and business investment.

UK inflation is projected to fall below 2% in September but is set to rise again over the coming months, peaking at 3% in early 2025. We're expecting it to gradually moderate and return to target by the end of 2025."

Methodology and Value

It is understood that the proposal is for Hatfield Broad Oak Parish Council to sublet the Property to Hatfield Broad Oak Village Green Co at nil rent. This is specifically provided for at 3.10 of the Lease and the Parish Council would therefore be foregoing any potentially achievable rent.

Under the terms of the Lease, it would be possible for Hatfield Broad Oak Parish Council to charge a rent in this situation. With reference to comparable evidence, we consider that a sublet rent for a local recreation, sporting, or community use would be in the order of £2,000 to £2,500 per annum. If the Parish Council did opt to charge Hatfield Broad Oak Village Green Co a rent, it is considered that a rent within this range would be considered appropriate.

We are therefore of the opinion that the value of the leasehold interest of the Property is **£40,000 (forty thousand pounds)**.

It should be noted that values change over time and that the valuation provided above is given on the date specified. It may not be valid on an earlier or later date.

Confidentiality

Neither the whole nor any part of this report nor reference thereto may be included in any published document, circular or statement nor published in any way without prior written approval of the form and context in which it may appear.

Such publication of, or reference to, this Valuation Report will not be permitted unless it contains a sufficient contemporaneous reference to any departure from the statements of Asset Valuation Practice and Guidance Notes published by the Royal Institution of Chartered Surveyors or the incorporation of the special assumptions referred to herein.

The report has been prepared solely for the purpose stated and is to be regarded as confidential to the persons to whom it is addressed and it is intended for use by them only. Consequently, in accordance with our normal practice, no responsibility is accepted to any third party in respect of the whole or any part of its contents.

Notes

Please be aware of the below which has influenced the valuation opinion.

- No physical inspection of the property has taken place.
- No allowance has been made for taxation.
- We have assumed that there are no deleterious or hazardous materials that are situated on the Property.
- Neither the whole nor any part of this Market Appraisal should be included in any publicised document nor published without our prior consent.

Hatfield Broad Oak Village Green
Hatfield Broad Oak
October 2024

Yours sincerely



Alex Porter MSc MRICS FAAV
Partner, Rural

For and on behalf of Bidwells LLP

APPENDIX

C GoCE CHECKLIST

Contracts and Grants: A Comparative Table (GCoE)

Issue	Contracts: www.gov.uk/government/collections/the-public-sector-contract	Government Grants: https://grantshub.civilservice.gov.uk
Description	The agreement for money to be paid to an external source / party for the purchase of products (assets or goods) or activities (services or works). Usually focussed on specific output. Mostly for commercial opportunities, and the provision of goods and services or access to experts.	The agreement for money to be paid to an individual or entity to fund activities that align with departmental policy and / or for the public good. Usually focussed on more general outcomes. In reflecting department priorities these can cover areas of disadvantage, social improvement, research and innovation etc.
Benefit to Government	Departments can benefit directly, by taking ownership of goods purchased, or receiving services provided.	Departments have activities carried out that align with their policies, they do not gain a direct economic benefit (except if replacing a spending commitment).
Incentives	Most contracts have a profit element to the payment and consideration. Contracted parties can make a reasonable return / profit margin in return for the risk they are accepting and the goods or services being delivered.	Grants do not generally have a profit element, they are usually for reimbursement of costs incurred. The recipient is usually barred from making a profit from delivery. Grants incentivise delivery through funding.
Ownership and Liability	Departments can take ownership of (and may be beneficiary to) the products or activities. Liability / risk lies predominantly with the contractor.	The funding department does not take ownership of (nor will it be beneficiary to) the activities. Liability / risk lies predominantly with the funder.
Control	Departments have greater / direct control over the funds spent.	Gives Department limited control over the funds spent, allowing Departments to remain at arm's length to recipients and outputs.
Elements	A legally enforceable agreement, between two or more competent parties that intend to be legally bound, where an offer is made and accepted, and funds / resources are provided for goods or services (consideration).	A legal agreement, between two or more parties, where on evidence of the entity's need or qualification, money is paid in order to fund (or reimburse expenditure on) specific recipient activities or services.
Establishment	Usually developed via commission for a specific service / goods, detailed specification of goods or services to be provided. With defined outputs and a delivery profile or agreed activity.	Usually developed in conjunction with existing activities that align with Department policy, indication of likely areas to benefit, of desired outcomes and longer term impacts. Less well defined, particularly for innovation / research.
Terms & Conditions	Terms are any provisions that form part of the contract, they create legal obligations. Terms can be conditions or warranties. They regulate the exchange of products / activities (quality, quantity, etc.) for payment.	A grant is provided on conditions aimed at ensuring the proper application of the grant funds, but not in return for anything. Terms and Conditions focus on broader aims / milestones and categories of expenditure.
Payment	Can pay by results, transferring risk and limiting financial exposure – uses targets to incentivise performance. Funding is payable as deposits or on completion of contract stages.	Can be paid in advance of the activities being carried out (if need is evidenced) or provided on submission of periodic claims.
Delivery	Usually driven by the Department, based on its needs, and specified within the contract. Usually outputs focussed.	The recipient is usually able to exercise freedom to take their own decisions on how to achieve the outcomes.

Value Added Tax	Due to consideration VAT will apply (unless for certain exempt goods / services, or with HMRC waiver). More information can be found here.	As consideration is not usually evident VAT will not apply . If there is consideration, it is unlikely to be a grant. More information can be found here.
Authority & Regulatory Issues	Authority to enter into contracts is given by Parliament via vote on estimate, though specific legislation may also be required for certain large contracts. EU Public Sector Procurement law applies . Contract procurement rules must be applied. Civil law standards and contract law applies.	Specific legislation is usually required to allow a Secretary of State to make grants (in some instances grants can be financed via the Appropriations Act). The Grants Standards must be complied with. Public law standards, public and administrative law and tort law applies.
Remedies for breach	Suspension, clawback of unused or misused funds, liquidated damages allow compensation, recovery of funds due to losses incurred, termination for breach, may be able to obtain a court order for specific performance.	Can suspend, claw back unused or misused funds, termination for breach.

APPENDIX

D. NALC ADVICE

Subject to Review

From: Legal | EALC <legal@ealc.gov.uk>
Subject: 286.24 Hatfield Broad Oak
Date: 25 September 2024 at 10:22:16 BST
To: Cllr Artus <cllrartus@hatfieldbroad oakpc.gov.uk>
Cc: Parish Clerk <parishclerk@hatfieldbroad oakpc.gov.uk>

Good morning Cllr Artus

I have received a reply from the NALC in regard to the matters that you raised. The response is as follows:

Are there any other acts that would affect the granting of the sublease and the support payment of £20k per annum for the duration of the lease (86 years)? Such as the Procurement Act etc.

Section 19 of the Local Government (Miscellaneous Provisions) Act 1976 empowers the council to make a grant to any voluntary (not for profit) body that provides recreational facilities which seems to be the case here. The procurement legislation is not relevant as the council will not be obtaining a service or goods.

Is the support we are proposing compliant with NALC financial regulations (we are simply transferring the cost to the council to the charity)?

The financial regulations allow for grants to appropriate bodies such as this appears to be. However, it is unwise to enter into a legal obligation to make a specific grant for a number of years as circumstances may change and make the size of the grant inappropriate.

To ensure compliance, is it better to have a legally binding annual grant (say subject to proof of costs etc.) or through a payment upon invoice? For either of the above, to ensure compliance, would it be better to specify the amount or not. If not, this could be paid by either method above.

Payment by invoice is not appropriate as the council is not obtaining goods or services. It is not legal to claim back VAT on an invoice where the council is not the ultimate recipient of the goods or services concerned. The council should make payment by a grant under section 19 of the 1976 Act. If it wishes the council can require evidence of how the previous grant has been spent before making a further grant.

I hope this helps but please do not hesitate to contact me if you have any questions or need further information.

