

POLICY & RESOURCES COMMITTEE**Thursday 27 July 2023**

REPORT TITLE:	COMMUNITY ASSET TRANSFER – BRACKENWOOD GOLF COURSE RECOMMENDATION FROM TOURISM, COMMUNITIES, CULTURE AND LEISURE COMMITTEE ON 22 JUNE 2023
REPORT OF:	DIRECTOR OF FINANCE

REPORT SUMMARY

This report considers the transfer of Brackenwood Golf Course to Brackenwood Community Golf Limited based on the Heads of Terms set out in this report. This proposal includes an improved rental offer and the provision of two mini 5-a-side pitches and two-full size playing pitches on the golf course following further discussions with Brackenwood Community Golf Limited.

The alternative option is not to transfer the asset and pursue a strategy to create a hub of 8-12 playing pitches which will significantly contribute towards the identified shortage of pitches within the Local Plan.

If a transfer is agreed, the intention to do this will need to be advertised as it is public open space and any representations will need to be dealt with before a lease can be entered into. (Paragraph 5.8 below)

This report meets the following priorities in the Wirral Plan 2021-26

- Safe, vibrant communities where people want to live and raise their families.
- A prosperous inclusive economy where local people can get good jobs and achieve their aspirations.

There is the potential for the reopening of Brackenwood golf course to adversely impact the income generation at other Council facilities.

The reduction in provision of playing pitches from the Brackenwood site will still need to be addressed and may require the acquisition of additional land to deliver the strategy. This will have a capital cost that will need to be considered within the overall capital programme and the associated asset disposal strategy.

This matter has the potential to affect all wards.

This is a Key Decision.

Brackenwood Community Golf Limited and RM Estates have given their written consent to the Council to put into the public domain all their financial information contained in this report and appendices.

RECOMMENDATION/S

It is recommended:-

- (1) That the Committee consider the transfer of Brackenwood Golf Course to Brackenwood Community Golf Limited (BCGL) on the basis of the Heads of Terms set out in this report, noting the improved rent offer and the required provision of two mini 5-a-side pitches and two full-size playing pitches.
- (2) That, if agreed, the intent to transfer is advertised as the asset is public open space. If no objections are received, then delegated authority be given to Director of Neighbourhoods in consultation with the Director of Law and Governance to proceed to transfer the identified land. To note that if objections are received then the matter will return to Committee for consideration as set out in paragraph 5.8.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

- 1.1** As the value of Brackenwood Golf Course is over £500,000, any decision regarding it must be taken by the Policy and Resources Committee as set out in the Council's Constitution.
- 1.2** The recommendation reflects the initial direction provided by the Tourism, Communities, Culture and Leisure Committee on the 22nd June 2023. The original proposal from Brackenwood Community Golf Limited has been improved since the Committee meeting in terms of both the financial implications to the Council and the contribution towards the Local Plan priorities in respect of the provision of playing pitches.

2.0 OTHER OPTIONS CONSIDERED

- 2.1** The options considered by the Tourism, Communities, Culture and Leisure Committee (22 June 2023) , in addition to the transfer for an 18-hole golf course, Biodiversity Net Gain and continued community access were:-
1. the use of the site for playing pitches and Biodiversity Net Gain to support Local Plan priorities, and continued community access, and;
 2. a nine-hole golf course, playing pitches and Biodiversity Net Gain to support Local Plan priorities, and continued community access.
- 2.2** The committee report at Appendix 1 of this report provides information on these options.

3.0 BACKGROUND INFORMATION

- 3.1** The Tourism, Communities, Culture and Leisure Committee at its meeting on 22 June 2023 considered a report on Brackenwood Golf Course and made a recommendation to Policy and Resources Committee which is as follows: The Director of Finance be authorised to conclude negotiations on the heads of terms in exempt Appendix 2, for the transfer of Brackenwood Community Golf Limited, once an increase in the rent proposal from the company is agreed, and some provision for very small football/tennis pitches has been explored. This should form part of the recommendation to Policy and Resources Committee as the Asset value is £950,000 which is over the value that can be agreed by this Committee or the Director of Finance.”
- 3.3** Following the recommendation of that Committee, officers discussed these matters further with Brackenwood Community Golf Limited and a revised Heads of Terms is included at Appendix 2 of this report. They show an increase in the rent proposal (from £7,500 per annum to £16,250 per annum and a reduced lease period of 30 years to meet Subsidy Control requirements. They also propose two very small (5m x 5m) playing pitches.

