

ABERDEEN CITY COUNCIL

COMMITTEE:	Education, Culture and Sport
DATE:	31st January 2013
DIRECTOR:	Gayle Gorman
TITLE OF REPORT:	Rubislaw Field Agreement
REPORT NUMBER:	ECS/13/010

1. PURPOSE OF REPORT

The report provides the Committee with information on ongoing discussions between the parties to the Rubislaw Field Agreement and efforts to ensure that the agreement in place is fit for its purpose, reflecting the changes and patterns of use since 1923. The Council's assets, service delivery and responsibilities are potentially directly affected by the decisions taken.

2. RECOMMENDATION(S)

That the Committee –

- (i) note the current position, that the Rubislaw Field Committee has been unable to reach agreement on replacing the existing 1923 Agreement for the reasons outlined in the report and the appended minute;
- (ii) instruct officers to make a final effort to obtain the agreement of the Rubislaw Field Committee to implement a revised Agreement in the terms set out in the report at paragraph 5.8 and that, if this is successful, to receive a recommendation from the Field Committee that these terms be implemented; and
- (iii) agree that, if such agreement cannot be reached, officers be instructed to issue Conditions of Let restricted to the terms of the existing 1923 Agreement with effect from 31st March, thereby preventing any additional, unauthorised usage from that date.

3. FINANCIAL IMPLICATIONS

At present there are budget implications to meet the terms of the current Field Agreement, mainly relating to staff costs, to make the grounds and pavilion available to Aberdeen Grammar School Former Pupils' Club's sporting sections, as well as additional costs to maintain the grounds for this use, which is in addition to the needs of Aberdeen Grammar School and the wider provision of sports pitches. At present, the power supply

for floodlighting, which was paid for and installed by the Grammar FP Rugby Club, is paid by the Council.

The replacement Field Agreement will reflect a balance between recognising the historical relationship, while offsetting appropriate costs, including cleaning the pavilion and offering the potential for investment by the Council from income received. In particular, the Agreement has provisions for the Council to seek payments from the FP Club's Sporting Sections for any advertising the Field Committee agrees to allow at Rubislaw. It also enables the Council to re-invest the income it receives in youth coaching, training or other related assistance provided by the Sports Sections for the benefit of the Grammar School or wider community.

Revenue raised and paid by the Sport Sections to the Council under the provisions of this clause, not used to support youth sport as above, shall be used for current or future improvements to the facilities at Rubislaw, including debt repayment, as approved by the Education Authority managing Rubislaw Field.

4. OTHER IMPLICATIONS

There are legal implications in that the Field Agreement is a formal agreement, reached in 1923, and which has operated till the present day. The agreement of all constituent parties to amend the Agreement is required, and is important to sustain the relationships and facilities. Its updating will also demonstrate good stewardship by the City Council.

There is potential that sports development may be detrimentally affected by the process of change; the FP Club sporting sections do contribute to the participation, progression and performance in their respective sports. However, the intended result is intended to achieve a better overall situation, with proper recognition of the real costs to the Council, as well as identifying the costs and benefits of the sports development being provided at Rubislaw.

As the Council wishes to review and replace the Field Agreement agreed by a predecessor authority, there may be a risk to its reputation, dependent on the extent of the process to resolve the issues currently outstanding. Should agreement not be reached and the proposed course of action is restricted to the terms of the 1923 Agreement, there may be implications for the FP Club's sports sections. This in turn may result in the final results of the Leisure Asset Review and Pitch Strategy, currently under way, having to be amended to consider any resulting requirements they may have in order that they can continue to play in local and national leagues, on other pitches.

5. BACKGROUND/MAIN ISSUES

5.1 The background to this report is that in 1914, the Grammar School's Former Pupils Club made a financial contribution to Aberdeen School Board, to enable the latter to purchase the original Rubislaw Field. In return, an agreement was made that the Field would be used as a play field by both the pupils and former pupils of Aberdeen Grammar School. A Minute of Waiver was recorded in 1974, which enabled use of the Field by other persons. As successors to the School Board, the City Council, as Education Authority, own the Field.

5.2 In 1923, following the erection of the Pavilion, funded by the FP Club and which included a War Memorial to former pupils who had given their lives during the First World War, a new agreement for the operation and management of the Field was agreed, with a Field Committee, which consists of the Education Authority (currently represented by Cllrs Laing, as Convener, Cllrs Greig and Thomson), three members of the FP Club and the Rector and one other member of staff from Aberdeen Grammar School. That pavilion, following the opening of the new pavilion, is no longer used for changing facilities.

5.3 In consideration of the contributions made by the FP Club towards the purchase price of the play field, it has the exclusive use without charge of one grass (rugby) football pitch and one grass hockey pitch on Saturdays during the season and facilities for cricket and tennis during the summer if it chooses to use them. Additional facilities can and have been made available by the agreement of the Field Committee, and some are being used without agreement. In consideration of the FP Club's contribution to the new Pavilion, the Field Committee can also determine its use of its facilities, but this is not so far the subject of any formal agreement.