Kind regards

Ann Wood

Ann C Wood
LLB(Hons) CertHE Local Policy DMS

APPENDIX

E. BIRKETTS ADVICE

Subject to Review

ADVICE TO HATFIELD BROAD OAK PARISH COUNCIL REGARDING DISPOSALS AND SUBSIDY

1. INSTRUCTIONS

- 1.1 Hatfield Broad Oak Parish Council (the “**Council**”) are proposing to grant a sublease of the land known as the Hatfield Broad Oak Village Green (the “**VG**”) to HBO Sports and Community Club (the “**Charity**”) (the “**Lease**”).
- 1.2 We have been asked to advise the Council on:
 - 1.2.1 whether there is a specific or general consent requirement for the Council to conduct a disposal in relation to the proposed Lease under the Local Government Act 1972 (“**LGA 1972**”); and
 - 1.2.2 whether there is a risk of the Council providing a subsidy to the Charity.
- 1.3 Following your review of this advice note, if you require any further advice, please let us know and we would be happy to provide a separate scope and fee estimate.
- 1.4 Where we have provided general guidance based on the information provided to us, we would be happy to discuss should further specific advice be required. We assume that the Council has sought an independent valuation of the VG.

2. EXECUTIVE SUMMARY

2.1 **Grant of a Lease:**

- 2.1.1 If the Lease is in scope of the provisions of s.127 of the LGA 1972, **the Parish Council has a duty to obtain best consideration** or seek specific consent from the Secretary of State for disposing of its interest at ‘less than best consideration than can be reasonably obtained’.
- 2.1.2 The grant of a sublease by a parish council is considered a disposal under section 127 of the LGA 1972.
- 2.1.3 As the Lease is for more than seven years, a disposal under section 127 LGA 1972 requires that the Council seek consent from the Secretary of

State. The Secretary of State provides for a 'general consent' under 'Circular 06/03'¹.

2.1.4 Generally speaking, the Council may be able to rely on the general consent under Circular 06/03 where:

2.1.4.1 the undervalue does not exceed £2M. The undervalue is calculated in accordance with Circular 06/03 and broadly, it is the difference between the unrestrictive value (i.e. the value the Council could have sublet the VG on the market) and the restricted value (i.e. the value at which the Council has decided to sublet the VG); and

2.1.4.2 the Council considers that the disposal will help it to secure the promotion or improvement of the economic, social or environmental well-being of its area.

2.1.5 If the conditions of the general consent are not met, the Council must seek specific Secretary of State consent for the disposal.

Advertising requirements where the land consists of public open space

2.2 There are additional advertising requirements where the land to be sublet consists of public open space. Public open space includes land used for the purposes of public recreation or a public garden. If the land to be sublet consists of public open space, before the Council disposes of the sublease, it should advertise its intention to do so in a local newspaper for at least 2 weeks and give proper consideration to any representations received. We can provide further guidance on the implications of open space land under the Local Government Act 1972 if necessary. If you require support on this, please let us know and we will prepare a separate quote for you.

Subsidy Control compliance

2.3 We assume that the Lease to the Charity is at a less than market rate. As the Lease to the Charity is at an undervalue, it is an unlawful subsidy unless it complies with the provisions of the Subsidy Control Act 2022 ("**SCA 2022**").

2.4 To be a subsidy in scope of the SCA 2022, all four limbs of the test under s.2 of the SCA 2022 must be met. The second limb of the test requires that the financial assistance is conferred on an economic undertaking. This is determined by **the activity** that is being undertaken and ultimately whether the entity is selling goods or services on a market. The legal status of the entity, e.g. whether it is a charity, is not taken into account.

¹ [Circular 06/2003: Local Government Act 1972 general disposal consent \(England\) 2003 Disposal of land for less than the best consideration that can reasonably be obtained.](#)

- 2.5 On our initial assessment, we consider that the Council has good arguments that the Lease at an undervalue is not a subsidy provided that the charity does not undertake any economic activities in the property, i.e. selling goods or services. Please let us know if you require further advice on this.

Further Considerations

- 2.6 The Council will need to consider further:
- 2.6.1 Recording the decision to dispose of the VG in accordance with s. 127 Local Government Act 1972 and the Council's compliance with Circular 06/03 and the general consent.
 - 2.6.2 Advertising the intention to dispose of the Lease for a minimum of two consecutive weeks and considering any representations / objectives received.
 - 2.6.3 On the basis of the Heads of Terms provided, the Council intends to provide each year a guaranteed minimum of £10,000 up to £20,000 (exc. of VAT) in each year of the Lease for the operation, management and maintenance of the VG for the Lease's duration (less one day than the term of the Headlease). An initial payment of £5,000 will be made on 28th February 2025. We would strongly recommend that the Council considers procurement law and commercial implications for the Council of the maintenance of the VG for this payment and that this is legally documented separately from the Lease. Contracts for services by the public body are in scope of procurement law whereas land transactions are out of scope. Where there is both a services contract and a land transaction such as a lease, it is the 'main subject matter' of the arrangement which determines whether the arrangement is caught by procurement regulations. The main subject matter is typically determined by what part of the arrangement has the highest monetary value. If it is a grant, then Council would need to ensure it has considered its powers to provide the grant and documents its decision making. Please let me know if you need further advice on this.
 - 2.6.4 Recording the rationale for how the Council's decision-making that the Lease complies with the SCA 2022.
 - 2.6.5 Compliance with its Standing Orders and procurement regulations for the outsourcing of the proposed works. To note procurement law is undergoing reform, with the introduction of the Procurement Act 2023 changing the way public bodies source goods, services and works. The Procurement Act 2023 is anticipated to come into force on 24 February 2025. If you need any further advice on this, please let us know.

3. DETAILED ADVICE

Question 1: is there a specific or general consent requirement for the Council to conduct a disposal in relation to the proposed Lease under the Local Government Act 1972 ?

3.1 Section 127(2) of LGA 1972 states that:

(2) Except with the consent of the Secretary of State, land shall not be disposed of under this section, otherwise than by way of a short tenancy, for a consideration less than the best that can reasonably be obtained.

3.2 Breaking this down:

3.2.1 The definition of 'disposed' includes the grant of a lease, assigning any unexpired term of a lease and granting an easement.

3.2.2 A parish council entering into the Lease with the Charity must seek the best consideration for the rent that is reasonably obtainable on the market. If the rent is less than the best reasonably obtainable, consent from the Secretary of State for the disposal must be sought.

3.2.3 An exception to this rule is if the disposal is a short tenancy, i.e. for a term of less than seven years. This exception does not apply in the current circumstances.

3.3 What constitutes consideration less than the best that can reasonably be obtained is the commercial value of the Lease to the Council that is capable of being assessed by a valuer. The only factor to take into account is the commercial or monetary value to the Council. It is fact-specific, so what is reasonable will depend on a case by case basis. If you need further legal guidance on this point in terms of how legal judgments have interpreted 'best consideration reasonably obtainable', please let me know.

3.4 We assume that the Lease granted to the Charity is at a preferential rate and therefore below-market rate. Consequently, on the above analysis, Secretary of State approval for entering into the Lease is required.

4. GENERAL OR SPECIFIC CONSENT OF THE SECRETARY OF STATE

4.1 The Council must seek specific Secretary of State consent for entering into the Lease unless the conditions of the Circular 06/03 are met.

4.2 Circular 06/03 provides that the Council may have a general consent to proceed with the Lease and the Council would not need to obtain specific consent if:

- 4.2.1 the Council considers that the disposal will help it to secure the promotion or improvement of the economic, social or environmental well-being of its area; and
 - 4.2.2 the difference between the unrestricted value and the restricted value does not exceed £2 million.
- 4.3 We understand that the sublease of the VG to the Charity is so that the Charity can manage and maintain the VG for the benefit of the general public. Further that the Charity will be able to deliver sports and clubs (including cricket and football) and organisations associated with Hatfield Broad Oak and to potentially develop a pavilion on the VG. At this time, we have not been asked to advise on the development of the pavilion but will be able to assist if required. Please let us know if this is something that you may require. For these reasons, it is likely that the Council will have good objectively justified arguments to support that the disposal is to secure the promotion or improvement of the economic, social or environmental well-being of its area. The Council's reasoning behind determining whether the disposal will secure promotion or improvement of the economic, social or environmental well being must be properly documented to evidence the decision making procedure.
- 4.4 In terms of calculating whether or not the difference between the restricted value and the unrestricted exceeds £2 million, the undervalue should be calculated on a realistic valuation in accordance with the Technical Appendix to Circular 06/03. Broadly,
 - 4.4.1 the restricted value is the market value of the property having regard to the terms of the proposed transaction; and
 - 4.4.2 the unrestricted value means the best price reasonably obtainable for the property on terms that are intended to maximise the consideration which are assessed in accordance with the procedures set out in the Technical Appendix to Circular 06/03.
- 4.5 If following the Council's valuation, the difference does not exceed £2,000,000 and the Council are satisfied that it has good objectively justifiable reasons that the sublease to the Charity will assist with the "*promotion or improvement of the economic, social or environmental well-being of its area*" then the Council will be able to rely on the general consent. It will not therefore need to seek specific consent from the Secretary of State.to enter into the Lease.
- 4.6 To note Circular 06/03 recommends that even if the conditions are met for the general consent to apply, the Council should still comply with 'normal and prudent commercial practices, including obtaining the view of a professionally qualified valuer as to the likely amount of the undervalue'.

