

Name of meeting: Cabinet

Date: 24 March 2016

Title of report:

Leasehold Asset Transfer of East Bierley Playing Fields, Off Hunsworth Lane, East Bierley, BD4 6PU

Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	No
Is it in the Council's Forward Plan?	No
Is it eligible for "call in" by Scrutiny?	Yes
Date signed off by <u>Director</u> & name	Jacqui Gedman – 15 March 2016
Is it signed off by the Director of Resources?	David Smith – 10 March 2016
Is it signed off by the Assistant Director - Legal, Governance and Monitoring	Julie Muscroft – 10 March 2016
Cabinet member portfolio	Resources and Community Safety – Cllr Graham Turner

Electoral [wards](#) affected: Birstall and Birkenshaw

Ward councillors consulted: Cllr Robert Light, Cllr Elizabeth Smaje, Cllr Andrew Palfreeman

Public or private: Public

1. Purpose of report

- 1.1 The report sets out the proposal to grant a long lease of the land and buildings that currently make up East Bierley Playing Fields to East Bierley Community Sports Association.
- 1.2 The report also sets out a request from the group for a loan from the Council of £175,000 over a period of 20 years.
- 1.3 Community Asset Transfer involves transferring land and budgets from a statutory body to a community organisation at 'less than best consideration' – that is at less than its full market value – in order to

further social, economic and /or environmental objectives. The Council's Asset Advancement Policy was approved at Cabinet in 2013.

2. Key points

Background

- 2.1 East Bierley Playing Fields (“the Site”) are located off Hunsworth Lane, East Bierley and are currently managed by the Council, The pitches on the Site are used for both Rugby and Football and there are approximately 4 teams that regularly play on the pitches.
- 2.2 There are 2 changing facilities on the Site: one is managed by the Council; one is managed by one of the teams that play on the pitches (and that team is a member of the East Bierley Community Sports Association. Both facilities are in a poor state of repair and both require significant capital investment to bring them up to a suitable standard.
- 2.3 Current users pay Kirklees £400 per season to use the pitches, Kirklees currently maintain the pitches and the changing facilities and this is at an estimated cost of £7500 per year.
- 2.4 East Bierley Community Sports Association (“the Association”) was formed in 2013 and members are from the active teams who currently use the pitches on the Site They have formed a RFL, FA and Sports England Approved constitution to enable them to move forward with an asset transfer. The group do not currently have a lease for the .Site
- 2.5 The Association has secured £125,000 funding towards the demolition of the old changing facilities.
 - £50k Sport England funding- secured
 - £25k Sport England-committed
 - £50k indicative funding from the Football Stadia improvement fund.

The group have also requested a loan from the Council of £175,000 over 20 years. The loan will enable the group to continue with their planned rebuild of the changing facilities including the relevant asbestos, health and safety and environmental surveys required. If the Council decide to not grant a loan the Association can use alternative funding sources, however rates are not as competitive and timescales are an issue as the group are at risk of losing approximately £50,000 if a funding source is not found by April 2016 (the £50k Football Stadia funding improvement fund is at risk if a lease or agreement in principle to lease is not secured before the end of the football season.)

Asset Transfer

- 2.6 Members of the Association have met with officers of Kirklees Council with a view to taking a leasehold asset transfer of the Site and have recently submitted a Community Asset Transfer application.

East Bierley Community Sports Association aim to support not only local sports teams to utilise the space but also aim to open the space to the wider community for recreation, fitness and social activities.

- 2.7 The Association have submitted a robust application and business plan in line with the requirements of the Asset Transfer Policy, this includes the development of policies, outline of service users and financial plans which have been assessed by the Communities and Engagement Team, Locality (which is a third party who are working in partnership with the Council to support groups in capacity building and business planning), Corporate Landlord and Strategic Finance. The application was assessed using the Asset Transfer assessment tool which assesses 5 areas including a financial assessment, impact on community, risk, the asset and the strength of the organisation. This assessment was designed in line with the Hallmarks of an Effective Charity which is written and supported by the charity commission.
- 2.8 The Council's Asset Advancement Policy was developed in response to the Quirk review and subsequent localism agenda, and approved by Cabinet 8 October 2013. The policy allows for assets to be transferred either through long term leases or freehold transfer, but normally with covenants which restrict use to community use.

