

Tom Minogue

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Sent: 11 October 2007 14:36
Subject: Pitreavie Playing Fields, Dunfermline

Dear Mr Minogue,

The Chief Executive has passed me your email of 14th September requesting further information on the leasing of Pitreavie Playing Fields. Firstly I apologise for the delay in replying but, in the meantime, I have been made aware of your separate query regarding the accounting treatment of the transaction and have been able to collate this information also.

Hopefully, therefore, my response will be at least comprehensive.

To deal with your accounting query first, I have received the following response from Sandy Dewar, Accounting Team Leader:

'Michael McArdle and subsequently Ken Duncan have confirmed that this particular lease was issued in 2002/03. After checking various sources it would appear that we have not disposed of this asset for accounting/auditing purposes. It has not been included at any time as a capital receipt and in the final capital payment returns for both 2002/03 and 2003/04 there is no mention of a notional receipt involved. Vicky Wyse has checked the consent information and guidance and there is no mention of ranking leased income as notional receipts - the capitalisation of leases for s94 purposes only applies where a local authority has entered into a lease of 20 years or more as a lessee not lessor. Harry Steadman has also confirmed that Pitreavie is still included in the asset registers.'

Turning to the background to the Pitreavie lease itself, the playing fields were first leased in 2002 to Vida Sports Limited. The intention of the Council in leasing the playing fields was to lever in private money to a) improve the existing facilities, and in particular the pavilion; and b) to enable the development of an all-weather five-a-side facility.

Vida initially wanted to purchase the area outright. However, we resisted this and agreed with them a 60-year lease. As Vida was making a large capital outlay on the development project, it needed to borrow money on the commercial marketplace. Without title, it needed to produce to its lenders sufficient comfort that, should they go bust, the lenders would have an asset to sell on.

That is why a 60 year lease was agreed on. It provided the private sector with the commercial leverage it needed. At the same time, the leasehold nature of the title - which we insisted on from the Council's side to ensure we had maximum control over the park in the circumstances - gave us the additional comfort that, if the private sector side failed totally, the Council would have the power to take back the enhanced asset that had been produced.

It is worth noting at this stage that the lease was not concluded in isolation. To further protect the Council's - and the public's - position, key agreements in the suite of legal documentation were:

1. A Development Agreement, backed by a Guarantee, to ensure that the development of the five-a-side facility and the pavilion were concluded in agreed terms;
2. Collateral warranties, to ensure the Council had rights against the design team in the case of defects in construction;

3. Most crucially, a User Agreement which contained the following key protections:

- the pricing structure for the Facilities to be in line with equivalent Fife Council facilities elsewhere;
- a 25% discount for the then existing users of the facilities for the first three months of the New Facilities' operation;
- an agreement that Vida operate Fife Council's Fifestyle scheme during off-peak times;
- Vida to ensure, during the period of the Works, that adequate changing facilities were kept available for users;
- protection for Council organised or Council sponsored events at Pitreavie for the future;
- Council entitled to use two 5-a-side pitches during off-peak times for schools use, sports events or other Council sponsored events at no charge, up to a maximum of ten hours per week;
- a general obligation that the facilities were available to the public, and that the Existing Users - a defined group of clubs and societies then using the facilities - should be entitled to continue to exercise the same level of use.

On 25 January 2005, Vida went into administration. The joint administrators, as they were entitled to do, transferred the remaining portion of the tenant's part of the lease on to a company known as Powerleague Fives Limited, in May 2005. Powerleague Fives Limited, in turn, assigned on to Dunfermline Athletic Football Club Limited in September 2006.

There is now a sublease to The Pars Trust which I will give more detail on presently. I should stress, however, that all tenants and subtenants of the Council have been made subject to the User Agreement I have set out above. This was indeed a condition of the agreement itself - so that public use would be protected to the fullest extent and that existing user groups, in particular, were protected so far as possible.

I was not personally involved in the lease to DAFC and sublease to the Pars Trust. However, I understand that the Pars Trust is a registered charity who are running the bulk of the facility. DAFC are, of course, the local professional football club.

DAFC can use the training area for training sessions at such times as they reasonably require. Bearing in mind however that the sub-lease is subject to the terms of the head lease which does not restrict amateur use of the playing fields, there is still an obligation on the tenants to allow other parties to use the training area.

The reason DAFC - and a guarantor for them - was included in the lease arrangement was to ensure that the Council had tenants with proven financial covenant, the Pars Trust being a company limited by guarantee for charitable purposes as outlined above.

The Council has, therefore, in its dealings with Pitreavie, attempted at all times to maintain the public interest and to ensure the original ideals of public access are met as fully as possible. At the same time, it has entered into arrangements with the private sector to lever in private investment to develop the park at a time when local authority finances simply would not have been able to do such a thing.

I trust this answers your queries in full. I have taken the liberty of copying this response to Sheila Pitcairn, who at a recent meeting with me expressed an interest in seeing my response to you on this issue.

Yours sincerely,

Please note new phone number, below

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NB Please note my new number: 08451 555555 ext (following prompt) 442241

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