- 3.4 The market rent for Brackenwood Golf Course, as advised by the Council's independent consultants, Avison Young, is £25,000. Over the 30-year lease period this would give a rental income to the Council of £750,000.
- 3.5 Brackenwood Community Golf Limited have submitted an increased rental proposal which offers £16,250 per annum in rent from year 4 to 30, following a request for an introductory rent offer of year 1 – nil, year 2 - £5,500 and year 3 £10,725. The introductory rent request is due to them being a new company start-up and requiring three years to establish the business. The implications of this increased rent proposal on their cashflow and the delivery of the community benefits are contained in appendix 5 of this report. For the first five years of the lease, RM Estates are providing a rental guarantee to the Council. Over the 30-year lease period this would give a rental income to the Council of £438,725. This is £311,275 below the market rent.
- 3.6 The rent may not fully compensate the Council for the probable reduction in its golf income from the competition that would result from reopening Brackenwood Golf Course, which would be a direct competitor to the Council's two existing municipal courses.
- 3.7 The Brackenwood Community Golf Limited proposal is below the Subsidy Control threshold of £315,000 at £295,025 over the 30-year lease period. This may however be exceeded if any further economic advantages are given to the company e.g. discretionary business rate relief which is not also given to its competitors. Brackenwood Community Golf Limited have advised that they will not exceed the £315,000 threshold.
- 3.8 The Council must obtain the best price reasonably obtainable for the disposal of any interest in land which includes obtaining a market rent. However, the Secretary of State has given a general consent to disposals where the undervalue is £2million or less; and the Council considers the disposal will secure the promotion of the economic, social, or environmental well-being of its area. The social and environmental wellbeing impacts of this proposal provided by Brackenwood Community Golf Limited for the transfer of the golf course are set out at Appendix 4 of this report for Members to consider but should be compared with the social and environmental benefits which would accrue if the site were used for community playing pitches and bio diversity net gain, and thereby also enable the Green Belt to be preserved from residential development.
- 3.9 The Council decided to close Brackenwood Golf Course (and Hoylake Municipal Golf Course) in 2022 for two reasons. First, there was an over-supply of golf courses in Wirral and the Council considered there would remain, after closure, a sufficient number of golf courses in Wirral (11 in number) to meet all the needs of the community (from elite players to beginners). There remains adequate availability within the remaining municipal courses (Arrowe Park and The Warrens) to accommodate any current and increasing demand for such facilities. (Brackenwood Golf Club currently play on a course outside of the Borough). Second, was to reduce significant financial losses and this has proved to be very successful with the service now producing a surplus (see paragraph 4.2 below). If the Committee approves the transfer of the Golf Course on the terms offered, it would have to be satisfied that the reopening of the golf course would produce greater community benefits than its

alternative use as playing pitches (for a variety of sports including football, rugby etc) for all sections of the community. It should be noted that reopening the golf course does not contribute towards Local Plan priorities. It is only the playing pitches and Biodiversity Net Gain aspects of the proposals which contribute to Local Plan priorities.

