

This report will be made public on 18 February 2014.

Folkestone

Hythe & Romney Marsh
Shepway District Council



Report Number **C/13/85**

To: Cabinet
Date: 26 February 2014
Status: Non Key Decision
Director: Jeremy Chambers, Policy & Strategic Initiatives
Cabinet Member: Councillor David Monk, Leader of the Council

SUBJECT: FOLKESTONE INVICTA FOOTBALL CLUB

SUMMARY: This report provides an update to members on the ongoing discussions with Folkestone Invicta Football Club and seeks a decision regarding future lease arrangements.

REASONS FOR RECOMMENDATIONS:

Cabinet is asked to consider the recommendations set out below because the relationship between the football club and the Council cannot remain unregulated.

RECOMMENDATIONS:

1. To receive and note report C/13/85.
2. To instruct the Director of Policy and Strategic Initiatives as appropriate.

1 INTRODUCTION

- 1.1 The Council is the freehold owner of the land that is occupied by Folkestone Invicta Football Club. The club currently occupy the premises, which includes the Stripes Club, under a bare licence and has done since the club entered into a Company Voluntary Arrangement in February 2010.
- 1.2 Following detailed discussions with the former chairman of the club, in September 2010 Cabinet resolved: -
- To offer the Club a 3-year full repairing lease for the Stadium and the Stripes Club House at a rent of £5,500 per annum.
 - To authorise the Council's Head of Corporate Services to negotiate the detail of the terms and conditions of the lease with the Club in accordance with the principles set out in this report.
 - To require the Club to prepare and present to the Council a detailed and viable Business Plan within the first 2 years of the new lease.
- 1.3 Since 2010 officers have been seeking to formally regulate the relationship as the non payment over a period of many years and the CVA were a significant concern to the Council. There was a reluctance from the club to enter into the lease described above due to the lack of financial certainty moving forwards and the club's ability to commit to the rent.

2 RECENT DISCUSSIONS WITH THE CLUB

- 2.1 As a result of significant structural damage and following discussions with the Leader of the Council, Cllr David Monk and the Cabinet Member for Asset Management, Cllr John Collier, on 17 December a letter was sent to Mark Jenner, the current chairman of the club.
- 2.2 The letter required the club to enter into a lease that reflects the September 2010 Cabinet resolution no later than 31st January 2014.
- 2.3 A meeting took place between officers of the Council and representatives of the club on 23 January and the club put forward the following proposal:

Term	5 years from 1 st April 2014
Rent	Year 1 – rent free Year 2 - £3,000 Year 3 - £4,000 Year 4 - £5,000 Year 5 - £5,500
Repair	FIFC to be responsible for keeping the premises in no worse state of repair than as evidenced by a detailed photographic schedule of condition.
Business Case	A detailed business case will be provided within 2 years of 1 st April 2014.

- 2.4 The proposal was considered by Cllrs Monk and Collier and officers were given a steer that this was unlikely to be acceptable and to reiterate the requirement to comply with the 2010 Cabinet resolution. This was confirmed in an email to the club dated 31st January.
- 2.5 On 3 February the Council received two emails. The first email received was from Mark Jenner, as follows: -

Jeremy

Sorry for any delay in replying but I don't work Friday afternoons and we had a system failure following weekend maintenance work on the IT infrastructure here.

Jim is currently working on some figures for a business plan.

In the meantime our position remains the same, we have put forward the best deal we can afford. Quite frankly any other position would become too onerous to the club and would be a major factor in putting it out of business. We cannot pay rent and the CVA at the same time.

A three year lease is no better for the club than the present arrangement because it does not meet Ryman league minimum standards. If imposed and revealed to the league we would not have the qualification for the following season which would end the club in its present form.

We would not agree to a full repairing lease unless it was on an 'as is' basis as discussed last week, particularly in its present condition as a result of storm damage. We have demonstrated our ability to manage the property to a high standard with a superb playing surface which has been much improved in the last three years and refurbishments to both buildings all at our expense.

Perhaps I could invite you and your colleagues to attend a home game in the near future so that Council Officials could better appreciate what we are trying to achieve on behalf of the town and how much effort it takes by volunteers to make Folkestone Invicta successful.

Kind regards

Mark

- 2.6 The second email received was from Jim Pellet, as follows: -

Dear Jeremy

Thank you for your email.

It is sensible for me to deal with the financial matters and Mark to deal with the remainder.

Dealing with the club/company's "it must (be) in circumstances where the club has demonstrated its ability to pay rent and manage the premises".

Five years ago, the current management plus Lynn Woods, now primarily Mark and myself, took over debts of £180,000 leading to the CVA in an amount of £78000 which has just over a year to run. We have paid all but fifteen payments of these.