5. **ADDITIONAL REQUIREMENTS RELATING TO OPEN SPACE**

- 5.1 We note that the disposal consists of a village green and therefore includes open space land. There are additional advertising requirements where a parish council intends to dispose of land under section 127 LGA 1972 which includes open space land. Open space land includes any land laid out as a public garden or used for the purposes of public recreation.
- 5.2 A parish council wishing to dispose of any land consisting of or forming part of an open space must advertise its intention in a local newspaper for two consecutive weeks and properly consider any representation or objections (sections 123(2A) and 127(3), LGA 1972).
- 5.3 The purpose of advertising is to enable the public to respond to a proposal to dispose of open space land and to enable the Council to consider objections before it takes the decision to dispose of the land. If you require any assistance with this, such as support on preparing the public notices, please let us know.

6. **SUBSIDY CONTROL**

Question 2: is there a risk of the Council providing a subsidy to the Charity?

- 6.1 Where a public authority provides financial assistance (either in money or benefit in kind) to a recipient that meets the definition of a subsidy (as set out in Section 2 Subsidy Control Act 2022 ("**SCA 2022**")), the public authority must comply with SCA 2022. Failure to comply with the SCA 2022 will result in the subsidy being considered unlawful.
- 6.2 Attached is a note that contains a brief overview of the Subsidy Control Act (the "**Subsidy Note**"). Paragraph 1.2 of the Subsidy Note sets out the test for determining whether a Subsidy has occurred. All four limbs of the test must be satisfied in order for financial assistance to be considered as a subsidy.
- 6.3 For the purposes of our analysis, we consider that **Limb A** is met. The Council is subletting its interest in the Lease to the Charity. **Limb B** is met if the funding '*confers an economic advantage on one or more enterprises*'. Our advice is on the basis that we are informed that the Council is providing grant funding in the Lease for up to £20,000 for the upkeep of the VG. We have not been asked to provide advice on the analysis of the grant payment of up to £20,000 in the context of the delivery of the maintenance services. To flag for further consideration, there is a legal distinction between a grant and a contract. A contract could fall under the procurement regulations and can typically take the form of payments made for a service to a specification required by the Council. Grant agreements are not in scope of the procurement regulations and tend to be more 'purpose' focus, without dictating specific requirements and failure to deliver results in the suspension and/or return of the grant payment. Please let me know if you require

further advice on this point, and any guidance on legal risk with the annual payment of up to £20,000.

- 6.4 For **Limb B**, the key aspect is whether the Charity meets the definition of an ‘Enterprise’. An “enterprise” means a person who is engaged in an economic activity, that is offering goods or services on a market. The Statutory Guidance² gives an example of non-economic activity being “[a] ringfenced grant to a charity for its non-economic activities (even if the charity also provides some goods or services on the market) (at para 2.17 of the Statutory Guidance). If the activity is a non-economic activity, it will not be considered an “enterprise” for the purposes of Limb B.
- 6.5 Providing the Lease at a preferential rate could confer an economic advantage to the Charity therefore **the Council should check that the Charity is not undertaking any economic activity (based on the permitted use of the Lease)**. The Council will need to assess whether the Charity is an Enterprise; if the Charity are acting commercially it will be considered an Enterprise.
- 6.6 The Statutory Guidance sets out that when determining whether economic activity is being undertaken, the public authority should consider how the activities are financed i.e. through or public resources or through commercial payments such as by visitors (entrance fees). Where the activity is funded by the latter the activity will likely be considered economic in nature. In contrast, a sports club for example can set reasonable membership fees without being considered an enterprise. Provided that the Council can demonstrate that the Charity is not an enterprise as it does not undertake economic activity, then the Council would have arguments to support that the Lease at a preferential rate and grant funding will not be considered a subsidy within the meaning of the SCA 2022. For more guidance as to the application of this limb please see paragraph 4 of the Subsidy Note.
- 6.7 **We have not considered Limbs C or D of the test under the SCA 2022 on the basis that the Council can demonstrate Limb B is not met.**
- 6.8 To note, Circular 06/03 refers to the need for the Council to consider subsidy control however it has not been updated since the UK left the European Union. Circular 06/03 therefore refers to the previous legal regime governing subsidies known as ‘state aid’ (see paras 14 – 16 of Circular 06/03).

Should you need further advice on any of the subjects above or have any questions around this advice note or the Subsidy Note attached then please let us know and we would be happy to discuss this further with you.

BIRKETTS LLP
21 October 2024

SUBSIDY CONTROL: A BRIEF OVERVIEW

OVERVIEW

We've set out below a brief overview of the Subsidy Control Act 2022 and its implications for public bodies providing financial assistance (by cash or benefit in kind). If you have any questions, we would be pleased to discuss further. Key aspects of the Subsidy Control Act are summarised below:

Financial Assistance	Financial Assistance or a benefit provided by a Public Authority to a Recipient;
SCA 2022	The Subsidy Control Act 2022; and
The Statutory Guidance	The government's guidance explaining Public Authorities' legal obligations under the UK subsidy control regime. https://assets.publishing.service.gov.uk/media/658025b295bf65000d719140/uk_subsidy_control_regime_statutory_guidance.pdf

1. DEFINITION OF A SUBSIDY

- 1.1 Where a Public Authority provides Financial Assistance to a Recipient that meets the definition of a subsidy (as set out in s.2 SCA 2022), the Public Authority must comply with SCA 2022. Failure to comply will result in the subsidy being considered unlawful. Where the Financial Assistance does not satisfy the criteria set out in s.2 SCA 2022, the Public Authority should document its rationale.
- 1.2 Section 2 of the SCA 2022 defines a subsidy as the provision of Financial Assistance which:
 - 1.2.1 **Limb A** is given, directly or indirectly, from public resources by a Public Authority;
 - 1.2.2 **Limb B** confers an economic advantage on one or more Enterprises;
 - 1.2.3 **Limb C** is specific, that is, is such that it benefits one or more Enterprises over one or more other Enterprises with respect to the production of goods or the provision of services; and
 - 1.2.4 **Limb D** has, or is capable of having, an effect on:
 - competition or investment within the United Kingdom,
 - trade between the United Kingdom and a country or territory outside the United Kingdom, or
 - investment as between the United Kingdom and a country or territory outside the United Kingdom.

All four limbs of this above test must be satisfied for Financial Assistance to be considered a subsidy and subject to the SCA 2022. We set out below commentary on the test¹.

¹ s.2, Subsidy Control Act 2022

2. LIMB A

2.1 The assessment of Limb A is divided into two parts:

2.1.1 The first part determines if the granting body is a Public Authority. A Public Authority is defined as a person who exercises functions of a public nature.² If the granting body exercises mixed public and private functions or if its functions are attributable to a Public Authority, further analysis is required.

2.1.2 The second part of this Limb assesses whether the Financial Assistance is granted from public resources. Public Authorities must be aware that if they have influence over the granting body and can direct the use of the body's resources, those resources will be considered as public resources.

3. LIMB B

3.1 Limb B of the SCA 2022 assesses whether: (1) the recipient is an Enterprise; and (2) the Financial Assistance confers an economic advantage.

3.2 An Enterprise is defined in the SCA 2022 as a person (or group of persons under common ownership or control) engaged in an Economic Activity, to the extent that the person (or group) is engaged in such an activity. Economic Activity is the offering of goods or services on a market.

4. LIMB C

4.1 Limb C is focused on the specificity of Financial Assistance. This Limb is satisfied when Financial Assistance benefits certain Enterprises over others in a comparable position.³ Common specificity factors are where a Public Authority provides Financial Assistance to an Enterprise with specific characteristics in certain geographical areas or even where it has discretion in deciding which Enterprises can benefit from the Financial Assistance.