- 3.10 The Playing Pitch Strategy identifies a current shortfall of new playing pitches – 17 in number. In addition, the Local Plan is a plan for growth with an all-member agreed Brownfield First Strategy. It is difficult to say how many new pitches will be required in relation to the Local Plan, at this stage, because this will depend on the exact details of the requirements in relation to the housing trajectory. However, from residential applications currently in discussion with developers and Sport England, it is the view that all of the currently available sites are likely to be required over the plan period (to 2037). Many of these brownfield sites are in urban locations and because of their size and location do not have the ability to provide on-site requirements in relation to playing pitch provision which would be required by Sport England to make them policy compliant. Without being policy compliant, the Council could not grant planning permission, and this would put pressure on Green Belt sites for development. Retaining Council land for playing pitch hubs and developing a proactive strategy for delivering on them will reduce the risks to the Council in delivering its Brownfield First Strategy.
- 3.11 A few days before the Tourism, Communities, Culture and Leisure Committee on 22 June 2023, Officers completed work looking at sites for new playing pitch hubs. The information was given to that Committee verbally and it is now documented below. A review of all Council owned assets, and school sites for their suitability to provide playing pitch hubs (two or more pitches) has been undertaken by a cross-Council working group comprising of officers from assets, schools, parks and countryside, planning, legal) The Playing Pitch Strategy recommends hub sites as single pitch sites are not efficient and are expensive to maintain. In addition, a hub site, can have joint facilities for several pitches making such an approach cost-effective. The conclusions of the work undertaken to date are: -
- a. there remains a significant deficit of new playing pitches, for all sports, across all areas of the Borough. If not comprehensively addressed this will impact on the Council's delivery of its Local Plan Brownfield First Strategy
 - b. There are a limited number of identified sites for the provision of new playing pitch hubs in Wirral. These include Brackenwood Golf Course and Hoylake Municipal Golf Course (where the Royal and Ancient and Royal Liverpool Golf Club have confirmed they will be proposing playing pitches alongside the golf area to support future Open Championships at Royal Liverpool)
 - c. While the number of sites is limited, the advantage is that these sites are in Council ownership and that gives control over delivering new playing pitch hubs. This will be important to demonstrate support for the Brownfield First Strategy over the Plan period (i.e until 2037). It would be possible for the Council to consider future land acquisition for new playing pitches, on an as and when basis, but this would require a budget to acquire them and be dependent upon the land being available at the time it was required.
 - d. Brackenwood Golf Course can provide between 8 to 12 pitches alongside Biodiversity Net Gain and community access, and this is one of the largest sites for new playing pitch facilities that the Council currently has available. If it is leased for 30 years (i.e

until 2053) it will not be available for new playing pitch consideration within the Plan period.

- e. The initial proposal from Brackenwood Community Golf Limited is for two mini 5 a side playing pitches (around 27m x 30m). In the context of this recently completed work it is considered to be insufficient to significantly support the Brownfield First Strategy.

3.12 On 17 July 2023, following further discussions, Brackenwood Community Golf Limited proposed that in addition to the two mini 5 a side pitches they could consider two full-size playing pitches on the golf course site (four pitches in total) alongside an 18-hole golf course. This would better support the Brownfield First Strategy and provide some benefits from playing pitches alongside the golf course. They have made this conditional on several issues which are summarised below.

- the CAT process to continue without significant further delay.
- further investigation on feasibility, financial support and capital funding will be required.
- sports pitches would not reduce the biodiversity on the whole site, that there is community support for such projects given it is an open greenspace in a residential area.
- key decision timescales
- an assurance that other options for sports pitches have been exhausted.
- A three-year grace period to enable the golf course to reopen before any pitch developments.

3.13 Officers have considered the issues raised and believe that they can largely be addressed within the proposed lease agreement. The options for sports pitches at other locations has already been considered in detail and community consultation will be undertaken in relation to the biodiversity of the site.

4.0 FINANCIAL IMPLICATIONS

4.1 The following table sets out the capital value and market rent for the asset as advised by the Council's consultants, Avison Young.

ASSET	Asset Value	Market Rent
Brackenwood Golf Course	£950,000	£25,000

4.2 In the 2022/23 budget, the Council agreed to close two 18 – hole municipal golf courses (Brackenwood and Hoylake) to address a significant budget deficit in the operation of the service (circa £335,000 per annum). This decision has been very successful, and the service is now in surplus, achieving over £60,000 above its income target for 2022/23.