The company/club employs around 16 people generating around £12000 p.a. of tax and N.I. revenue to the exchequer and £16500 of VAT revenue p.a. All statutory payments and filings are up to date.

Although it will take a long while for this to feed through in to a cushion of cash given the debts we inherited, the filed accounts for the last financial year show we made a pre tax profit of approximately £25,000 (the CVA is a Balance Sheet item), and despite the events of the last two months, continue to trade in the black. This contrasts sharply with a history of mounting losses and misdemeanors in years preceding the CVA.

Mark and I are highly experienced in business management. Neither of us has a failure on our CV.

We now pay our utility and recurring bills by direct debit. We would do the same with the council.

Officers of a company have a legal duty not to act recklessly. The object of these negotiations on the lease, is to ensure that we do not take on financial commitments that we may not be able to fulfill.

Filed accounts are on the public record, monthly management accounts are available to the council.

With our improving reputation local businesses are returning to support the club, Fullick's as ground sponsors, M3 solutions and Audio energy as shirt sponsors, and more advertising around the ground.

We have 30 teams of all ages in our youth sections, which we strongly believe is "pulled along" by our senior side who are currently in a promotion place in the Ryman Isthmian League Div. 1 (S). The core of our semi-professional first team squad came through our youth section.

Mark, I and others give considerable time energy and skills to the club free of charge.

I hope the above satisfies the council's requirement in demonstrating our ability to fulfill a lease in all respects, and that this will enable the council to proceed with our proposal

Our proposal is in line with our determination not to take on commitments we can't fulfill, and is logical and prudent in not taking on further outgoings until we have completed the CVA, and having a recovery period building to

a full agreed rent. We are not seeking, as many other clubs enjoy, an ongoing peppercorn rent, or a new ground built by the council, so we believe our proposal is reasonable and well argued.

What we are offering in terms of the lease, is a big step towards the council from the historic position.

In light of the above we hope the council will re-evaluate it's position.

Should the worst happen and we fail to reach agreement, the consequences will be serious. We would be able to demonstrate at that date that the company has traded profitably, and correctly with it's creditors, and filed all required statutory returns. None of the officers of the company/club would be prepared to risk the loss of personal protection under limited liability by not then acting as the law demands.

In the event you proceed with repossession and closure of the ground on the 14th February, these would be:

Folkestone Invicta F.C. Ltd. will have to cease trading immediately so that we do not trade to the detriment of our creditors.

Notify employees and creditors.

Notify the administrator of the CVA, Moore Stephens, that the CVA will fail, together with a report as to why including our abortive negotiations with the council. Irrespective of a third parties assessment of the merits of our respective positions, there is no financial reason to close the company.

Notify the Ryman League and F.A. that we will not be able to fulfill our fixture (there are penalties for not completing a season).

Notify HM Revenue & Customs.

Place the company into voluntary liquidation.

I look forward to hearing from you as to how we progress the matter from here.

With kind regards

*Jim Pellatt
Folkestone Invicta F.C. Ltd.*

- 2.7 The proposal was considered by Cllrs Monk and Collier and officers were given a steer that this was unlikely to be acceptable and to respond as follows: -
1. The need, due to league requirements, for a 5 year rather than a 3 year lease is appreciated and understood;

2. The pressure the ongoing CVA payments of £9,600 per annum place on the club is acknowledged as is the request for there to be no rent payable during the first 12 months of any new lease;
3. There is a need for the full open market rent of £5,500 to be paid from year 2 of any new lease. The CVA obligations will have come to an end by the start of the second year of any proposed lease;
4. There is a need for the £5,500 not paid during year 1 due to the financial pressures in meeting the CVA payments to be spread over years 2-5 of any new lease, i.e. an additional £1,375 per annum. The club currently pays £9,600 to meet the CVA requirements. A rental of £5,500 + £1,375 would leave the club £2,725 less to pay in year 2 as rent than it pays in Year 1 under the CVA;
5. That the current directors of the football club give personal guarantees for the liabilities of the club under any new lease. This would demonstrate your belief that the club is able to meet its obligations.

2.8 A copy of the email sent to the club on 7 February is reproduced below: -

Dear Mark

I am writing further to your and Jim's emails of 3rd February 2014.

I have taken an informal steer from the Leader of the Council, Cllr David Monk and the Cabinet Member for Asset Management, Cllr John Collier on the contents of your emails.

