

**Report title:** Ashton Gate Stadium Development  
**Wards affected:** All wards  
**Strategic Director:** Neil Taylor / Strategic Director - Place  
**Report Author:** Robert Orrett / Service Director - Property

**RECOMMENDATION for the Mayor’s approval:**

- 1. That approval be given to transfer freehold ownership of the car park land off Winterstoke Road to the lessee, Bristol City Football Club, on the basis set out in the report.**
- 2. That the request for the Council to enter into a major community benefits agreement, funding a package of benefits by property transfers and other considerations is declined as the Council has other objectives which should be given higher priority for funding.**

**Key background / detail:**

a. Purpose of report: To seek approval to transfer the Council owned freehold to Bristol City Football Club (BCFC) and to summarise other proposals for Council support linked to the proposed stadium redevelopment made on behalf of BCFC with commentary as to why these are not being recommended.

b. Key details:

1. BCFC is seeking to finalise arrangements for re-development of their Ashton Gate stadium. They have approached the Council with a package of proposals similar to those approved by Cabinet in July 2010 in relation to the proposed new Ashton Vale stadium, but significantly greater in extent.
2. The largest part of the increased package of community benefits relates to an education facility offering NVQs to 16-18 year olds. The City currently has many more places (and facilities providing places) than are needed for student numbers. Thus the appropriateness of linking Council assets/resources to gain this type of educational provision, would be very low in the range of priorities. Most of the proposals for Council funding linked to the package of benefits are not recommended for approval.
3. The transfer of the Council’s freehold of the car park land already held by BCFC on a 125 year peppercorn lease is a “point of principle” for BCFC, in view of previous Council willingness to transfer the freehold to them, and the stadium redevelopment generally being on their freehold land, except for this piece. The latent value to the Council that could arise if there was any different use, such as the supermarket planned if the new Ashton Vale stadium were to be built, is preserved by obligations enabling the Council to regain the freehold in such circumstances, or share in uplift.

**BRISTOL CITY COUNCIL  
CABINET  
4 MARCH 2014**

**REPORT TITLE: ASHTON GATE STADIUM DEVELOPMENT**

**Ward(s) affected by this report: All wards**

**Strategic Director: Neil Taylor / Strategic Director - Place**

**Report author: Robert Orrett / Service Director - Property**

**Contact telephone no. 0117 922 4086  
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**Purpose of the report:**

To seek approval to transfer the Council owned freehold to Bristol City Football Club (BCFC) and to summarise other proposals for Council support linked to the proposed stadium redevelopment made on behalf of BCFC with commentary as to why these are not being recommended.

**RECOMMENDATION for the Mayor's approval:**

- 1. That approval be given to transfer freehold ownership of the car park land off Winterstoke Road to the lessee, Bristol City Football Club, on the basis set out in this report.**
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**The proposal:**

**Policy**

- 1. The Council's Local Plan Core Strategy Policy BCS1 'South Bristol', which identifies South Bristol as a priority focus for development and regeneration.**

**Context**

- 2. This report relates to current proposals by BCFC for the redevelopment of the existing football stadium at Ashton Gate. References throughout this report are to BCFC although arrangements may involve a related organisation - Ashton Gate Limited - or another related entity. There have been previous proposals. There is also an extant planning approval for development of a new stadium at Ashton Vale. A package of land**

transfers linked to community benefits for the Ashton Vale stadium development was approved by Cabinet on 22 July 2010. There was recognition of the economic benefits to the city which would flow from the new stadium and associated development.

3. In the context of the current proposals for the Ashton Gate stadium redevelopment, BCFC have approached the Council with an increased package of proposed community benefits, equating to a substantially higher capitalised value, linked to a package of land transfers and other contributions by the Council. These are summarised in this report. Whilst the Council is supportive of the proposed redevelopment of the stadium and the benefits that should flow to the City from this, officers have advised representatives of BCFC that in the context of the current funding position of the Council and the priorities for investment and spending, it is not possible to recommend the effective funding of these community benefits by way of the land transfers and contributions to BCFC that have been sought.

