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| Subject: | Falmer Community Stadium – Spreading of Excavated Chalk on Land South of Village Way | | |
| Date of Meeting: | 11 June 2009 | | |
| Report of: | Interim Director of Finance and Resources | | |
| Contact Officer: | Name: | Angela Dymott | Tel: 29-1450 |
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| Key Decision: | No | | |
| Wards Affected: | Moulsecoomb & Bevendean | | |

FOR GENERAL RELEASE**1. SUMMARY AND POLICY CONTEXT:**

- 1.1 The Community Stadium Limited (the Club) has secured planning permission to deposit excavated chalk arising from the construction of the Community Stadium onto a field owned by the council (the Land). The field is directly opposite the Stadium site on land south of Village Way. Approval is sought to grant consent *via* a seven year licence to the Club to enable this work to take place. By granting consent the Club will avoid the need to transport the chalk off site saving lorry movements and CO₂ emissions. Cabinet is also asked to note urgency decisions taken by the Director of Finance and Resources in this matter.

2. RECOMMENDATIONS:

- 2.1 That Cabinet approves granting the Club a 7 year licence to deposit chalk on the Land and carry out a programme to restore the Land to agricultural use on substantially the terms set out in the confidential report elsewhere on this agenda and that authority to enter into the licence is granted to the Director of Environment and the Director of Finance and Resources in consultation with the Leader and Cabinet Member for Central Services.
- 2.2 That Cabinet notes the urgency decisions taken by the Director of Finance and Resources in consultation with the Leader and Deputy Leader in respect of the surrender agreement with the tenant farmer and the grant of a temporary licence to allow works on site to continue.

3. RELEVANT BACKGROUND INFORMATION:

- 3.1 A previous report to Cabinet on 15 January 2009 on the Community Stadium explained that the Club were seeking planning approval to the disposal of excavated chalk from the stadium site on the Land. It indicated that should planning permission be granted a separate agreement between the council as landowner, the tenant farmer and the football club would be required and that a separate report to Cabinet would be required to seek approval should agreement in principle be reached.

- 3.2 The Land is subject to a 1986 Agricultural Holdings Act tenancy which also includes the farm cottage and a farm shop. To enable the proposal to proceed it was necessary for the council to negotiate a surrender of the tenant's interest.
- 3.3 If acceptable terms had not been agreed with the Club and the tenant, the Club would be required to transport all chalk arising from the construction of the Community Stadium to a suitable landfill or recycling site. The Club has calculated that 21,400 lorry movements on public roads would be required to move the excavated chalk offsite. If the chalk is relocated onto the Land the Club also estimates significant amounts of CO₂ will be saved by not transporting the chalk.
- 3.4 There are two elements to the arrangement:
- (i) Agreement between the council and the Club on the terms of the licence to be granted to enable the chalk spreading to happen.
 - (ii) Agreement between the council and the tenant on the terms of surrender of the tenancy of the Land. [The terms are set out in the confidential report elsewhere on the agenda.]

The Current Position

- 3.5 The time involved in the technical exercise of establishing all the costs involved together with negotiating two separate legal agreements has meant that the date on which the Land was required by the Club would have passed with consequent delay to the start of the Stadium works. The council therefore consented to a short term temporary licence being granted by Mr Lenihan to the Club to enable work to begin.
- 3.6 The surrender agreement between tenant and the council is agreed in principle and is to be completed prior to the Cabinet meeting. The decision regarding the surrender was taken under urgency powers because of the need to ensure no potential delay in the stadium works. At the same time a short term licence is to be granted under officer delegated powers by the council to enable works to continue pending a Cabinet decision on the grant of the 7 year licence approval to which is sought in this report.
- 3.7 The 7 year licence to the Club covers a premium to be paid to the council together with requirements for method statements for the deposit of the chalk and topsoil and an aftercare plan for the field to bring it back to agricultural quality (in total estimated to take 7 years). The principal terms are agreed and set out in the confidential report elsewhere on this agenda. It is recommended that Cabinet approves completion of the licence on substantially the terms set out in the confidential report with authority to enter into the licence delegated to the Director of Environment and the Director of Finance & Resources in consultation with the Leader and Cabinet Member for Central Services.

4. CONSULTATION

- 4.1 On 30 March the Leader and the Cabinet Members for Environment, Culture Recreation & Tourism and Enterprise Employment & Major Projects were briefed on the negotiations about the advantages and disadvantages of spreading the chalk across the Land as compared with transporting the chalk away from the site. Taking into account all the factors including the wider social, environmental and economic benefits as mentioned in 6.2 below agreement was given in principle to proceeding with the Club's proposal.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 These are set out in the confidential report elsewhere on the agenda.

Finance Officer Consulted: Peter Sargent

Date: 26/05/09

Legal Implications:

- 5.2 This matter is being reported to Cabinet in accordance with Urgency Power 7(2)(b). It is not considered that any third party's Human Rights Act rights will be adversely affected by the recommendations of this report.

Lawyer Consulted:

Marten Matthews

Date: 29/05/09

Equalities Implications:

- 5.3 An Equalities Impact Assessment is not relevant to this report

Sustainability Implications:

- 5.4 By taking a surrender of the existing farm tenancy and granting a licence to the Club allowing them to deposit chalk on the Land the Club will avoid approximately 21,400 lorry movements and will make significant savings in CO₂ emissions, assisting them in meeting their sustainability obligations in accordance with the planning permission granted.

Crime & Disorder Implications:

- 5.5 During the period in which the chalk disposal and land restoration works are carried out the contractors acting for the Club will be responsible for the security of the site.

Risk and Opportunity Management Implications:

- 5.6 The Land forms part of the South Downs National Park and as such there may be some concern regarding the chalk deposits. To address this the field will be re-contoured to reflect the natural undulations of the area. In addition the stripping, storage and depositing of the chalk will be carried out to a specification to minimise the effects of soil handling and on completion the land will undergo an aftercare plan by the Club to restore the land to a quality allowing continued agricultural use.

Corporate / Citywide Implications:

- 5.7 The recommendation supports the council's priority to protect the environment while growing the economy by reducing potential lorry movements and carbon emissions.

6. EVALUATION OF ANY ALTERNATIVE OPTION(S):

- 6.1 To facilitate the Club's request to deposit chalk on the Land legal advice was taken to establish whether any formal process could be followed to recover possession of the land from the tenant. Having established that no formal process was available to the council that would meet the required timeframe, the only option available was to seek a surrender by negotiation. Given these restrictions and the desire on the council's part to facilitate the Club's proposal as part of its overall role in facilitating the delivery of the Stadium, agents were instructed to negotiate and agree the best terms possible for the surrender of the tenancy.

7. REASONS FOR REPORT RECOMMENDATIONS

- 7.1 The recommendations will result in the council being able to deliver the Land on a timely basis to the Club. In taking these steps and reaching successful agreement with both the council's tenant and the Club, the council has avoided the need for a significant number of lorry movements on public roads during the early construction phase of the Community Stadium.

SUPPORTING DOCUMENTATION

Appendices:

1. Plan

Documents In Members' Rooms

None

Background Documents

1. Report to Cabinet 15 January 2009.
2. Report to Policy and Resources Committee 16 January 2003.
3. Report to Policy and Resources Committee 26 March 2003.
4. Report to Policy and Resources Committee 19 November 2003.