The decision options for this request for asset transfer are:

Refuse the request for an asset transfer?

Community Asset Transfer is one of the strands empowering communities to do more for themselves and is a key Council priority.

If either a leasehold or freehold transfer is refused the Association will not be able to draw down the relevant funding to allow for capital improvements for the changing facilities on site.

Officers are of the opinion that this is not the recommended option on the grounds that this wouldn't allow the Association to proactively develop the site allowing for increase in usage by the local community.

Transfer on a leasehold or freehold basis?

The Council's Asset Transfer Policy was approved in 2013 and states: "and a transfer may take a number of legal forms. At one extreme, a transfer of the 'freehold' of a property would mean the entire ownership of the building would pass from the Council to the community based group. However, restrictions (called 'covenants') would normally ensure the property remained available to local people to use and prevent it being sold for development. At the other end of the spectrum, a 'licence' would allow a community based group to use a building, but sharing its use with other

groups or individuals. In between these extremes, a 'lease' will give a community based group the exclusive right to use the property for the duration of the lease. A lease can run for any period - commonly from a few months, up to 999 years. At the end of the lease or licence the building will either return to Council control or a further lease or licence could be negotiated. Should the management of a building fail then the council would accept the building back into its portfolio regardless of the advancement basis".

To mirror previous asset transfers which have been agreed to transfer on a freehold basis at nil consideration officers are of the opinion that the lease transfer should take place as a full repair and insure lease, at nil consideration, but that a lease is required rather than freehold as it is the first playing field and public open space asset transfer the Council has completed.

Officers are of the opinion that a lease transfer, full repair and insure lease, for 125 years is the recommended option on the grounds that, in the unlikely event that the Association ceases to operate, the Council would have the right to terminate the Lease (subject to the exercise of any step-in rights in favour of the other funding bodies) and therefore the Council would be more likely to have the ability to regain control of the Site

Transfer with or without covenants?

a. Transfer with a restrictive covenant.

Officers are of the opinion that this should be the recommended option but that flexibility of the area could be allowed for commercial activity to support the income of the Association.

b. Transfer without restrictive covenants in place.

Officers are of the opinion that this should not be the recommended option on the grounds that the future use of the playing fields could be lost to the local community without these covenants in place.

Costs

2.9 The Council does not have a Conditions Survey for the building, however the Association have provided pictures of the site within their business case and the premise is in a poor state of repair.

2.10 The current running costs to the Council for the site is £7,500 pa, this relates to water and electricity within the changing facilities and pitch maintenance.

Loan

2.11 A loan has been requested by the Association to enable them to undertake various surveys, demolition and rebuild of the current changing facilities.

Initial discussions centred on a £150,000 loan with a maximum repayment period of 10yrs with the loan being secured against the changing facilities. Subsequently the Association requested loan facilities for £175,000.

- 2.12 For a £175,000 loan, this would require the Association to repay £20,124 per annum with a total debt repayment across the 10 years of £201,240.

The submitted business plan requests that the loan is offered over a 20yr period. The impact is to reduce annual repayments to £12,072 but the total value of debt to be repaid by the Association over the term of the loan increases to £241,440.

The Association's financial forecasts estimate approximately £25,000 of income will be generated in an average year (mainly through memberships, Association lottery and fundraising events). This level of revenue funding covers building running costs, fees, and loan repayments (based on a 20 yr. loan period) and is estimated to produce a small cash flow surplus from Yr. 3 onwards (average surplus £500 - £1,500 each year).

The business plan indicates that any loan repayment plan based on a period less than 20 yrs. will adversely impact on the viability of the Association's finances and therefore be unaffordable.