4.3 Reopening Brackenwood golf course will potentially undermine this achievement and lead to competition and loss of income, incurring financial pressures on the Council's budget, that could potentially jeopardise the viability of the remaining sites (Arrove Park 18-hole course and The Warrens nine-hole course).

5.0 LEGAL IMPLICATIONS

- 5.1 The terms of reference for the Policy and Resources Committee include to, amongst other matters, consider disposals of assets above £500,000 in value.
- 5.2 In general the Committee in reaching a decision must consider all relevant considerations and disregard irrelevant considerations and come to a reasonable conclusion. That would include considering any potential uses for the assets which are alternative to that proposed by Brackenwood Community Golf Limited. Not to consider alternative uses would expose any decision to legal challenge.
- 5.3 A relevant consideration is the Council's fiduciary duty to the Council Taxpayer to take account of its interests in maximising income or savings and obtaining the best price reasonably obtainable for the disposal of any asset. The Committee should therefore consider any income or capital receipt forgone because of transferring an asset for community use. Any financial loss would have to be clearly outweighed by the strength of the community benefits. The Council's current financial position is a relevant factor.
- 5.4 In this regard it is important to ensure that the terms of a community asset transfer do not significantly reduce the savings made, or increased income achieved as a result of the measures already taken by the full Council to fulfil its legal duty to balance its budget.
- 5.5 If the community benefits are unlikely to be realised by a CAT transfer because, for example, of a lack of financial viability or necessary expertise, then they should be given little or no weight in the decision-making process.
- 5.6 The Council is under an additional duty under section 123 of the Local Government Act 1972 to obtain the best price reasonably obtainable for the disposal of any interest in its land unless the disposal is for a lease for less than seven years. If the proposed lease is for a longer term, then a less than market rent would be lawful if the value of the community benefits outweighed any loss of income.
- 5.7 A further consideration is the Subsidy Control Act 2022 which prohibits subsidies by public bodies to an enterprise (even if not for profit) that offers goods or services on a market. If the financial assistance (e.g. charging a below market rent in a lease) conferred an economic advantage on the selected enterprise that might distort competition with other providers, it would be unlawful unless the advantage were below the "de minimis" level of £315,000 (measured over the length of the proposed lease) or the rigorous requirements for a lawful subsidy under the Act were satisfied. The figure of £315,000 includes any previous financial assistance provided to the recipient by a public body during the past three financial years. Financial assistance would include any future discretionary business rates relief which is not given to its competitors.
- 5.8 Any proposed disposal by the Council of an interest in land that is public open space (i.e. land held for the purpose of public recreation such as public parks or golf courses that are open to the public and not restricted to a private membership) must be advertised in local newspapers for two successive weeks. Any objections

received would have to be considered by the Committee before any decision were made on the disposal.

- 5.9 The grant of a lease to a CAT transferee would confer exclusive possession of the land to the organisation. The Council could impose covenants on the lessee e.g. to keep the property in good repair or not to use it for any purposes other than those specified. Those covenants would be enforceable but any decision by the Council to forfeit the lease for non-compliance could be overturned by the Court in its discretion if the lessee sought relief from forfeiture. The Council would in effect lose control of the land for the duration of the lease (and the lessee would have the right to a renewal of the lease on its expiry unless its right were excluded pursuant to the Landlord and Tenant Act 1954).
- 5.10 Any disposal of the land for a different use than the one formerly established by the Council would have to be compliant with any legally enforceable covenants imposed by previous owners or current landlords and with any requirements for planning permission.
- 5.11 If the Committee decided not to proceed with a CAT transfer, the property would be used for playing pitches, Biodiversity Net Gain to support Local Plan priorities and continued community access.

6.0 **RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS**

- 6.1 The Council has existing resources in place to progress the decision of this Committee with regard to this asset.

