

## LONDON BOROUGH OF HAMMERSMITH & FULHAM

**Report to:** Commercial Revenue Committee Member Decision

**Date:** 1/07/2022

**Subject:** Grant of a further, short-term lease to Fulham Stadium Ltd for retention of a constructor's compound in Bishop's Park, SW6

**Report of:** The Cabinet Member for Finance and Reform – Councillor Rowan Ree

**Report author:** David Jones, Valuer, Corporate Property Services

**Responsible Director:** Jon Pickstone, Strategic Director for Economy

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### SUMMARY

This report seeks approval to grant a further lease to Fulham Football Club (FFC), following the expiry of its previous lease on 7.6.2022, for retention of its constructor's compound in Bishop's Park until 31.10.2023. The previous lease was granted to FFC on 7.6.2019 to facilitate its Riverside Stand development scheme, in accordance with the Commercial Revenue Committee Decision of 31.5.2019, attached as Appendix 3. FFC has requested a time extension because completion of the development at Craven Cottage Stadium has been delayed because of the effects of the covid pandemic.

Approval is also requested to enter a corresponding deed of covenant with FFC and the Church Commissioners for England for extending the latter's temporary release of covenants that apply to the compound land being occupied by FFC.

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### RECOMMENDATIONS

That the Commercial Revenue Committee:

1. Agrees that Appendices 1 and 2 of this report, comprising the draft lease and draft deed of covenant respectively, are not for publication because these agreements are not finalised yet and because the equivalent agreements were exempt from the previous report, comprising proposed contractual terms currently being finalised, as per Paragraph 9 of Part 1 of Schedule 12A of the Local Government Act 1972 (as amended).
2. Agrees for the Council to enter a new lease with Fulham Stadium Ltd for retention of the constructors' compound to facilitate completion of the development of the stadium, particularly fitting-out work. In exchange for the benefits of the lease to FFC, it would pay the Council a rent of £282,800 p.a.x, for an overall value of £395,210 for the full lease term (but this would be less should FFC be able to trigger an option for early lease termination).

3. Agrees for the Council to enter into another deed of covenant with FFC and the Church Commissioners for England for an extension of the temporary release of restrictive covenants on the land. This is required for granting a new lease to FFC.
4. Agrees to delegate authority to the Assistant Director Operations, The Economy, in consultation with the Cabinet Member for Finance and Reform, the Assistant Director, Leisure, Sports and Culture and the Assistant Director, Legal Services, to finalise both property agreements with FFC to enable the requested retention of its constructor's compound.

**Wards Affected:** Palace Riverside

Our Values	Summary of how this report aligns to the H&F Values
Building shared prosperity	The lease would benefit FFC because of the logistical advantages of retaining the existing compound which adjoins the stadium and conversely, sparing the club the cost, inconvenience, and probable delay if an alternative constructor's compound was required elsewhere.
Creating a compassionate council	Agreeing the new lease is not obligatory, but it would considerably help FFC for the above reasons.
Doing things with local residents, not to them	A new lease for FFC was subject to notification to the public in accordance with a statutory, s123(2A) procedure. Information about the lease was also shared with the Friends of Bishop's Park, a principal stakeholder, and no objections were raised in either case.
Being ruthlessly financially efficient	The proposed rent is considered to be the best consideration reasonably obtainable, and it will help pay for the improvement and maintenance of Bishop's Park.
Taking pride in H&F	The deed of covenant with the Church Commissioners would be subject to the rental income being used for the repair and improvement of Bishop's Park.
Rising to the challenge of the climate and ecological emergency	If the existing compound is not retained and FFC must resort to an alternative, offsite compound instead, this could result in a significant increase in traffic movements for the delivery of materials and plant to the stadium, which would increase pollution and the development project's carbon footprint.

**Financial Impact**

The Council will receive £282,800 per annum as the rent, payable from 8.6.2022 on lease completion. This equates to £395,200 over the full lease term of c17 months (subject to the break clause in the lease not being activated).

This income has not been forecast or included in any Council revenue budgets for Parks (Environment department) or any corporate budgets. Corporate Finance colleagues will need to work with the Environment department to understand where this unbudgeted income will sit.