The Association have stated within their business case that although they have secured funding of approximately £125,000 from Sports England that additional funds will still be required to upgrade the facilities on Site. If a transfer is granted without the offer of a loan the group will not be able to proceed with the building work and given the state of the current facilities risk current teams seeking alternative facilities to use.

- 2.13 The request of a loan in connection with an asset transfer application is unusual and was not envisaged when the current Asset Transfer Policy was approved (sept 2013).

- 2.14 One of the key planks of the Quirk/localism agenda and the subsequent asset transfer policy was about empowering communities to do more for themselves; recognising the Councils increasingly challenging financial position by transferring assets on long term leases/freehold basis and opening up new funding opportunities to organisations to apply for e.g. Lottery Bids and Sports England funding. Consequently, the asset transfer policy did not anticipate and therefore did not address loan facilities to be the norm, however Cabinet in considering each request can make exceptions.

- 2.15 Officers consider that offering a loan period above 10 years to this group increases the risk of the total loan value not being recovered in the future. However, it is acknowledged that the viability of the proposal is dependent on a 20yr loan period being granted whether the loan facility is via the Council or an alternative funding source previously mentioned. Annual repayments to the Council based on a 10 year loan are £8,052 higher than those based on a 20 year loan period.

- 2.16 Based on a loan of £175,000 over 20 years as requested, the Council would be repaid interest totalling £66,440.

Valuation

Unrestricted Value

The unrestricted value is the best price reasonably obtainable for the property and should be expressed in capital terms. It is the market value of the land as currently defined by the RICS Red Book (Practice Statement 3.2), except that it should take into account any additional amount which is or might reasonably be expected to be available from a purchaser with a special interest (a "special purchaser"). When assessing unrestricted value, the valuer must ignore the reduction in value caused by any voluntary condition imposed by the authority. In other words, unrestricted value is the amount that would be paid for the property if the voluntary condition were not imposed (or it is the value of the property subject to a lease without the restriction).

The unrestricted value of East Bierley Playing Fields is: £80,000

Restricted Value

The restricted value is the market value of the property having regard to the terms of the proposed transaction. It is defined in the same way as unrestricted value except that it should take into account the effect on value of any voluntary condition(s).

The restricted value of East Bierley Playing Fields is: £ Nil

Voluntary Conditions

A voluntary condition is any term or condition of the proposed transaction which the authority chooses to impose. It does not include any term or condition which the authority is obliged to impose, (for example, as a matter of statute), or which runs with the land. Nor does it include any term or condition relating to a matter which is a discretionary rather than a statutory duty of the authority.

The value of voluntary conditions in the proposed transaction is: £ Nil

Amount of discount given by the Council

The difference between the unrestricted value of the land to be disposed of and the consideration accepted (the restricted value plus value of any voluntary conditions).

The amount of discount in the proposed transaction is: £80,000

In respect of *Local Government Act 1972 general disposal consents (England 2003) disposing of land for less than best consideration that can be reasonably obtained* the transaction does not require the Council to seek specific consent from the Secretary of State as the difference

between unrestricted value of land to be disposed of and the consideration accepted is £2,000,000 or less.

3. Implications for the Council

- 3.1 The Local Government Act 1972 General Disposal Consent means that specific consent is not required for the disposal of any interest in land/buildings at less than best consideration which the authority considers will help it to secure the promotion or improvement of the economic, social or environmental well being of its area. Following their assessment the Council is confident that East Bierley Community Sports Association meets the social, economic and social factors for the local community.
- 3.2 The site is deemed Public Open Space and therefore relevant consultation with the public has been instigated via Council Procedures. The objection period will expire on 4th March. Cabinet would need to consider any objections received and therefore the timing of the asset transfer decision may have to be delayed if an objection were received.
- 3.3 The draft local plan states that the pitches are green belt and the wooded area is wildlife habitat.
- 3.4 A phase 1 environmental survey has already been undertaken and the land has been identified as a former pit and reservoir which may have been backfilled in the past with colliery soil. A phase 2 environmental survey will be commissioned as part of the planning process, this will identify the ground conditions and the extent of any contamination from historical and current uses.
- 3.5 As the facility is close to the border with Bradford Council the group have provided additional statistical evidence with regards the sports club users and have established that 92% are Kirklees residents. In addition there are at least 25 visits per day from local Kirklees residents using the facility as dog walkers and other exercise which is in excess of 9,000 visits annually.