5. LIMB D

5.1 A Public Authority will need to carry out its own commercial analysis to ascertain whether this limb has been fulfilled. We cannot specifically assist in this limb's assessment but can broadly advise on the legal implications of fulfilling the limb. The determination as to its fulfilment will ultimately be up to the Public Authority's internal analysis. More complex subsidies may require economists/market-specific financial consultants to support you in your analysis.

² s6(1) Subsidy Control Act 2022

³ s 2(1)(c) Subsidy Control Act 2022

6. TRANSPARENCY AND AUDIT

- 6.1 Before granting a proposed subsidy, the Public Authority must undertake a Principles Assessment. The Public Authority must be able to justify that the proposed subsidy is compliant with these principles before giving the subsidy. The Subsidy Advisory Unit has published a template Principles Assessment document available here: <https://www.gov.uk/government/publications/subsidy-control-principles-assessment-template>. We would be happy to support you in evidencing compliance with the Principles Assessment.
- 6.2 Central government maintains a database of subsidies. The database is available to view here: <https://www.gov.uk/guidance/view-subsidies-awarded-by-uk-government>. Unless an exemption applies, subsidies must be uploaded to the Subsidy Database within three months of the decision to give the award.

7. OTHER CONSIDERATIONS UNDER SCA 2022

7.1 Gross Cash Equivalent/Gross Cash Amount

The UK government introduced the Subsidy Control (Gross Cash Amount and Gross Cash Equivalent) Regulations 2022 alongside the SCA 2022. These regulations enable Public Authorities to convert various types of Financial Assistance into a single £ value for accurate application of the SCA 2022.

Scenarios to which the regulations will apply will be where, for example, the grant is given over a number of years or the financial assistance is by way of a loan. We can discuss with you what this means in practice for the valuation of your Financial Assistance.

7.2 Indirect and Cross Subsidies

When a Public Authority grants Financial Assistance, it must identify all potential recipients, including third parties who might indirectly benefit. These third-party recipients may be indirectly receiving a benefit; this will affect the outcome of subsidy consideration. We would be happy to discuss this further with you if it is applicable to your scenario.

APPENDIX

F. Birketts email 21st October 2024

From: Michael Corsham <Michael-Corsham@birketts.co.uk>

Subject: RE: Legal Advice to Hatfield Broad Oak Parish Council

Date: 21 October 2024 at 14:10:40 BST

To: Cllr Artus <cllrartus@hatfieldbroadoakpc.gov.uk>

Cc: Hannah Harbottle <Hannah-Harbottle@birketts.co.uk>, Josie Devoti <Josephine-Devoti@birketts.co.uk>, Parish Clerk <parishclerk@hatfieldbroadoakpc.gov.uk>

Good afternoon Keith,

Thanks for the email – I understand that in any year, the Parish Council will provide a minimum £10k and a maximum of £20k, based on invoices received. On this basis I've assumed that the Parish Council will still pay the Charity a guaranteed amount of £10k up to £20K for the operation, management and maintenance of the village green to the Parish Council's specification (let me know if this is not the intention to guarantee the £10k payment regardless of the value of invoices actually incurred).

As such, para 2.6.3 of the advice still requires consideration by the Parish Council; that the Parish Council intends to provide a minimum fixed sum for the maintenance of the village green still leaves the question open as to whether there is in law a grant or a contract. Procurement law will be a consideration for the Parish Council where the transaction is construed as a contract for services (i.e. the maintenance, management and operation of the village green).

I did not see the possibility in the HoTs of clawing back any of the payment made to the Charity. Grant Agreements will typically provide that any proportion of the grant funding is returned where the recipient has not been able to provide sufficient evidence of the incurred expense to be reimbursed or simply if the grant funding has not been used by the recipient. Is this the intention of the Parish Council that it does not expect any of the payment returned? Apologies for the typographical error in the first line of para 4.4., the line "We understand from the Heads of Terms provided that the rent paid by the Charity will be £20,000 per annum" should be deleted.

Please note that I have exceeded the initial budget of £1,500 (plus VAT) for the public sector scope as set out in our client care letter of 6th September 2014. Therefore, I will need to increase the budget for the public sector advice by a further £1,475 (exc. of VAT) in order to take into account your follow up queries to the high level advice note below and provide comments on the aspects that were outside of my initial scope (consideration of procurement law implications, comments on grant agreements and legal interaction of a grant/contract with the lease). I would be grateful if you could please confirm that you are content for me to proceed on this basis.

Best,
Mike

Michael Corsham

Senior Associate | Public Sector Team | For and on behalf of Birketts LLP | [birketts.co.uk](https://www.birketts.co.uk)

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From: Cllr Artus <cllrartus@hatfieldbroadoakpc.gov.uk>

Sent: 21 October 2024 11:22

To: Michael Corsham <Michael-Corsham@birketts.co.uk>
Cc: Hannah Harbottle <Hannah-Harbottle@birketts.co.uk>; Josie Devoti <Josephine-Devoti@birketts.co.uk>
Subject: Re: Legal Advice to Hatfield Broad Oak Parish Council

Hi Guys.

In addition to the below I've now read through the advice and have the following comments in preparation for a call.

1,4. Yes the PC has sought valuation advice from Bidwells and they value the lease at £40,000, with a market rent of £2,000 per annum. I have discussed this with the charity who would be prepared to pay the market rent of £2,000 p.a. (See Subsidy Control Compliance below)

[2.1.4.1](#) Noted, FYI see above. The council will consider subletting for nil consideration or at the market rent of £2,000 (for decision). The market land value of £40,000 is considerably below the £2m undervalue.

2.1.5. Noted. On the basis of the above can one assume the conditions for general consent have been met in either or both of the undervalue and the market rent should it be charged.

2.2 Noted. The PC has already voted to publish the necessary notices.

2.3 Subsidy Control Compliance. As above, there are two options. To sublet at nil rent and to sublet at a market rent of £2,000.

Limb 2 of the act says "The recipient must be an 'enterprise': any entity engaged in an economic activity, which means offering goods and services on a market. The financial assistance must confer an economic advantage, meaning that it is provided on favourable terms. Financial assistance will not confer an economic advantage if it could reasonably be considered to have been obtained on the same terms on the market.

Therefore, if the lease were let at the market value of £2,000 it would not meet this criteria, regardless of any economic activity?

2.6.3 The HoT sent to Birketts rewords the 'support' to that of a grant as recommended by National Association of Local Councils (see previous emails and below). On this basis NALC has advised that providing support for the charity is not a contract for services and hence outside procurement legislation?

As suggested previously, I don't think it helps to major on the £20k payment as this is now a variable grant. I think your Exec Summary should add a specific paragraph of this option. Your advice states that the land value is the highest and hence the 'main subject matter' hence would not fall under any procurement law, if such were even suitable.

2.6.5 Noted

Detailed Advice

3.2.2 and 3.4 Consent not required if at market rent?

4.4 NO this is incorrect. The HoT does not say the charity will be paying a rent of £20,000. That was never the case. See above and updated HoT.

4.5 Noted

4.6 Done, see above.

5.1 Agreed

6.3 This is not as per the HoT. See all comments above re grant.

6.3 Noted that grant agreements are not in scope of procurement regulations (as also advised by NALC)

6.4 Noted. Very helpful advice that is primary in our deliberations.

6.4 Noted, the charity will be providing some services such as pavilion hire, but no 'commercial activity'

6.6 Noted. Helpful advice.

As I said, the way the advice is currently written it does not 'appear' to note the terms of the latest HoT issued on 11th October. I think we should discuss the above either before you have reviewed your current draft or after. Please let me know when would be best.

Kind regards

Cllr Keith Artus

On 17 Oct 2024, at 21:43, Cllr Artus <cllrartus@hatfieldbroad oakpc.gov.uk> wrote:

Hi Michael, thank you for this.

I will give it a good read but I just wanted to make sure you have provided the advice on the basis of the latest version of the head of terms (my email 11th October) . I say this because your advice still refers to a support payment of £20k, whereas the, on advice from National Association of Local Councils, we have changed this to a variable value grant, depending on evidenced expenditure. I don't think it helps to refer to the £20k payment, or if it is referred to, then an equal assessment of the grant alternative, to demonstrate the advice corresponds to the HoT.