The Council seeks to ensure the park is reinstated to an agreed standard as a condition of the lease but as a safeguard, a security deposit was agreed at the commencement of the original lease agreement to reduce the risk of default by FFC.

The Council's legal fees and surveyor's fee for this transaction will be recouped from FFC as part of the lease's completion.

*Financial Implications completed by: Danny Rochford, Head of Finance (Economy & Housing Revenue Account) and verified by Emily Hill, Director of Finance, 9 June 2022*

## **Legal Implications**

Under the Local Government Act 1972 section 123, local authorities have powers to dispose of property in any manner they wish, except with the consent of the Secretary of state, a Council shall not dispose of land under this section, otherwise than by way of a short tenancy, for a consideration less than the best that can be reasonably be obtained.

The Council may not dispose under section 123 of any land forming part of an open space unless before disposing of the land they give notice of their intention to do so, specifying the land in question, to be advertised in two consecutive weeks in a newspaper circulating in the area in which the land is situated, and consider any objections to the proposed disposal which may be made to them.

Bishops Park was conveyed to the Vestry of Fulham (the Council's predecessor in title) by the Church Commissioners for England by a conveyance dated 14/069/1900, pursuant to the Open Spaces Act 1877-1890. This established a statutory trust to maintain the open space for public exercise and recreation in perpetuity. At the same time certain restrictive covenants were taken, which requires the Church Commissioners' release on any disposal of the park land.

*Legal Implications completed and verified by: Rachel Silverstone, Senior Property Solicitor, Tel: 0208 753 2210, Email: rachel.silverstone@lbhf.gov.uk ( 23.5.2022)*

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## **Background Papers Used in Preparing This Report**

None.

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## DETAILED ANALYSIS

### Proposals and Analysis of Options

1. FFC contacted the Council in early February to request a lease extension to retain its constructor's compound, located in Bishop's Park next to its stadium, while fitting out works for its stadium development are completed. Completion of the stadium development has been delayed because of the impediments of the covid pandemic.
2. In consequence, the proposal is for the Council to grant a new lease to FFC, based on its previous lease, particularly the parts regulating the use and occupancy and the eventual restoration of the parkland, but subject to some updating, e.g., the original preparatory, landscape works for the compound have been completed so clauses for them are no longer required. The new lease term would commence on 8.6.22 and expire on 31.10.23, subject to a tenant's option for early lease termination if FFC could satisfactorily reinstate the entire compound site before the latter date.
3. To allow a new lease, the Council will also need to enter a new deed of covenant with FFC and the Church Commissioners for further, temporary release of covenants on the park that protect its use for public recreation. The deed will also be based on the existing deed.
4. The proposed lease constitutes a disposal of public open space, so it was also subject to a public notification procedure laid out in s123 (2A) of the Local Government Act 1972. A notice of the intended lease was published in The Gazette (for west London) on 18th and 25th May, with a deadline of 6th June for receipt of any comments/ objections but none were received. The land that would be leased comprises the existing constructors' compound of 5,637 sq. m. and it is shown outlined in red on the plan included in the draft s123 notice, attached as Appendix 4.
5. FFC currently occupy the compound on a tenancy at will following the recent expiry of the three-year lease that the Council granted on 7.6.2019. The reasons why the Council supported the lease were described in the Decision Report for the Commercial Revenue Committee of 31.5.2019. This report is attached as Appendix 3 and those reasons still apply for favourably considering FFC's request for a new lease, mainly to facilitate the delivery of the stadium development because of the considerable convenience and logistical benefits of locating the compound next to the development site.
6. Under the proposed lease, the council would receive a rent of £282,800 p.a., exclusive of VAT, payable quarterly in advance. The current, principal rent is £164,000 p.a.x, augmented by a premium of £150,000.
7. The option for the Council of not agreeing a new lease is a qualified option because FFC would still need extra time to remove the compound, its structures and reinstate the site to parkland. Also, the below-mentioned option for FFC to establish an offsite compound elsewhere would reportedly still be

subject to requiring a vehicular accessway across parkland, at either end of the stadium, for getting access from Stevenage Road highway into the stadium. Undoubtedly, constructor's staff would still require welfare facilities to be located close to, or within, the stadium development site.