4. Consultees and their opinions

- 4.1 The group were consulted and have commented specifically about the loan: *"We are not aware of any other funders being able to have security on an Asset unless KMBC are happy that their book value transfer outweighs their on-going risk and liability for the site.*

We have no alternative funding option at the minute so therefore we wouldn't be proceeding with the asset transfer due to the standard of the present facilities at the site. The clubs who also play there would have no choice but to look to move elsewhere to a location with better facilities, leaving the current site as it stands today for the council to pick up from there.

This was mentioned and is included within our risk log.

The timing of the cabinet meeting means if we don't get the decision on the loan and the asset, then we will lose a grant of £50k and this would leave

us requiring a loan of over £200k which with the legal asset points still remaining outstanding and with Kirklees to finalise, no other funder would consider us at the present time so if we don't succeed in gaining both decisions before at least April, we stand lose the grant and the project isn't able to proceed.

4.2 The group currently have no alternative funding in place, they have explored other options but feel that the alternative loans available are too expensive for a not for profit organisation, therefore they have stated that they would not wish to continue with the asset transfer if the loan was not available. The group have also noted that there is a possibility sports clubs would look to move elsewhere if the development of the site couldn't move forward.

4.3 Ward Councillors were consulted and commented:

Cllr Palfreeman - I support the Sports Association in this particular project. The work which the clubs undertake is vital, especially in encouraging young people (of both sexes) to experience the benefits of exercise and sport. In order to assist the Association to I would ask that the loan be granted for 20 years but in all other aspects I agree with the proposals.

Cllr Smaje - I also support the association in this project and agree with Cllr Palfreeman's comments.

Cllr Light - I fully support the proposed asset transfer however I strongly believe it is in the best interest of the Council to offer a loan over a twenty year period. The longer period will make the venture much more sustainable and enable the Association to focus on involving young people from our local community in sport rather than just making loan repayments.

4.4 Cabinet Members requested greater clarity around the risks:

- Approve the Community Asset Transfer and the loan?

This option will support the Council's priority of empowering communities to do more for themselves. It will make a financial saving of revenue running costs (£7,500 p.a.) and avoid a future capital replacement cost.

The current asset transfer policy does not address the concept of providing loans, but Cabinet can make exceptions however Cabinet will also need to consider if granting a loan whether a precedent is set and whether the Council can afford any potential future demands from other groups requesting a loan along with an asset transfer?

The loan can be secured against the property to mitigate against the risk of the association defaulting on the loan as the mere fact that the loan is secured will encourage compliance.

- Approve the Community Asset Transfer but with a reduced loan/shorter term?

To succeed, the Association would either have to make savings on the replacement build costs, find an additional source of funding, or adjust their business plan to accommodate the higher payments required from a shorter term loan. If the Association was successful in this then the Council would benefit from empowering communities to do more for themselves , and make a financial saving on revenue running costs (£7,500 p.a.) and avoid a future capital replacement cost.

The current asset transfer policy does not address the concept of providing loans, but Cabinet can make exceptions, however Cabinet will also need to consider if granting a loan whether a precedent is set and whether the Council can afford any potential future demands from other groups requesting a loan along with an asset transfer?

The loan can be secured against the property to mitigate against the risk of the association defaulting on the loan as the mere fact that the loan is secured will encourage compliance.

- Approve the Community Asset Transfer without a loan?