Since, we have now received a valuation from Bidwells who value the land at £40,000 (i.e. well below the £2m threshold), and with a potential achievable rent of £2000 p.a. I am considering adding this rental obligation into the lease, but that's just FYI.

I have copied my previous email below.

Likewise, their advice about procurement legislation is interesting in that they say it is not relevant in this case. Thoughts?

As you say re Fol, I won't circulate this advice to anyone (councillors/clerk) until we have discussed the above.

I'm out and about tomorrow but can call Monday if that is convenient. Let me know.

Kind regards

Keith

Cllr Keith Artus

From: Cllr Artus <cllrartus@hatfieldbroad oakpc.gov.uk>

Subject: Fwd: Hatfield Broad Oak.

Date: 11 October 2024 at 18:23:52 BST

To: Hannah Harbottle <Hannah-Harbottle@birketts.co.uk>, Michael Corsham <Michael-Corsham@birketts.co.uk>

Dear Hannah, Michael

We have sought legal advice from the National Association of Local Councils regarding whether the support payment to the charity should be 'service fee' or a 'grant'. They had advised that a grant would be better, as covered by Section 19 of the Local Government (Miscellaneous Provisions) Act 1976 which empowers the council to make a grant to any voluntary (not for profit) body that provides recreational facilities, which is our case.

I asked also about procurement legislation (e.g. Procurement Act 2015) and their advice was that the procurement legislation is not relevant as the council will not be obtaining a service or goods.

I have appended below their full advice.

As a consequence, I have amended the Heads of Terms to reflect a grant, but a grant of varying value between a cap and collar, evidenced by costs, invoice and estimates. This therefore limits the total annual exposure of the parish council and allows for a grant purely dependent upon actual evidenced costs.

I have appended the revised HoT in tracked changes mode so you can see what has changed.

With this change in mind, we still require your public law advice but would ask what you think is the most relevant or applicable public law to consider, as we would not want to ask you to provide advice on legislation that does not impact the support payment or the sublease in its updated form.

Also, there are a couple of points I would like to discuss when we get to sublease drafting stage.

Let me know you acknowledge the above and I would be pleased to answer any questions.

Best

Cllr Keith Artus
07966634442

Appends

Advice from NALC

Are there any other acts that would affect the granting of the sublease and the support payment of £20k per annum for the duration of the lease (86 years)? Such as the Procurement Act etc.

Section 19 of the Local Government (Miscellaneous Provisions) Act 1976 empowers the council to make a grant to any voluntary (not for profit) body that provides recreational facilities which seems to be the case here. The procurement legislation is not relevant as the council will not be obtaining a service or goods.

Is the support we are proposing compliant with NALC financial regulations (we are simply transferring the cost to the council to the charity)?

The financial regulations allow for grants to appropriate bodies such as this appears to be. However, it is unwise to enter into a legal obligation to make a specific grant for a number of years as circumstances may change and make the size of the grant inappropriate.

To ensure compliance, is it better to have a legally binding annual grant (say subject to proof of costs etc.) or through a payment upon invoice? For either of the above, to ensure compliance, would it be better to specify the amount or not. If not, this could be paid by either method above.

Payment by invoice is not appropriate as the council is not obtaining goods or services. It is not legal to claim back VAT on an invoice where the council is not the ultimate recipient of the goods or services concerned. The council should make payment by a grant under section 19 of the 1976 Act. If it wishes the council can require evidence of how the previous grant has been spent before making a further grant.

Summary of Report to Parish Council

Amends to Heads of Terms

As per the motion at the PC meeting on 8th October 2024, the Heads of Term Working Group will liaise with the council's solicitors on these and any other emerging issues that arise from further legal and other advice and discussions with the HBOSCC charity to progress the public law legal report and preparation of a sublease for parish council consideration.

1. Preambles Clause D – Council Works

Provision has been included for a circumstance where works the PC has committed to complete prior to occupation have not been completed. It facilitates the PC to finish the works within a period of six months.

2. Preambles Clause E - Footpaths

The same facility to allow the PC to complete the works within six months.

3. Preambles Clause G – Financial Support for Public Access

The original options of either a grant or a payment upon invoice for funding the public access maintenance element were refined to a payment in the original heads of terms.

Section 19 of the Local Government (Miscellaneous Provisions) Act 1976 empowers the council to make grants to any voluntary (not for profit) body that provides recreational facilities.

Thus, following advice from NALC Legal Team the updated terms revert the support to a grant, payable for the duration of the lease on presentation of unfunded costs, subject to a cap and collar of a minimum of £10k and maximum of £20k, index linked.

There is also the facility to include, if required, an up-front grant of £5k, if required, for cash flow purposes which would be accounted for in the cap and collar.

4. Preambles Clause H – Asset Transfer

Rather than transferring the PC's machinery etc. assets to the charity for nil consideration, the charity has suggested receiving the assets at their total depreciated value, less any contribution previously made.

5 Preambles Clause I – Use of Equipment

A minor amendment placing responsibility for damage to grass cutting machinery upon the PC when the PC is using it.

6. Preambles Clause M – Insurances

Confirmation that the charity shall provide evidence of indemnifying the PC against any claims arising from the charity's management and occupation through the sublease.

Cllr Keith Artus 7th October 2024

Section 19 of the Local Government (Miscellaneous Provisions) Act 1976

19

Recreational Facilities

(1)A local authority may provide, inside or outside its area, such recreational facilities as it thinks fit and, without prejudice to the generality of the powers conferred by the preceding provisions of this subsection, those powers include in particular powers to provide—

(a)indoor facilities consisting of sports centres, swimming pools, skating rinks, tennis, squash and badminton courts, bowling centres, dance studios and riding schools;

(b)outdoor facilities consisting of pitches for team games, athletics grounds, swimming pools, tennis courts, cycle tracks, golf courses, bowling greens, riding schools, camp sites and facilities for gliding;

(c)facilities for boating and water ski-ing on inland and coastal waters and for fishing in such waters;

(d)premises for the use of clubs or societies having athletic, social or recreational objects;

(e)staff, including instructors, in connection with any such facilities or premises as are mentioned in the preceding paragraphs and in connection with any other recreational facilities provided by the authority;

(f)such facilities in connection with any other recreational facilities as the authority considers it appropriate to provide including, without prejudice to the generality of the preceding provisions of this paragraph, facilities by way of parking spaces and places at which food, drink and tobacco may be bought from the authority or another person; and it is hereby declared that the powers conferred by this subsection to provide facilities include powers to provide buildings, equipment, supplies and assistance of any kind.

(2)A local authority may make any facilities provided by it in pursuance of the preceding subsection available for use by such persons as the authority thinks fit either without charge or on payment of such charges as the authority thinks fit.

(3)A local authority may contribute—

(a)by way of grant or loan towards the expenses incurred or to be incurred by any voluntary organisation in providing any recreational facilities which the authority has power to provide by virtue of subsection (1) of this section; and

(b)by way of grant towards the expenses incurred or to be incurred by any other local authority in providing such facilities; and in this subsection “voluntary organisation” means any person carrying on or proposing to carry on an undertaking otherwise than for profit.

On 17 Oct 2024, at 18:18, Michael Corsham <Michael-Corsham@birketts.co.uk> wrote:

Good Evening,

I've attached our public law advice in this matter. Should you have any questions, please let me know and I would be pleased to assist.

To note, the advice note (and indeed our legal advice given to you in supporting you in this matter) is subject to legal professional privilege. In practice this means that our advice would not usually be disclosed, such as following an FOIA request, unless in exceptional circumstances. If you intend to disclose or share our advice more widely, please let us know beforehand so we can discuss with you steps to protecting the legal privilege. Once legal privilege has been waived, the advice is potentially disclosable. Happy to discuss further.

Best,
Mike

Michael Corsham

Senior Associate | Public Sector Team | For and on behalf of Birketts LLP | birketts.co.uk

Direct: +44(0)1245 211284 | Mob: 07866 127600

APPENDIX

G. HEADLEASE (W. GOSLING / HBO PARISH COUNCIL)

Head Lease

Between

W.R Gosling

And

Hatfield Broad Oak Parish Council

**Clause 3.10 refers to the sub lease
to the HBO Village Green Co.**

DATED

19 January

2010

W R GOSLING Esq

(1)

AND

HATFIELD BROAD OAK PARISH COUNCIL

(2)

LEASE

Hatfield Broad Oak Village Green
Hatfield Broad Oak
Essex

WILSONS

Wilsons Solicitors LLP
Steynings House
Summerlock Approach
Salisbury
Wiltshire
SP2 7RJ

Tel: (01722) 412412

Fax: (01722) 410059

Ref: SR

SR/400101

LR9. Rights of acquisition etc.