7.0 **RELEVANT RISKS**

- 7.1 Transferring any asset carries a risk that it may not be successful. To reduce this risk, the Council has undertaken a very thorough process in terms of assessing each business plan, the funding required and considering all other relevant factors as detailed in this report. Brackenwood Community Golf Limited is a new company with no assets or track record. In establishing any new business venture, the first three years of operation are critical for establishing the business. To mitigate the start-up risks, RM Estates are providing a five-year rental guarantee (total value £48,725) and an introductory rental arrangement has been agreed in the Heads of Terms. However, risks remain in terms of the competitive golf market but having RM Estates involved (a company experienced at running golf courses) will assist the new company at least during the first 5 years of the Lease. In the longer term the company may have challenges with the resources to invest in the course (estimated at 1.4m in the STRI condition report and now with inflation increases estimated around £1.7m). The drainage will have to be improved on the course as it can only be played on for a limited number of months each year due to water logging and these drainage improvement costs are significant.
- 7.2 In addition, under the CAT proposals the Council would be leasing the assets to the relevant organisation and if any transfer failed the asset would return to the Council but only after possible litigation and the Court or the lessee agreeing to the forfeiture of the Lease. Consideration could then be given to the options for the future of the site.

- 7.3 A communications strategy is in place to manage any reputational risks associated with the CAT project.
- 7.4 Any post transfer risks (e.g. ensuring compliance with the lease, maintaining the property etc) will be dealt with by lease provisions and regular annual monitoring of these matters.
- 7.5 A register of all assets transferred will be kept by the Asset Management Team. The annual report to members on the Asset Strategy 2022-27 will report progress on CAT.

8.0 ENGAGEMENT/CONSULTATION

- 8.1 Extensive engagement has taken place with Brackenwood Community Golf Ltd as it prepared its business plan and in all the further discussions required around the Heads of Terms document.

9.0 EQUALITY IMPLICATIONS

- 9.1 Wirral Council has a legal requirement to make sure its policies, and the way it carries out its work, do not discriminate against anyone. An Equality Impact Assessment is a tool to help council services identify steps they can take to ensure equality for anyone who might be affected by a particular policy, decision or activity.
- 9.2 It is not considered that the proposed transfer or its alternative will adversely affect any section of the community having protected characteristics.

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

- 10.1 While they are green, golf courses require intensive amounts of manicuring, use large amounts of water, fertilisers and pesticides which can have significant ecological implications for surrounding land. The lawnmowers that manicure the grass make significant contributions to greenhouse gas emissions. The same considerations, to a lesser extent, relate to playing pitches.
- 10.2 Brackenwood Community Golf Limited have proposed a Biodiversity Net Gain Strategy for the course which will have to be balanced against the operational environmental impacts of the golf course.
- 10.3 The Council is currently waiting for guidance from DEFRA in relation to Biodiversity Net Gain as the Council continues to develop its Biodiversity Net Gain Strategy which is out for consultation and closes at the end of July 2023.

11.0 COMMUNITY WEALTH IMPLICATIONS

- 11.1 Transferring the asset has several community benefits which are set out in Appendix 4 of this report. This will provide new opportunities within those communities for

community wealth building. The local focus of activity within those communities has the potential to complement existing facilities and create new economic opportunities for local groups.

11.2 There are also community benefits which would accrue to a wide and numerous section of the community if the site were used for playing pitches as outlined above.

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APPENDICES

Appendix 1 Tourism, Communities, Culture and Leisure Report on CAT dated 22 June 2023

Appendix 2 Heads of Terms document dated 23 June 2023

Appendix 3 Brackenwood Golf Course – Plan of land to be transferred outlined in red

Appendix 4 –Community Benefits

Appendix 5 Revised cashflow showing implications of increased rental proposal from Brackenwood Community Golf Limited

Appendix 6 Letter setting out implications of increased rent proposal from Brackenwood Community Golf Limited.

BACKGROUND PAPERS

1. Community Asset Transfer Policy 2022

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Tourism Communities Culture and Tourism Committee Report on CAT (stage 1)	16 June 2022
Report on CAT	25 October 2022
Report on CAT	2 February 2023
Report on CAT	9 March 2023
Report on CAT	22 June 2023