5.4 In March 2009, following discussions with the parties who are represented at the meetings of the Field Committee, it was intended to take a report to the City Council's then Policy and Resources Committee. At the request of the then Head of Legal Services, it was withdrawn so that the Council could obtain further legal advice. This was done; proposals to replace the current Agreement were scoped and then discussed between representatives of the FP Club, the Grammar School and officers. Subsequently, three meetings of the Field Committee have taken place this and last year.

5.5 The main issues are a proposal to revoke the existing Rubislaw Field Agreement, which allows exclusive use without charge by the Grammar FP Club of certain parts of the Rubislaw Field and to conclude a fresh Agreement with the Grammar FP Club, regulating their current usage of Rubislaw Field, including compliance with the general Booking System, and a mechanism for calculation of payment to the Council of a share of advertising revenues and cleaning costs.

5.6 While the existing Users Agreement with the Grammar FP Club dates from 1923, over the intervening years, there have been a number of changes to the usage made of the Field and its environs, not least the introduction of the all-weather pitch surface, which was part **sportscotland** Lottery funded and which allows play over an extended period of the year. Although this pitch is not within the scope of the Field Agreement, the Committee has been involved from its inception and has been keen to ensure that as appropriate, access could be enabled for the school and FP Club. The Council's normal bookings and lettings procedures have always applied to this pitch for all users.

5.7 There are also instances of "custom and practice" over the period of the current Agreement, some which have been accepted by the Field Committee when explicitly requested, others which have been assumed through informal use. The proposed Field Agreement reflects current use, where there are cost implications for the Council and retains the overall relationship between itself, including the Grammar School, and the FP Club. The all-weather pitch, being on ground not covered by the Field Agreement is included in order to reflect that relationship, however it should be re-emphasised that it was funded by the Council, with **sportscotland** support. Any other historical use of the upper level in the past is not included within the Agreement.

5.8 Following initial negotiations with the Grammar FP Club, the terms set out below are designed to protect the interests of school users and regulate fairly other uses of the Field in terms of current usage and entitlement. The new Agreement would also regulate payment for cleaning of the new pavilion, reflecting the usage made of it by the Grammar FP Club, and application of any income from Advertisements agreed by the Committee.

The main terms would be as follows:

1. Management of the Field and pavilion and facilities will be carried out by the Rubislaw Field Committee, comprising 3 Elected Members of the Council, 3 Members of the FP Club and 2 Members of the Grammar School staff.
2. The Convener will be appointed by the Council Committee whose remit deals with Secondary Education in the City of Aberdeen.
3. The Grammar FP Club shall have exclusive use without payment of two (grass) rugby pitches on Saturday afternoons.
4. The Grammar FP Club shall have exclusive use without payment of cricket training nets for cricket training, and of that area also for rugby training.

5. The Grammar FP Club shall have exclusive use without payment of the cricket square on Tuesday and Thursday evenings, and on Saturday afternoons from April to August.
6. The Grammar FP Club shall have exclusive use without payment of a football pitch for football matches on Tuesday and Thursday evenings and on Saturday afternoons, and shall advise the Central Booking Office, as directed by the Rubislaw Field Committee, of their intended use.
7. The Grammar FP Club shall have a priority use, subject to normal charges, of the all-weather pitch for hockey training on Tuesday evenings and on Saturday afternoons and Sundays for hockey league games. (The exclusive use of one hockey pitch from the original Agreement has been removed in recognition of the changes to the needs of competitive hockey games)
8. The Grammar FP Club shall have priority use, subject to normal letting charges, of the south western corner for training for mini and midi rugby.
9. All bookings of the Field or facilities, whether paid or without payment, will be made through the general Booking Office and payments and timescales for booking made as per the arrangements in place at that time. Bookings will be only be accepted and access given if the lettings procedures are followed.
10. If the Grammar FP Club do not require any pitches or facilities to which they are entitled to exclusive use and had booked, they shall if possible, advise the general Booking System so that if appropriate, the pitches can be re-let to other users.
11. The ground indicated for the Grammar FP Club priority use shall only be offered to another user once the deadline for the subsequent letting period has passed.
12. Payments for cleaning of the new Pavilion to enable Grammar FP Club use will be agreed within six months of this Agreement being put in place and payments will be due from the date of the Agreement. Payments will be revised annually and will include consideration of the then prevailing staff costs being paid by the Council.
13. In the event of any section of the Grammar FP Club erecting advertising boards or hoardings on the Rubislaw Field, boundary fencing or gates, they shall only be erected with prior approval of the Rubislaw Field Committee and subject to the necessary planning permissions and consents being in place. The Rubislaw Field Committee shall consider the revenue generated by such advertising, and also the value of coaching and other services provided by Grammar FP members to children and young adults, and shall set a fee to be due to the Council, which money shall be used wholly in connection with current or future improvements to the facilities at Rubislaw, including debt repayment

arising out of any works carried out to the facilities, as approved by the Committee.