### **Car park freehold transfer**

4. The land which comprises the car park and main stadium access from Winterstoke Road is held by BCFC on a lease from the Council which retains the freehold interest. The lease is for a term 125 years from 17 July 1987 with a peppercorn rent. The land area in the lease is shown edged red on the plan provided as background paper 1. The land area is about 1.7 acres. Under the lease, the land may only be used for the purposes of giving access to the adjoining football stadium and as car park or coach park. The lease also excludes access from Raynes Road except for spectator match day access. There are restrictions to prevent excavations, and controls on building and alterations. BCFC acquired the current 125 year lease in 1987 for the sum of £25,000. BCFC has subsequently received a payment of £30,000 for agreeing a lease variation that enabled use of the access route for the adjoining site when it was to be redeveloped as a retail park.

5. BCFC has asked the Council to transfer the freehold interest. A transfer was part of the package agreed in return for community benefits in the July 2010 Cabinet decision. The current request for the transfer of the freehold is for two main reasons:

- a. The redevelopment of the stadium will involve part of the stand being constructed over the leasehold area. It is important for BCFC to own the entire freehold of the stadium site.
- b. Carrying out development and construction works expose BCFC to needing formal Council consent to works as they proceed with risk of delay or additional cost.

6. The need expressed by BCFC is reasonable and this is an area where the Council is able to provide support. The Council freehold does not have a material Market Value whilst BCFC continues to use the land for football club purposes, this is because there is no income receivable for over 100 years. It is desirable for the structure for a transfer of the freehold needs to avoid loss of the ability linked to property title for the Council to restrict future use of the land, continuing the current clear legal restriction.

7. It is recommended that the Council agrees to transfer the freehold to BCFC on the following basis:

- c. Transfer of freehold would be for £1
- d. Title would be subject to a restrictive covenant in favour of BCC with uses restricted to football stadium car park and/or coach park and for the purpose of access to the football stadium.
- e. In the event the owner ceases to use the property as a football stadium car park

and/or coach park, then BCC shall have a conditional option to re-purchase the freehold of the property for £1 with vacant possession.

- f. There is to be no restriction on alterations or excavations on the property provided they relate to the permitted use.
- g. Any existing services rights for the benefit of BCC and occupiers in the vicinity shall remain.
- h. The leasehold interest will merge with the freehold and be extinguished upon completion.

8. Representatives of BCFC have requested the Council consider an alternative basis for the transfer of the freehold to BCFC:

- a. Transfer of freehold would be for £150,000
- b. In the event of any change of use or development of the land, BCFC shall pay overage to BCC based on 50% of the increase in value over the indexed purchase price, with the value used being net of reasonable allowance for costs incurred by BCFC in releasing that value. Development of the consented stadium would not trigger overage.

This basis is in line with previous discussions when BCFC sought to acquire the freehold. It has the disadvantage that the Council would not as land owner retain any control over future use. This could be mitigated by incorporating a restrictive covenant to exclude say use for or related to supermarket and hotel uses. It would also be possible to require a higher overage share such as 80% for the Council. This approach does have the disadvantage for BCFC of diverting funding away from the stadium redevelopment project.

## Other Proposals

9. The proposal on behalf of BCFC involved an expanded package compared with the situation approved by Cabinet in July 2010 in relation to the Ashton Vale scheme.

- a. **Community Benefits** – the proposal costed by BCFC is for a package of benefits with annual value of £886,000. The community benefits package in the Cabinet Report from July 2010 was £370,000 per annum over 30 years. The main difference is the introduction of a proposal for a “Community Corner” to be constructed in a corner of the redeveloped stadium. This would form 10 classrooms in a 35,000 sq ft area, accommodating an education facility offering NVQs to 16-18 year olds focussed around participation, education, health and social inclusion, operated by Bristol City Community Trust. Verbal indication is that student numbers would expand from current c 60 to 500-600. Annual value attributed to that by BCFC is £620,000 of the total. Advice from Education officers is that the City currently has many more places (and facilities providing places) than are needed for student numbers, and that the appropriateness of linking Council assets/resources to gain this type of educational provision, would be very low in the range of priorities. There is a range of other benefits similar to the previous schedule such as occasional use of facilities and limited naming rights.
- b. **Other land transfers** – the proposal includes the freehold transfer of land at Alderman Moores allotment site, excluding the area required for BRT. This is a similar arrangement to that approved in July 2010 when prospective residential development land was valued in 2010 at £3.5 million. The proposal at that time was for executive type housing. There is strong interest in this land from Strategic Housing as an early site for affordable housing provision, which could be implemented immediately by the Council. This transfer is linked to funding the