LR9.1 Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land

None

LR9.2 Tenant's covenant to (or offer to) surrender this lease

LR9.3 Landlord's contractual rights to acquire this lease

None

LR10. Restrictive covenants given in this lease by the Landlord in respect of land other than the Property

None

LR11. Easements

LR11.1 Easements granted by this lease for the benefit of the Property

None

LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property

None

LR12. Estate rent charge burdening the Property

None

LR13. Application for standard form of restriction

LR14. Declaration of trust where there is more than one person comprising the Tenant

THIS LEASE is made the

19

day of

January

2010

BETWEEN

(1) **WILLIAM RUPERT GOSLING** of Little Barrington Hall Bush End Takeley Bishops Stortford CM22 6NL("the Landlord") and

(2) **HATFIELD BROAD OAK PARISH COUNCIL** ("the Tenant")

WITNESSETH as follows:-

1 Definitions

In this Lease unless the context otherwise requires:

1.1. the following definitions apply:

- | | |
|--------------------------------|--|
| 1.1.1. "the Landlord" | William Rupert Gosling |
| 1.1.2. "the Tenant" | Hatfield Broad Oak Parish Council |
| 1.1.3. "the Demised Premises" | land at Hatfield Broad Oak, Essex shown edged red on the plan annexed to this lease |
| 1.1.4. "the Commencement Date" | the date hereof |
| 1.1.5. "the Term" | a term of 99 years from the date of this Lease |
| 1.1.6. "the Rent" | The yearly rent of £1.00 |
| 1.1.7. "the Authorised Use" | means use for any sporting or recreational, or local community or ancillary uses and associated parking and all activities ancillary thereto |
| 1.1.8. "the Planning Acts" | means the Town and Country Planning Act 1990 Planning (Listed Buildings and Conservation Areas) Act 1990 Planning (Hazardous Substances) Act 1990 Planning and Compensation Act 1991 |
| 1.1.9. "Dangerous Substance" | means any natural or artificial substance (whether in solid or liquid form or in the form of a gas or vapour) causing or capable of harm to man or other animals or damaging polluting contaminating or changing the composition of the environment (including water) or damaging public health or welfare |

Legend

- Access & Car Parking - 0.954ha (2.36ac)
- Sports Ground - 4.231ha (10.45ac)
- Sports Ground / Development - 0.915ha (2.26ac)

BIDWELLS

Trumpington Road, Cambridge CB2 9LD t: 01223 841841 f: 01223 845150 bidwells.co.uk

Scale: 1:2,500 @ A4 O.S. Ref: TL 5416 NE Drawing No: A.39,655a Date: 17/11/2010

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WRG William Goshing

1.1.10. "Environmental Law"

means all statutes laws regulations codes of practice circulars guidance notices and the like (whether in the United Kingdom or elsewhere) concerning the protection of human health or the environment or the condition of the workplace or the control and prevention of pollution of land water or the atmosphere or the generation transportation storage treatment or disposal of any Dangerous Substance including but not limited to the Environmental Protection Act 1990 the Environment Act 1995 and the Water Resources Act 1991

1.1.11. "Health & Safety Law"

means all applicable statutes regulations directives and codes of practice concerning the health safety and welfare of persons employed by the Tenant or who are at the Demised Premises in connection with the Tenants at the Demised Premises or concerning the control and use of Dangerous Substances or substances which are hazardous or highly flammable

1.1.12. the Plan

means the plan reference HBO 1

References-

- 1.2. "the Landlord" includes the person for the time being entitled to the reversion immediately expectant on the Term
- 1.3. "the Tenant" includes the Tenant's successors in title
- 1.4. "service media" means ducts flues gutters pipes drains channels sewers cables conduits wires watercourses gutters culverts soakaways and other media and installations for conducting water soil electricity telephone and other electrical impulses air smoke and fumes and other things of a like nature
- 1.5. the Demised Premises includes each and every part of the Demised Premises and all additions thereto
- 1.6. the expression "these presents" shall include this Lease and any document which is supplemental hereto or which is expressed to be collateral herewith or which is entered into pursuant to or in accordance with the terms hereof
- 1.7. the neuter includes the masculine and the feminine the singular includes the plural person includes corporation and vice versa respectively month means calendar month and the Term shall for all purposes be computed as commencing on the Commencement Date and ending on its expiration (or the

expiration of any statutory or common law extension thereof) or earlier determination

- 1.8. where the Landlord has the right or obligation to serve a notice or demand or to enter the Demised Premises for any purpose such right may be exercised by a surveyor or agent authorised to act on the Landlord's behalf and (in the case of entry) if appropriate with workmen materials and equipment but subject to the person exercising this right causing as little damage and interference as possible and making good any damage caused
- 1.9. Reference to any Act of Parliament includes any Act replaced by it and any Act replacing or amending it and any order regulation instrument direction scheme plan or permission made under it or deriving validity from it
- 1.10. Each covenant by the Tenant not to do any act or thing shall be deemed to include a covenant not to permit or suffer that act or thing to be done
- 1.11. the headings shall not affect the interpretation of this Lease

2 The Demise

THE Landlord with full title guarantee HEREBY DEMISES unto the Tenant ALL THAT the Demised Premises TO HOLD unto the Tenant for the Term PAYING THEREFORE the Rent and the rent shall in all cases be paid without any deduction annually in advance on each anniversary of the date of this Lease term by standing order if required by the Landlord without any deduction and without the Tenant claiming any right of set off the first payment to be apportioned in respect of the period from the date hereof to the next quarter day to be made on the signing hereof

3 Tenant's Covenants

THE Tenant COVENANTS with the Landlord throughout the Term as follows:

To pay Rent and outgoings

- 3.1. To pay the reserved rents on the days and in the manner aforesaid
- 3.2.
 - 3.2.1. To pay and discharge all existing and future rates taxes (including Value Added Tax) duties assessments impositions charges and outgoings whatsoever (whether imposed by Statute or otherwise whether of a national or local character) charged or imposed upon the Demised Premises as a result of the Authorised Use or on the owner lessor or occupier in respect thereof PROVIDED that if any such rates charges or other outgoings as aforesaid are or at any time during the Term shall be charged assessed or imposed in respect of the Demised Premises in common with other premises and not separately the Tenant will pay to the Landlord on demand half yearly in advance a due proportion thereof (to be reasonably determined in the absence of agreement between the parties by a surveyor appointed by the Landlord)
 - 3.2.2. To pay to the suppliers, and indemnify the Landlord against, all charges for electricity, telecommunications and other services

consumed or used at or in relation to the Premises, including meter rents and standing charges, and must comply with the lawful requirements and regulations of the respective suppliers

3.3. To repair and redecorate

To keep in good and substantial repair all parts of the Demised Premises and all buildings fixtures fittings equipment and apparatus belonging thereto and without prejudice to the generality of the foregoing specifically;

- 3.3.1. To keep the Demised Premises clean and free from any rubbish or refuse and not to store stack or lay out thereon any petroleum or other inflammable explosive or combustible material or any Dangerous Substance except as required for the maintenance of the Demised Premises
- 3.3.2. To repair and maintain all pipes, sewers, drains, mains, ducts, conduits, gutters, watercourses, wires, cables, channels, flues and all other conducting media
- 3.3.3. To use its reasonable endeavours to keep the Demised Premises free from disease pest and vermin
- 3.3.4. Not to bring anything onto the Demised Premises that is or might become untidy, unclean, unsightly or in any way detrimental to the Demised Premises or the adjoining property of the Landlord in the reasonable opinion of the landlord
- 3.3.5. To maintain the sports pitches in a good state of repair
- 3.3.6. To maintain existing hedgerows in accordance with all statutory requirements
- 3.3.7. To maintain all gates fences trees shrubs ditches and drains and not to interfere with the ancient monument on the Demised Premises save as required by law
- 3.3.8. Not to fell remove or prune any trees or shrubs without the consent of the Landlord (not to be unreasonably withheld or delayed)