8. FFC did investigate the feasibility and advantages/ disadvantages of relocating the compound, either elsewhere (in south London) or possibly, on a pontoon platform on the Thames near the stadium. FFC received consultant's advice that the retention of the existing compound would far outweigh those alternative possibilities.

### **Reasons for Decision**

9. The reasons are the same as the reasons for the previous decision to approve the existing lease. Namely:
10. The recommendations allow the Council to grant a lease to FFC and to enter a deed of covenant with the Church Commissioners for England and FFC. This will enable FFC to complete as soon as possible the implementation of their planning permission for the stadium's development (planning reference 2017/04662/FUL). Incidentally, the planning permission also included the construction of a temporary compound within Council-owned land at Bishops Park.
11. The development of Craven Cottage includes the provision of a new, public riverside walkway, joining up with the Thames Path at each end of the stadium .
12. The new lease will enable FFC to continue using the stadium for home fixtures during the stadium development period.
13. A decision is required because the overall rental income of £395,200, over the full, prospective lease term, is above the delegated authority limit of £300,000 for property transactions and the commercial deal provides additional income for a time- limited period.

### **Equality Implications**

14. As per the comment in paragraph 7.1 of the previous Decision Report (Appendix 3), it is not anticipated that granting the lease for a temporary period would have a direct negative impact on any groups with protected characteristics, under the terms of the Equality Act 2010.

### **Risk Management Implications**

15. A summary of the high-level risks is set out below:

<b>Risk</b>	<b>Mitigation</b>
Failure to put right damage	Contractual obligation and retention of a

caused to public space by FFC use of land	security deposit. The Council has secured a security deposit on completion of the lease. In addition, a scheme of preparation as well as a scheme of reinstatement have been agreed with FFC.
In the event of a major incident, residual liability transferring to LBHF once FFC insurance depleted.	Insurance requirement has been amended to require £30M limit of indemnity.
Slips, trips, and falls on leased land and a new, temporary park pathway.	Clarification suggested in the lease regarding inspection, maintenance, and repair. A risk assessment was undertaken once the compound had been established.

*David Hughes, Director of Audit, Fraud, Risk and Insurance, 8 June 2022*

### **Climate and Ecological Emergency Implications**

16. As reported earlier, if the existing compound is not retained and FFC has to resort to an alternative, offsite compound instead, this could result in a significant increase in traffic movements for the delivery of materials and plant to the stadium.
17. The reinstatement programme for returning the compound to parkland was informed by the requirements of planning and parks officers and more shrubbery/ trees will be planted, than were removed by FFC for setting up the compound, the replacement ratio for trees being 3:1. Bishop Park's biodiversity should also be improved by the requirement for the council to use the rental income payable under the lease for carrying out improvements to or maintenance of the park.

*Hinesh Mehta, Head of Climate Change, 31.05.2022*

### **ICT**

18. No IT implications are considered to arise from this report as it requests authority to grant a temporary lease of land at Bishop's Park to FCC for its developments at Craven Cottage.

### **Consultation**

19. Statutory public notification was carried out, in accordance with s123(2A) of the Local Government Act 1972. No objections, to a new lease for FFC, were received during the consultation period that closed on, and including, 6<sup>th</sup> June 2022.

20. The Friends of Bishop's Park were notified about this report's principal recommendation to authorise granting a new lease to FFC, to fulfil its request for a time extension for its constructors' compound.

## **LIST OF APPENDICES**

*Exempt Appendix 1 – Draft lease*

*Exempt Appendix 2 – Draft deed of covenant*

*Appendix 3 (web link) – Decision report of the Commercial Revenue Committee of 31/5/2019 authorising the current lease granted to FFC:*

*<http://democracy.lbhf.gov.uk/ieListDocuments.aspx?CId=563&MId=6735&Ver=4>*

*Appendix 4 – Draft s123 (2A) notice*