As you know, the Cabinet resolution of September 2010 was: -

- *To offer the Club a 3-year full repairing lease for the Stadium and the Stripes Club House at a rent of £5,500 per annum.*
- *To authorise the Council's Head of Corporate Services to negotiate the detail of the terms and conditions of the lease with the Club in accordance with the principles set out in this report.*
- *To require the Club to prepare and present to the Council a detailed and viable Business Plan within the first 2 years of the new lease.*

My letter to you of 17th December 2013 required the club to enter into a lease that reflects the Cabinet resolution no later than 31st January 2014. Following our meeting on 23rd January, you put forward the following proposal: -

Term	<i>5 years from 1st April 2014</i>
Rent	<i>Year 1 – rent free Year 2 - £3,000 Year 3 - £4,000 Year 4 - £5,000 Year 5 - £5,500</i>
Repair	<i>FIFC to be responsible for keeping the premises in no worse state of repair than as evidenced by a detailed photographic schedule of condition.</i>

	<i>We discussed the current H&S works and Mark was clear that the club would be responsible under the lease (if agreed) once the current H&S issue has been fully resolved and that regardless of the proposed repair covenant the club would be responsible for all future H&S issues.</i>
Business Case	<i>A detailed business case will be provided within 2 years of 1st April 2014. (It is likely we will receive this much sooner than this).</i>

This was considered by Cllrs Monk and Collier and the steer I was given was that this was unlikely to be acceptable and to reiterate the requirement to comply with the 2010 Cabinet resolution. My email to you dated 31st January confirmed this requirement and led to the emails received on 3rd February.

The steer I have from members is as follows: -

- 1. The need, due to league requirements, for a 5 year rather than a 3 year lease is appreciated and understood;*
- 2. The pressure the ongoing CVA payments of £9,600 per annum place on the club is acknowledged as is the request for there to be no rent payable during the first 12 months of any new lease;*
- 3. There is a need for the full open market rent of £5,500 to be paid from year 2 of any new lease. The CVA obligations will have come to an end by the start of the second year of any proposed lease;*
- 4. There is a need for the £5,500 not paid during year 1 due to the financial pressures in meeting the CVA payments to be spread over years 2-5 of any new lease, i.e. an additional £1,375 per annum. The club currently pays £9,600 to meet the CVA requirements. A rental of £5,500 + £1,375 would leave the club £2,725 less to pay in year 2 as rent than it pays in Year 1 under the CVA;*
- 5. That the current directors of the football club give personal guarantees for the liabilities of the club under any new lease. This would demonstrate your belief that the club is able to meet its obligations.*

I must confirm that this is a steer from members and does not amount to a formal decision of the Cabinet. The above could form the basis of a decision that Cabinet may choose to make when it meets at the end of February.

In order for me to meet the timetable for reporting to Cabinet, can you confirm whether the steer outlined above is acceptable to the club by no later than 14th February 2014.

Regards

*Jeremy Chambers
Director of Policy and Strategic Initiatives*

2.9 At the time of writing the report, no further response has been received from the club. The Director of Policy and Strategic Initiatives will give a verbal update to members at the Cabinet meeting.

3 SUMMARY

3.1 Section 2 of this report gives a full explanation of the most recent dialogue with representatives of the club. At the time of writing the report it appears unlikely that agreement with the club will be reached.

3.2 The Council is currently in a vulnerable position in respect of exposure to risk if an unregulated relationship is allowed to continue. The financial cost of the recent storm damage, in the absence of a lease being in place, falls on the Council.

3.3 It is imperative that the current position is resolved and Cabinet is asked to instruct the Director of Policy and Strategic Initiatives accordingly.

4 RISK MANAGEMENT ISSUES

4.1 The principal risks associated with the ongoing current situation are set out below:

Perceived risk	Seriousness	Likelihood	Preventative action
Further structural damage occurs at the stadium.	High	Medium	The relationship with the club is formally regulated to ensure that the ongoing repairing liability sits with the club.
The Council continues to receive no rent for the ongoing occupation of the premises	Medium	Medium	The relationship with the club is formally regulated to ensure that the liability to pay rent exists and action can be taken against the club for any failure to pay.

5 LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

5.1 Legal Officer's Comments (EC)

Any relevant legal issues have been addressed in the main body of the report.

5.2 Finance Officer's Comments (OC-W)

Any relevant financial issues have been addressed in the main body of the report.

5.3 Diversities and Equalities Implications (JC)

There are no anticipated diversities and equalities implications.

6 CONTACT OFFICERS AND BACKGROUND DOCUMENTS

Councillors with any questions arising out of this report should contact the following officer prior to the meeting:

Jeremy Chambers
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Tel: (01303) 853461

Email: jeremy.chambers@shepway.gov.uk

The following background documents have been relied upon in the preparation of this report: None