- community benefits package.
- c. **Ashton Gate rail station** – BCFC seek a binding contractual commitment to deliver half hourly rail service and an Ashton Gate station. This is an objective for MetroWest but it would be inappropriate for the Council to contractually commit itself to BCFC to deliver this.
  - d. There were other detailed proposals which would effectively form part of the Council funding the purchase of the community benefits. It is recommended that the whole aspect comprising the Community Benefits agreement should not proceed. Accordingly, these are not reported in detail.
  - e. **CIL contribution** – the assessment of CIL contribution is by means of application of the approved CIL policy. For the stadium, this uses the area of the relevant parts of the proposed development. The total CIL contribution is about £850,000. This is difficult for BCFC who are striving to fund this costly redevelopment project. Officers have been requested by BCFC to consider approaches which could negate the CIL contribution including changing the overall CIL policy such that this proposal would not generate any CIL liability, or to introduce an exceptional circumstances relief policy. It is not part of any current thinking to make such changes to the Council's CIL policy and it is recommended this could not be appropriate in relation to a single project, however supportive the Council might be.
  - f. **CIL liability payment in kind** – CIL regulations allow the scope for CIL liability to be met by payment in kind in the form of an agreed land transfer. BCFC have proposed that they meet the liability by transferring land at Ashton Vale identified as the route for BRT. Any agreement to make a payment in kind must be entered into before liability to pay CIL arises due the commencement of a development. As the BRT scheme has not currently completed its process of Government approvals, it is not appropriate for the Council to agree to such transfer at present. This could be revisited if implementation of the development has not yet commenced when the BRT scheme is fully approved. However, under regulation 73(7)(b) the transfer of the land may not form part of a planning obligation entered into under section 106 of Town and County Planning Act 1990 and at the moment the offered land is required to be transferred as part of a planning obligation. It might be possible to re-visit the obligation, given in 2009, but as things stand now it is unlikely that the Council could lawfully accept the land offered as payment in kind.

## **Consultation and scrutiny input:**

Scrutiny comment to be added

### **a. Internal consultation:**

The range of proposals have required consultation with the following officers:

- City Director
- Interim Strategic Director – Place
- Service Directors for Legal, Planning, Regeneration, CYPS Resource Planning and Performance, Property

### **b. External consultation:**

None

### **Other options considered:**

The proposal to enter into the community benefits agreement outlined within Proposal above has been thoroughly explored. Regard has been given to the previous decision in relation to the Ashton Vale stadium development proposal to enter into a comparable

agreement, delivering community benefits in return for the transfer of property interests.

The proposal now being made is for a much greater value/cost of benefits, the major part being an education provision which is not a priority need for the Council to support. Since the previous cabinet decision, (1) three years has passed, (2) the proposal itself is a different one – the redevelopment of Ashton Gate, (3) the Council is under substantially increased financial pressure which means that it more constrained in its ability to fund as many things as it wishes to.

There are options as to the structure of terms that would apply to the freehold transfer recommended. There is also the option not to transfer the freehold, but to grant consent for the works proposed. This would be a viable arrangement in property legal terms, but would expose BCFC to risk in relation to the granting of detailed consents, and leave BCFC with a small section of the stadium it is investing in be built outside of the boundary of its freehold land. Refusal to transfer the freehold or to grant consent for the works would prevent implementation of the stadium redevelopment. No reason can be identified to justify such an approach.

### Risk management / assessment:

#### Guidance:

\* Ensure a full risk assessment is completed and insert the details here. It must be an honest and open appraisal of the risks. It is never justifiable to set out the risks in private to the Executive but not include them in the report. Responsibility for undertaking the risk assessment lies with the report author. Advice and guidance can be sought from the Directorate Risk Champion.