The Association have said they would not proceed with the asset transfer if a loan was not approved as they have no other funding options and because of the standard of the current facilities. This option would maintain the status quo. Current revenue running costs to the Council of £7,500 and a future capital liability to either replace the current facilities or close them if they become a health and safety risk. It is also likely that clubs will move elsewhere to locations with better facilities.

- Do not approve the Community Asset Transfer or the loan?

This option would maintain the status quo. Current revenue running costs to the Council of £7,500 and a future capital liability to either replace the current facilities or close them if they become a health and safety risk. It is also likely that clubs will move elsewhere to locations with better facilities.

5. Next steps

- 5.1 Subject to Cabinet approval Officers from Physical Resources and Procurement will complete negotiations and agree terms of the lease for the asset transfer to take place and officers from the Resources Directorate will complete negotiations and agree the terms of the loan.

6. Officer recommendations and reasons

- 6.1 Members are requested to approve the grant of a 125 years lease of the East Bierley Playing Fields to East Bierley Community Sports Association for no premium/nil consideration and to include covenants to ensure that the majority of the building and land can only be used for community use.
- 6.2 Members are requested to consider the balance between the affordability (and hence the likelihood) of the repayments of a loan and the length of

the term. Clearly a shorter loan imposes a greater burden on the Association, but reduces the risk to the Council. Hence officers initial suggestion of a 10 year loan which would appear difficult for the club now to afford. Members are requested to consider whether the Council should offer a loan of £175k to the East Bierley Community Sports Association for a term of 20 years (interest rate-see appendix B) and if so whether that loan should be a secured loan or whether the Council should recommend the Association pursue alternative funding sources.

6.3 Members are requested to note the Assistant Director of Physical Resources and Procurement and Assistant Director Legal Governance & Monitoring have delegated authority to negotiate and agree the terms of the lease that relate to the transfer of East Bierley Playing Fields.

6.4 Members are requested to note that the Director of Resources has authority to negotiate and agree the additional terms of any loan that Members may choose to offer to the East Bierley Community Sports Association

7. Cabinet portfolio holder recommendation

7.1 The Portfolio Holder, Cllr Graham Turner recommends the 125 year leasehold transfer of the East Bierley Playing Fields to East Bierley Sports Association for no premium/nil consideration subject to restrictive covenants for community use.

7.2 Additionally, the Portfolio Holder, Graham Turner recommends the granting of a secured loan for £175,000 to the association, but over a 15 year period. The timing of the release of the loan to the East Bierley Community Sports Association to be negotiated with the Assistant Director Physical Resources and Procurement in the conjunction with the Director of Resources.