3.4. Access of Landlord

- 3.4.1. To permit the Landlord and all persons authorised by the Landlord at all reasonable times on reasonable prior notice (or at any time without notice in cases of emergency) to enter the Demised Premises
 - 3.4.1.1. to inspect the state and condition thereof and to give to the Tenant a written notice ("the notice") specifying any works necessary to comply with the Tenant's obligations under this Lease and requiring the Tenant to carry out such works within a reasonable time
 - 3.4.1.2. to carry out any work to the adjoining premises owned by the Landlord that cannot reasonably be carried out without access to the Demised Premises

3.4.1.3. to exercise any right reserved to the Landlord in these presents

3.4.1.4. for any purpose connected with the renewal of these presents

3.4.2. The Landlord may enter the Demised Premises and execute or complete the works set out in the notice and the proper cost thereof shall be paid by the Tenant to the Landlord on demand and be recoverable as rent in arrear if the Tenant shall not within two months after the service of any such notice commence and thereafter diligently proceed with the works mentioned in the notice and complete the same to the satisfaction of the Landlord within the time stipulated in the notice (if so stipulated)

3.5. Environmental Protection

3.5.1. To make arrangements for the disposal of waste materials and not to discharge into the service media serving the Demised Premises any Dangerous Substance

3.5.2. To ensure that there is no release from the Demised Premises into any environmental medium of any Dangerous Substance and in the event of any such release promptly to report the same to any proper regulatory authority and the Landlord and to carry out such clean up and preventative measures as may be reasonably required by any regulatory authority or the Landlord

3.5.3. At all times to comply with all Environmental Laws relating to or affecting the Demised Premises or the Authorised Use of it

3.5.4. To indemnify the Landlord from and against all costs (including remediation preventative and third liability costs) arising under any Environmental Laws or any breach thereof by the Tenant their employees or anyone at the Demised Premises with their authority

3.6. Alterations

Not without the Landlord's consent such consent not to be unreasonably withheld or delayed to build upon alter or add to the Demised Premises or the layout or appearance it being acknowledged by the Landlord that the intention is to carry out development of the Demised Premises in accordance with the Authorised Use

3.7. Statutory Requirements and Health and Safety

3.7.1. To comply with every statute and notice or order from a Government department or local public regulatory or other authority or court that relates to the Demised Premises or the Authorised Use of the Demised Premises or any substance or article on the Demised Premises

3.7.2. At the Tenant's own expense to comply at all times with Health and Safety Law and all its requirements relating to the use or occupation of the Demised Premises

- 3.7.3. To provide to the Landlord upon written request a copy of the Tenant's current Health and Safety policy statement and full details of any events or accidents reportable under Health and Safety Law together with copies of any notices or any associated correspondence served or sent by any regulatory body on or to the Tenant or other occupier of the Demised Premises under Health and Safety Law
- 3.7.4. Within twenty eight days of receipt to give a copy to the Landlord of every permission notice or order or proposal for a notice or order relating to the Demised Premises received by the Tenant from any government department or local or public authority under any statutory powers and without delay to take all necessary steps to comply with such notice or order or (if required by the Landlord) to make or join with the Landlord in making such objections or representations against such notice order or proposal as the Landlord may require

3.8. User

- 3.8.1. Not to do or bring anything in or upon the Demised Premises which may in the reasonable opinion of the Landlord be or become a nuisance or damage to the Landlord or to the owners or occupiers of any adjoining or neighbouring property nor to use the Demised Premises for any illegal or immoral purpose

save that the proper exercise of the rights demised by these presents shall not constitute a breach of this covenant

- 3.8.2. Not to hold any sale by auction or "car boot sale" whatsoever on the Demised Premises
- 3.8.3. Not to permit or suffer any caravans on the Demised Premises
- 3.8.4. Not to install any floodlights on the Demised Premises except with the prior written consent of the Landlord as to the position and intensity of any such floodlighting (such consent not to be unreasonably withheld)
- 3.8.5. Not to burn any rubbish whatsoever on the Demised Premises except in such position and at such time as may from time to time be previously agreed with the Landlord or their surveyor
- 3.8.6. To give notice immediately to the Landlord of any defect in the Demised Premises which might give rise to a liability or duty on the Landlord
- 3.8.7. To display all notices which the Landlord may reasonably require in respect of any defect in the Demised Premises or any adjoining premises
- 3.8.8. To take all reasonable steps to prevent any encroachment being made over the Demised Premises and to give notice to the Landlord immediately if any is attempted

- 3.8.9. To comply with the conditions of all grants obtained by the Tenant in connection with the Authorised Use and in the event of this lease ending for whatever reason to take full responsibility for the repayment of any grants

3.9. Insurance

- 3.9.1. To insure and to keep any buildings on the Demised Premises insured in the full reinstatement cost against loss or damage by fire explosion aircraft storm tempest collision theft lightning earthquake riot flood escape and all water damage heave landslip and such other risks as are normally covered by a comprehensive policy and such other normal risks as the Landlord may require and to lay out all monies received as a consequence of any such loss or damage in reinstating the Demised Premises paying for any shortfall out of the Tenant's own funds
- 3.9.2. to give the Landlord on demand particulars of the policy and evidence from the insurers that it is in force
- 3.9.3. Not to do or bring anything in or upon the Demised Premises or otherwise which may render void or voidable any policy of insurance
- 3.9.4. To take all reasonable precautions against the outbreak of fire in the Demised Premises
- 3.9.5. In the event of any damage to or destruction of the Demised Premises to give immediate notice thereof to the Landlord

3.10. Assignment and Subletting

Not to assign sublet or charge this Lease as to the whole or part or part with possession of or share the occupation of the whole of the Demised Premises or any part thereof save that the Tenant may assign or sublet the whole or part of the lease to HBO Village Green Co without the need for any consent, or to any other organisation approved by the Landlord such approval not to be unreasonably withheld or delayed, Provided That prior to any permitted assignment or sublease

- 3.10.1. The Tenant must procure that the Assignee or Sublessee enters into a direct covenant with the Landlord to perform and observe all of the tenant's covenants contained in this lease; and
- 3.10.2. The Tenant must give written notice to the Landlord of the proposed assignee

And within 20 days of any such assignment the tenant will produce a certified copy of any assignment to the Landlord's solicitors together with a registration fee of £30 plus Value added Tax and Provided Further that nothing in this Lease shall prevent the Tenant from permitting sports clubs occupying the Demised Premises or part of the Demised Premises in common with the Tenant and all others so entitled for the Authorised Use

Yielding up

- 3.11. To permit the Landlord at all reasonable times of the day upon reasonable prior notice to enter the Demised Premises to take schedules and inventories of the fixtures and things to be yielded up at the end of the Term and also for the purpose of measuring or valuing the Demised Premises
- 3.12. To yield up the Demised Premises at the end of the Term with all additions and improvements from time to time made thereto and all fixtures from time to time affixed therein or thereupon in such condition as shall be in accordance with the covenants hereinbefore contained and in accordance with the covenants or conditions contained in or imposed by any licence or consent granted by the Landlord hereunder

Works to adjoining premises

- 3.13. To permit the Landlord at any time during the Term to execute works make erections or rebuild alter or develop any land or building of the Landlord adjoining or near to the Demised Premises and to use the same in each case as the Landlord may think fit notwithstanding any interference with or diminution of the passage of light or air to the Demised Premises

3.14. **Indemnity**

To take out a suitable Public Liability insurance policy and to insure against the usual third party risks to an amount to be agreed with the Landlord and to keep the Landlord fully and effectively indemnified from and against all liabilities costs claims proceedings actions and expenses arising through the use or occupation of the Demised Premises or any act or default whatsoever of the Tenant or its agents or employees or members of the public and whether in respect of any injury to or the death of any person or damage to any property movable or immovable or the infringement disturbance or destruction of any right or easement or otherwise except only insofar as the same may be due to any act of the Landlord

3.15. **Costs**

To pay all proper and reasonable costs charges and expenses (including legal costs surveyors' fees and other professional charges) which may be incurred by the Landlord or their agents after completion of the development of the Demised Premises and excluding any permitted works

3.15.1. in any application made at the request of the Tenant to any planning or other competent authority or any application by the Tenant to the Landlord for any consent pursuant to the covenants in this Lease contained (whether consent or approval is granted or refused and even if the application is withdrawn)

