

**FALKIRK COUNCIL**

**Subject: NEWTOWN PARK, BO'NESS**  
**Meeting: FALKIRK COUNCIL**  
**Date: 22 June 2011**  
**Author: ACTING DIRECTOR OF LAW AND ADMINISTRATION SERVICES**

**1. INTRODUCTION**

- 1.1 The purpose of this report is to consider a request to transfer the trusteeship of Newtown Park, Bo'ness to another community led public trust.

**2. BACKGROUND**

- 2.1 On reorganisation of local government in 1996, Falkirk Council inherited the trusteeship of Newtown Park, Bo'ness which is the football ground of Bo'ness United Football Club.
- 2.2 The Newtown Park Trust was set up in 1942 when it acquired the park from the previous Bo'ness Football Club Limited which was in liquidation. The acquisition was funded through public subscription. Bo'ness United Football Club became the tenants of the park in 1945. The trustees at that time were the Provost, Senior Baillie and Junior Baillie of Bo'ness Burgh Council, the President of Bo'ness Co-operative Society and the Chairman of Bo'ness and Carriden District Council.
- 2.3 In or around 1973, in anticipation of local government reorganisation, it was recognised by the trustees that there was insufficient trust income to enable adequate maintenance and repair of the park and consequently its condition was deteriorating. In April 1973, the trustees wrote to Bo'ness Town Council inviting them to take over the running of the park on the condition that it would continue to be retained for professional football. The Town Council agreed to the request and, on that basis, the trustees petitioned successfully the Court of Session for approval of a *cy pres* scheme to transfer responsibility for management of the park from the trustees to the Town Council. The scheme provided for:-
- transfer of the park to the Provost, Magistrates and Councillors of the Burgh of Bo'ness to be held by them as trustees;
  - the park to be used when required for the playing of professional football;
  - when not required for professional football, to be used for any purpose the Council saw fit (excluding dog racing); and
  - all other assets and income to be used for the maintenance of the park.
- 2.4 The trust was inherited by Falkirk District Council in 1975 and, following a subsequent re-organisation, by Falkirk Council in 1996. Bo'ness United Football Club has continued to occupy the park in the meantime.

- 2.5 Falkirk Council and its predecessors have made varying contributions to the maintenance of the park over the years. Significant investment is nevertheless required and the Trust itself has no funds to contribute, the trust fund consisting only of the park.
- 2.6 A number of meetings have taken place with Bo'ness United Football Club over the years with a view to determining whether other sources of investment could be found. While there has been a genuine willingness on all sides to make progress, the trust funds have not grown and the Club has been unable to secure significant external investment. A particular stumbling block has been the lack of a formal lease of the park to the Club. While the Council has been keen to put one in place, the Club have been unable to accept the full tenants' obligations in light of their own funding position.

### **3. TRANSFER**

- 3.1 It has now been suggested that a Community Trust with charitable status be established under the auspices of Bo'ness United Football Club and that the property of the Trust be transferred to it. This would allow the Trust to access alternative sources of funding not available to the Council as trustees and to become a more community based enterprise. The Club is being assisted in this endeavour by Firstport, a Scottish Government support body. They have produced a proposal for the transfer which is attached as an appendix to this report.
- 3.2 The Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 sets out mechanisms for the transfer of non charity public trusts. Newtown Park Trust falls into that category. The available options depend on the amount of the annual trust income. Where that income does not exceed £5,000, a non judicial method of transfer is available. This would cover the trust in question and would allow a transfer to be effected without having to get court approval.
- 3.3 Before a transfer can be competent, a majority of the trustees must be satisfied that one or more of the following conditions is satisfied:
- (a) the trust purposes, whether in whole or in part, have been fulfilled as far as it is possible to do so or can no longer be given effect to, whether in accordance with the directions or spirit of the trust deed or other document constituting the trust or otherwise;
  - (b) the trust purposes provide a use for only part of the property available under the Trust;
  - (c) the trust purposes were expressed by reference to;
    - (i) an area which has since ceased to have effect for the purpose described expressly or by implication in the trust deed, or
    - (ii) a class of persons or area which has ceased to be suitable or appropriate having regard to the spirit of the trust deed, or as regards which has ceased to be practicable to administer the property to the trust, or

- (d) the purposes, in whole or in part, have, since the constitution of the Trust,:
- (i) been adequately provided for by other means, or
  - (ii) have ceased to be such as would enable the trust to be recognised as a charity or
  - (iii) have ceased in any other way to provide a suitable and effective method of using the property available under the trust, having regard to the spirit of the trust deed.

3.4 In the event that any of the categories (a) to (d) above apply to the Trust then a majority of the trustees may determine that, to enable the resources of the trust to be applied to better effect consistent with the spirit of the trust deed, the trust purposes should be modified or the whole assets can be transferred to another public Trust. The new purposes must not be so dissimilar in character to the original purposes as to constitute an unreasonable departure from their spirit. Before passing the necessary resolution, the trustees must have regard to the circumstances of any locality to which the trust purposes relate and to achieving economy by amalgamating two or more trusts. Where the trustees have determined that the asset should be transferred, they may pass a resolution that the trust be wound up and the assets transferred to another, not too dissimilar, trust. There are also provisions in the legislation for advertising the proposal to transfer.

#### **4. CONCLUSION**

4.1 Members, as trustees, are not being asked at this stage to pass a resolution favouring transfer but to indicate, in principle, if this is a route they would be minded to consider in the event that another suitable trust vehicle was set up which could make better use of the trust assets. As can be seen from the proposal set out in the appendix there are still several steps to be taken before the community led trust would be established. An indication is sought from the Council at this stage, however, that it would be prepared to look positively on a transfer if there was a suitable body to transfer to so that Bo'ness United Football Club and its advisors can take forward their proposal in the community.

#### **5. RECOMMENDATION**

5.1 It is recommended that Council, in its role as trustee of the Newtown Park Trust, determines whether it will indicate, in principle only, that it would be prepared to effect a transfer of the trust assets in terms of section 10 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.

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**Acting Director of Law and Administration Services**

Date: 17 June 2011

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#### **LIST OF BACKGROUND PAPERS**

1. File ref. LR/5/7/10/4