8. Contact officer and relevant papers

8.1 Appendix A - Red Line Boundary

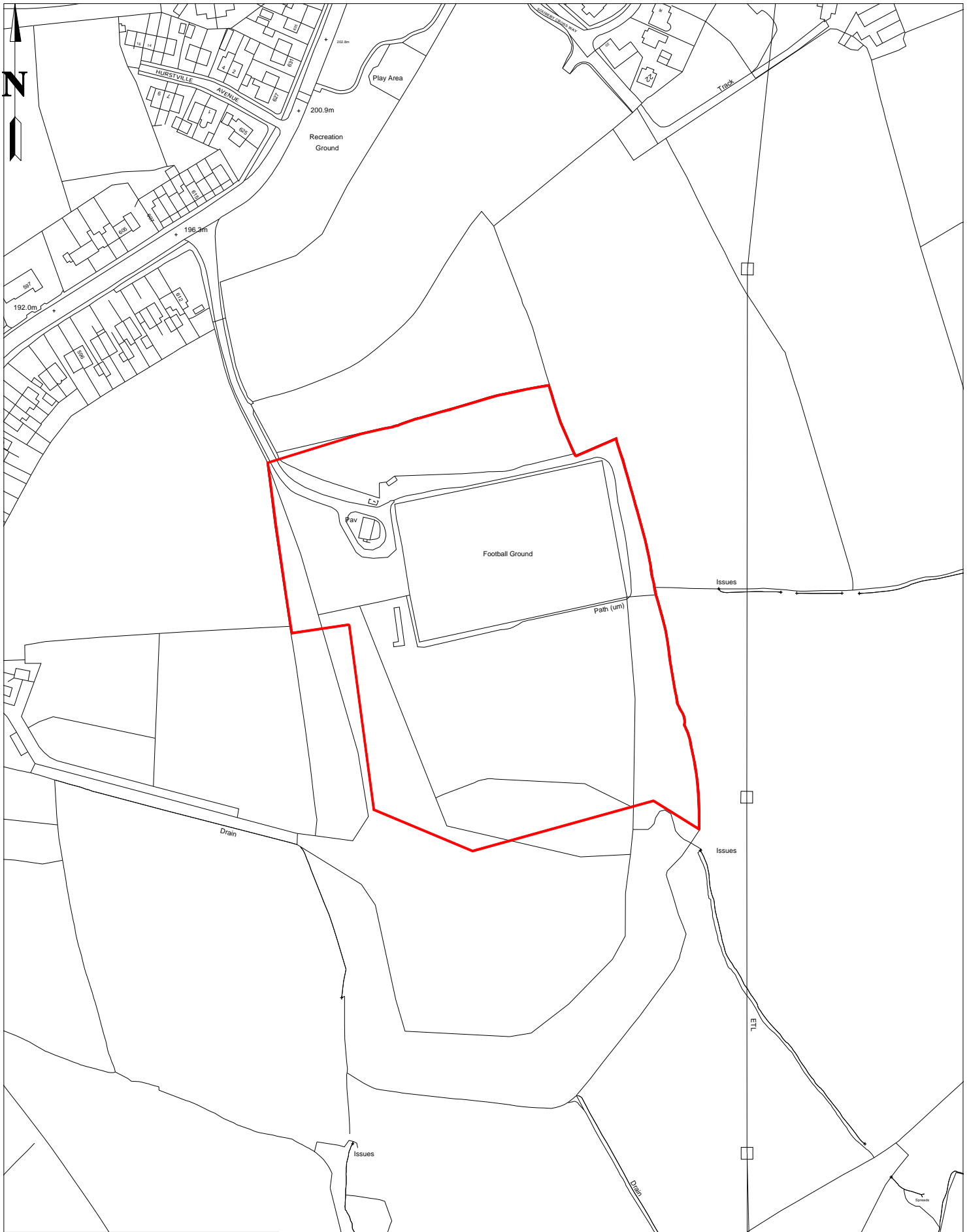
8.2 Appendix B – Loan Repayment Schedule

Mark Gregory, Head of Corporate Landlord mark.gregory@kirklees.gov.uk
(01484) 221000

Jonathan Quarmby, Corporate Facilities Manager
jonathan.quarmby@kirklees.gov.uk (01484) 221000

9. Assistant director responsible

Paul Kemp, Assistant Director - Place



**PHYSICAL RESOURCES
& PROCUREMENT**

Plan No: 15-0579

Scale: 2500

Required by:

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Cost of borrowing - East Bierley

(based on PWLB annuity rates 30/10/2015)

Based on loan of £175,000

Period	PWLB annuity rates	Certainty discount	Interest rate for KMC	Add for admin 0.50%	Cost per 1,000	Current cost of borrowing per year for principal and interest	Total repayment	Total interest	Annual payment	Monthly payment	Monthly per club
yrs											
5	1.82%	0.20%	1.62%	2.12%	-£212.90	21.3%	£186,375	£11,375	£37,275	£3,106	£777
10	2.34%	0.20%	2.14%	2.64%	-£115.09	11.5%	£201,250	£26,250	£20,125	£1,677	£419
15	2.83%	0.20%	2.63%	3.13%	-£84.56	8.4%	£220,500	£45,500	£14,700	£1,225	£306
20	3.01%	0.20%	2.81%	3.31%	-£69.16	6.9%	£241,500	£66,500	£12,075	£1,006	£252