14. It is emphasised that payments to the City Council for any advertisement on site, all which will only be permitted by prior agreement, will be agreed within six months of this Agreement being put in place and will be effective from the date of the Agreement. This will include consideration of any advertising currently on site and the FP Club will also confirm for those that all necessary planning permissions are in place.
15. The Council will endeavour to maintain at all times the facilities of Rubislaw Field and the pitches, facilities including the all-weather pitch to normal playing standards, with associating lighting, line painting and security of the pitch. Use of the all-weather pitch will be at the discretion of the Council and will include whatever sports are deemed to be appropriate.
16. The Council will consider any proposals from the FP Club to improve use of the Field, however will not be bound by these. The Field Committee will consider any proposals to locate temporary or other accommodation at the Field, or equipment, however unless previously agreed, no such item should be put in place. The Council will contract any works to improve the Field and manage the contracts to undertake these.
17. If the Grammar FP Club makes payment for facilities which are then deemed unplayable for any reason, a refund shall be made in accordance with the booking policy then prevailing. The Groundsman's decision on playability is final.

5.9 The proposed replacement Agreement is designed to be reviewed after ten years.

5.10 The current situation is that the Grammar School has indicated a readiness to agree to the Agreement as currently scoped. The Headteacher has indicated that he is in agreement with the terms of this report. Following a period where they had indicated that the issues to be resolved were more procedural than principle, the Grammar FP Club has now indicated its wish that the existing Agreement not be superseded, but modified. Their representatives have indicated their wish to retain reference to the grounds being in use for all time by Aberdeen Grammar School pupils and the Former Pupils' Club. The FP Club representatives indicated they saw this as a point of principle for their members.

5.11 Officers have advised the Council's representatives that the need to overhaul the Agreement is as a result of it not being flexible to respond to changing circumstances and in consequence it no longer meets the needs of the users. As the position of the Former Pupils' Club is now that it could not accede to an Agreement which did not refer to rights in perpetuity, then no form of words could be found to resolve the issue, as the Council could not, in terms of Best Value, agree to these rights being

retained in perpetuity, as well as the additional rights being proposed under the draft revised Agreement.

5.12 Officers advice is that if the proposed new Agreement can not be agreed by the FP Club, then there are two possible approaches which can be taken; the first is that the Field Committee could decide to continue the existing Agreement and the informal uses that have developed, without any recompense to the Council for the additional costs incurred (eg cleaning of the new pavilion) and without any share of revenue raised from use of the field (eg advertising) . In doing so, however, it should be recognised that this will represent an inconsistent approach, as compared to other sports users, or other sports development clubs, and may be criticised as not being Best Value in the use of Council assets.

5.13 The second approach is that the Field Committee agrees to revert to the original terms of the 1923 Field Agreement; that all uses and arrangements since that date, specifically including those not previously formally agreed by the Field Committee, are cancelled from a date to be agreed, and such uses are stopped. Thereafter, the Field Committee would consider on a case by case basis if it is prepared to agree to other uses, including the terms of those uses currently made by Grammar FP Club and if appropriate, any other regular uses of the Field. The practical implications of this proposal will have a potentially detrimental effect on Grammar FP Rugby, as decisions about the current stand and defined rugby pitch, advertising and related matters will require a series of decisions about future terms of use. This may include a detrimental effect on the standing of Grammar FP Rugby nationally, as a league club. Similarly, this may also affect the Cricket and Hockey sections. This may also put at risk the long-standing relationship enjoyed by the Grammar School and its FP Club. Similarly, the ongoing development of sport will potentially have a period of disruption.

5.14 The Deed of Trust setting up the Committee did not envisage a situation such as this where agreement could not be reached between the parties, therefore does not provide for the current impasse, and the resulting direct impact on the Council's assets and service delivery, which fall within the ECS account.

6. IMPACT

The report contributes to the Administration's programme, *Aberdeen the Smarter City*, which includes, "We will promote and improve opportunities for physical activity and sport to enable Aberdeen's citizens to lead more active, healthier lives" and, "We will provide a high quality education service within our schools and communities which will improve attainment and life chances of our children and young people to achieve their full potential in education, employment or training."

Public – there is likely to public interest in this report, including from those associated with Aberdeen Grammar School, both historically and present, and those interested in the sports played at Rubislaw.

7. BACKGROUND PAPERS

Reports to Rubislaw Field Committee, 11th October 2012 and 10th June 2011 on the Rubislaw Field Agreement.

8. REPORT AUTHOR DETAILS

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