3.15.2. for the purpose of or incidental to or in reasonable contemplation of the preparation service and enforcement of any notice under ss146 and 147 Law of Property Act 1925 or under the Leasehold Property (Repairs) Act 1938 (as amended by the Landlord and Tenant Act 1954) or any other notice schedule or demand (whether of a like nature or not) which the Landlord may reasonably require to be given under the provisions of this Lease notwithstanding that forfeiture (if applicable) is avoided otherwise than by relief granted by the Court and to keep the Landlord fully and effectually indemnified against all

costs proceedings expenses claims and demands whatsoever in respect of the said applications consents notices and proceedings

Where the sum payable by the Tenant hereunder is liable to Value Added Tax to pay such tax and to indemnify the Landlord in respect thereof

4 **Landlord's Covenants**

THE Landlord HEREBY COVENANTS that the Tenant paying the rents hereby reserved and observing and performing the several covenants and stipulations on the Tenant's part herein contained shall peaceably hold and enjoy the Demised Premises during the Term without any interruption (except as herein provided) by the Landlord or any person rightfully claiming under or in trust for them

5 **Provisos**

PROVIDED ALWAYS and IT IS HEREBY AGREED AND DECLARED as follows:-

5.1. **Re-entry**

Without prejudice to any other remedy or power of the Landlord if the rents hereby reserved or any part thereof shall at any time be unpaid for 14 days after becoming payable (whether lawfully demanded or not) or if the covenants on the Tenant's part herein contained shall not be performed or observed or if the Tenant shall become bankrupt or being a company enters into liquidation whether compulsory or voluntary but not if the liquidation is for amalgamation or reconstruction of a solvent company or has a receiver appointed or make any assignment for the benefit of creditors for the liquidation of debts by composition or otherwise or suffer any distress or process of execution to be levied upon its goods then and in any of the said cases it shall be lawful for the Landlord at any time thereafter to re-enter upon the Demised Premises or any part thereof in the name of the whole and thereupon this demise shall absolutely determine but without prejudice to any right of action of the Landlord in respect of any antecedent breach of the Tenant's covenants herein contained

5.2. **Interest on Late Payments**

If the Tenant shall fail to pay the rent on any sum that is or may become payable to the Landlord under this Lease within seven days of the date the same falls due (whether or not demanded in the case of rent) such sum shall be payable together with interest thereon (as well after as before any judgement) at the rate of four per centum per annum above base rate at Barclays Bank plc for the time being in force on a day to day basis from the day after the day such sum falls due until actual payment and every such sum with interest as aforesaid shall be recoverable as rent in arrear provided that this sub-clause shall take effect without prejudice to any right of re-entry or other right arising out of or exercisable due to such default by the Tenant as aforesaid

5.3. **Avoidance of Waiver**

5.3.1. Notwithstanding that rent or any other sum due under this Lease shall be accepted or demanded by the Landlord or the Landlord's agent with

knowledge of a breach of any of the covenants on the part of the Tenant herein contained the Landlord shall in no such event be taken to have waived any right to re-enter the Demised Premises and forfeit this Lease or otherwise enforce any breach of any covenant in this Lease and the Tenant shall not in any proceedings by the Landlord for forfeiture or other remedy or in any proceedings by the Tenant for relief from forfeiture or for any other relief whatever be entitled to rely upon any such acceptance or demand as aforesaid as a defence to such Landlord's proceedings or as grounds for making or in furtherance or support of such Tenant's proceedings (as the case may be)

PROVIDED THAT this provision shall have effect in relating only to an acceptance of or demand for rent made during such period (if any) as may in all the circumstances be reasonable for enabling the Landlord to conduct any negotiations with the Tenant for remedying the breach which negotiations shall have been commenced by either party upon the Landlord becoming aware of the said breach

- 5.3.2. That each of the Tenant's covenants herein contained shall remain in full force both at law and in equity notwithstanding that the Landlord shall have waived or released the same whether temporarily or permanently whether revocably or irrevocably and whether in favour of the Tenant in respect of the Demised Premises or in respect of similar covenants (if any) affecting any adjoining or neighbouring premises for the time being belonging to the Landlord

5.4. Notices

- 5.4.1. Any notice under this Lease shall be in writing
- 5.4.2. Any notice to the Tenant shall be sufficiently served if served in any of the following manners:-
- 5.4.2.1. addressed to the current Council Clerk of Hatfield Broad Oak Parish Council and left at the Council offices
- 5.4.2.2. addressed to the Tenant and sent to the Tenant by post
- 5.4.3. Any notice to the Landlord shall be sufficiently served if addressed to the Landlord and sent by post to their agents
- 5.4.4. Any notice to a part that comprises two or more persons shall be sufficiently served on all such persons if addressed to all of them and served on any one of them
- 5.4.5. In addition to the methods of service aforesaid the regulations contained in s196 of the Law of Property Act 1925 as amended by the Recorded Delivery Service Act 1962 shall apply and the provisions thereof and of this clause shall apply equally to any notice in respect of the Demised Premises served under the Landlord and Tenant Act 1954 as to any notice served under the Law of Property Act 1925 or the Leasehold Property (Repairs) Act 1938 or under the express provisions of this Lease

5.5. Rights and Easements

The Tenant will not acquire or become entitled to any easement over any adjoining premises and any easement exercised over adjoining premises owned by the Landlord will be regarded as being exercised by virtue of a determinable licence from the Landlord

5.6 Break clause for the Tenant

5.6.1 In this clause, the following definitions apply:

5.6.1.1 Break Notice: six months written notice to terminate this lease

5.6.1.2 Permitted Part: means any part of the Demised Premises which abuts the Landlord's adjoining land on the Western or Northern boundaries of the Demised Premises

5.6.2 The Tenant may terminate this lease by serving a Break Notice on the Landlord. The expiry of the Break Notice will be the Break Date

5.6.3 The Tenant may terminate this lease as to a Permitted Part in the event that the Tenant is unable to use the Permitted Part for the Authorised Use by serving a Break Notice on the Landlord with a plan showing the Permitted Part annexed to the Break Notice

5.6.4 A Break Notice served by the Tenant pursuant to clause 5.6.2 or clause 5.6.3 shall be of no effect if, at the Break Date:

5.6.4.1 vacant possession of the whole of the Property or in the case of notice served pursuant to clause 5.6.3 of the Permitted Part is not given; or

5.6.4.2 there is a subsisting material breach of any of the tenant covenants of this lease relating to the state of repair and condition of the Property.

5.6.4 Subject to clause 5.6.4, following service of a Break Notice this Lease shall terminate on the Break Date as to the whole in the case of a notice served pursuant to clause 5.6.2 and as to the Permitted Part in the case of a notice served pursuant to clause 5.6.3

5.6.5 In the event this Lease is terminated as to a Permitted Part it shall remain in full force and effect in relation to the remainder of the Demised Premises

5.7 Break Clause for the Landlord

If at any time the Landlord obtains planning consent to develop the strip of land forming part of the Demised Premises which adjoins Dunmow Road coloured blue on the Plan or any part of it whether in conjunction with other land or not the Landlord may serve at least six months notice on the Tenant with a plan showing the extent of the part of the strip of land for which he has consent and on the expiry of such notice this Lease shall absolutely cease and determine in relation to that part of the land edged blue on the Plan for which consent has been obtained.

Signed as a Deed by **WILLIAM RUPERT GOSLING**
In the presence of:-

William Gosling

Witness

Name

Address

Occupation

Mrs L. Barnett
SOUTH EAST FARM
MILBURN

NEWCASTLE NE20 0ED

Farmer.

APPENDIX

H. INFORMATION REQUESTED OF HBOSCC BUSINESS CASE

Heads of Terms Working Group

HBO Sports & Community Club Ltd Business Case – Question Headings

October 2024.

Item	Description	Action
1.	Charity governance and policy documents required.	
2.	Proof of insurances to be obtained, together with details/terms.	
3.	List of possible grant sources if available.	
4.	Succession plan and source/recruitment of future trustees.	
5.	Sports clubs management & membership profile and projection.	
6.	Charity and affiliate sports clubs bank balances and accounts	
7.	Details of service, use, licence or agreements between the affiliate clubs and the charity and funding streams to the charity.	
8.	Details of what the clubs will pay the charity to maintain and what the clubs will maintain.	
9.	Details of indemnity insurance obligation to the council.	
10.	Details of security arrangements for the green.	
11.	Contingency development proposals.	

Meeting with HBOSCC Directors

Date: 14th October 2024

Attendees: Cllr Artus
Cllr Beadle
Christopher Roberts
Stephen Munday
David Milne