<b>FIGURE 1</b>							
<b>The risks associated with the implementation of the (subject) decision :</b>							
No.	RISK  Threat to achievement of the key objectives of the report	INHERENT RISK  (Before controls)		RISK CONTROL MEASURES  Mitigation (ie controls) and Evaluation (ie effectiveness of	CURRENT RISK  (After controls)		RISK OWNER
		Impact	Probability		Impact	Probab	
1	Non-implementation of stadium development despite transfer of land	Medium	Medium	This is not a Council project. It is not a matter for the Council to manage this risk	Medium	High	BCFC
2	Loss of specific community benefits	Low	Medium	This is a risk accepted as inherent in the decision	Low	High	Robert Orrett

<b>FIGURE 2</b>							
<b>The risks associated with <u>not</u> implementing the (subject) decision:</b>							
No.	RISK  Threat to achievement of the key objectives of the report	INHERENT RISK  (Before controls)		RISK CONTROL MEASURES  Mitigation (ie controls) and Evaluation (ie effectiveness of mitigation).	CURRENT RISK  (After controls)		RISK OWNER
		Impact	Probability		Impact	Probability	
1	Frustrating delivery of a major leisure development	Medium	High	Potential for an amended scheme not dependent of the transfer of the freehold could be explored	Medium	Medium	BCFC
2	Reduction of economic activity for Bristol	High	High	Explore options for enabling the project to proceed without the land transfer	High	Medium	Robert Orrett
3	Loss of opportunity to raise sporting profile of Bristol	Medium	High	Explore options for enabling the project to proceed without the land	Medium	Medium	Robert Orrett

**Public sector equality duties:**

***Before making a decision, section 149 of the Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following “protected characteristics”: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the need to:***

***i) eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.***

***ii) advance equality of opportunity between persons who share a relevant protected characteristic and those do not share it. This involves having due regard, in particular, to the need to:***

***- remove or minimise disadvantage suffered by persons who share a relevant protected characteristic.***

***- take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons' disabilities);***

***- encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.***

***iii) foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to tackle prejudice and promote understanding.***

**Freehold transfer**

The freehold transfer is considered to have no identifiable equalities impact.

**Community Benefits**

The education component of the community benefits proposed could increase the breadth of 16-18 education opportunity available in the City. In view of the supply of education provision already existing for this age group in the City, the increase in breadth of opportunity is not considered sufficient reason to divert funds away from higher priority matters.

**Eco impact assessment**

Environmental aspects of the stadium redevelopment are considered in relation to the planning application. There are no additional impacts requiring separate consideration.

**Resource and legal implications:*****Finance*****a. Financial (revenue) implications:**

There are no financial revenue implications beyond the cost of officer time dealing with the proposals and freehold transfer.

**Advice given by Mike Allen / Finance Business Partner**

**Date**                      **20 February 2014**

**b. Financial (capital) implications:**

There are no financial capital implications.

**Advice given by**    **Mike Allen / Finance Business Partner**  
**Date**                      **20 February 2014**

**Comments from the Corporate Capital Programme Board:**

No comment

**c. Legal implications:**

Subject to a valuation of the site, it is expected that no state aid or sale at an undervalue issue arises.

As regards the application of the Community Infrastructure Levy Regulations, whilst Regulation 73 allows the Council to accept land in payment (part or full) of the CIL liability the ability to do this is tightly constrained. For instance, the Council cannot just accept any land in payment, the Council must aim to use any land so acquired for a relevant purpose (generally, for the infrastructure that CIL is meant to fund). Other restrictions are set out in the report. It should be possible for the Club and the Council to comply with all the restrictions, save for the one set out in Reg 73(7)(b) set out above.

It may be possible to vary the agreement to remove the requirement in that document to transfer the land. However, it has to be assumed that the transfer of the land was necessary to make the planning application which inspired it acceptable. Whilst that permission, which is the consent for a new stadium at Ashton Fields (09/02242/P), remains extant there would always be a risk of challenge should the agreement be modified to remove that requirement, so allowing the land to be transferred to offset CIL. Consent was formally granted on 5th April 2011 so the consent remains extant until at least 4th April 2016 and would remain extant forever if the development is (or has been) started.

**Advice given by**    **Liam Nevin / Service Director: Legal**  
**Date**                      **20 February 2014**

**d. Land / property implications:**

The freehold transfer on the basis recommended supports the requirements of BCFC without material property impact on the Council. It retains an element of long term influence linked to property title. Provided the recommended structure for the transfer is used, the transfer is in line with the requirement to dispose at the best price reasonably obtainable.

**Advice given by**    **Robert Orrett / Service Director - Property**  
**Date**                      **20 February 2014**



**e. Human resources implications:**

The recommendations have no HR implications.

**Advice given by** Mark Williams / HR Business Partner  
**Date** 20 February 2014

**Appendices**

Appendix 1 – lease plan

**Appendix 1 – lease plan**

