

The Mote Cricket Ground comprises some 24 acres containing several sporting facilities namely a sports pavilion serving two cricket pitches and three rugby pitches and a separate building housing four squash courts. There is also a small pavilion which has recently been renovated and is used a facility to foster sport, particularly youth sport, as well as a groundsman's house. Three independent clubs occupy the site, The Mote Cricket Club ("MCC"), Maidstone Football Club ("MFC") and The Mote Squash Club ("MSC").

The pavilion is Edwardian and run down. Whilst the changing facilities are suitable for the cricketing activities on the ground, they are totally inadequate for the rugby activities, something which is recognised in the 1966 lease/licence under which MFC occupies the site. Surveyors consider demolishing and rebuilding the pavilion is eminently more sensible than renovating it. MSC has its own lease and is, in effect, "ring-fenced" although access and parking and amenity generally are of concern to it.

MCC and MFC are currently jointly managing the ground and, whilst MCC is taking the lead, both clubs are pursuing a project to improve the facilities in harmony. The project, which is moving forward apace, contemplates four acres of the ground being sold for residential development as an enabling development to fund the improvements.

Attached is a plan showing the location of the four acres it is intended to sell. There are two sites. The smaller includes the site of the groundsman's house which it is proposed be demolished with one of the new dwellings on that site becoming the groundsman's house. The larger covers most of the current first XI rugby pitch. It is proposed the existing rugby pitch at the north of the site be improved to become the first XI rugby pitch, the surface of eastern pitch become 4G so that it serves a multi-sports purpose without losing a rugby pitch, and a new rugby pitch be constructed in the south-eastern corner of the ground.

The pavilion will be demolished and replaced with a modern pavilion with changing and bar facilities suitable for both cricket and rugby and a conference suite. It is hoped these facilities will attract the return of first class cricket.

The ground is vested in trustees independent of the occupying clubs who hold it on the terms of a trust set up in 1929 by the Second Lord Bearsted. Under the trust, MCC is entitled to use the ground and becomes the absolute owner if it is still in existence on a particular date which (though not entirely accurate) can be reckoned to be the 21st anniversary of the death of HM The Queen. If MCC has ceased to exist before then, Kent County Cricket Club ("KCCC") becomes the beneficiary and, if it is in existence on the said anniversary, becomes the absolute owner. If both MCC and KCCC cease to exist before the said anniversary, the ground is to be held for recreational purposes for the inhabitants of Maidstone.

If the current trustees dispose of the four acres, capital gains tax will be payable and that would prejudice the project. Tax advice has been taken by both the trustees and MCC. They have been advised that, as MCC is registered as a Community Amateur Sports Club, if MCC were to be the absolute owner of the land, no capital gains tax would payable on the disposal of that land by MCC, provided the proceeds are used for qualifying purposes. Qualifying purposes are defined as providing facilities for eligible sports and encouraging people to take part in them and are precisely how MCC intends to use the proceeds of sale.

Consideration has therefore been given as to whether MCC can become the absolute owner of the land intended to be sold without that process itself triggering an adverse tax liability. Trustees of land have a statutory power to vest in a beneficiary the interest it could become entitled to at some time in the future subject to certain conditions. The power is termed advancement and is conferred by section 32 of the Trustee Act.

In 2006 we consulted Counsel who advised:-

“I confirm that it would be possible to the trustees to make an advancement. Only part of the land (up to a maximum of 50% thereof – section 32 Trustee Act 1925) could be the subject of any such advancement. Subject to current valuations, the land the subject of the Sale Agreement could fall within that 50%. No such advancement can be made by the trustees, except with the written consent of Kent County Cricket Club, and the Maidstone local council, on behalf of the inhabitants of Maidstone. Consent from this latter body might need the sanction of the courts in order for the trustees to be completely protected and satisfied they have the appropriate written consent.”

We are satisfied the relevant law is unchanged and the intention is to advance the interest of MCC in the four acres so that it becomes the absolute owner of that land instead of, as it is at present, the potential absolute owner.

Earlier this year we obtained an independent valuation from a chartered surveyor which indicated the value of the land comfortably fell within the 50% limit described by Counsel. That valuation is now out of date and we are currently asking the valuer to update it. There is a concern that, as negotiations with the proposed developer are advancing at a rapid rate, the valuer may take the view a hope value must be included and, if that is the case, that could be fatal to keeping the value of the land advanced within the 50% limit.

It can be seen Counsel advised that the consent of the contingent beneficiaries is necessary. We have approached KCCC and are confident of receiving its consent. We are therefore also seeking the consent of Maidstone Borough Council as representatives of the inhabitants of Maidstone.

The tax advice taken by the trustees is to the effect that the proposed advancement would not trigger any adverse tax consequences.

MCC is an unincorporated association and, as a matter of law, needs to appoint trustees to hold land on its behalf. MCC is in the process of appointing such trustees.

It is therefore proposed that, subject to the valuation referred to above confirming that the 50% limit is not exceeded, the existing trustees, using the power conferred on them by section 32 Trustee Act 1925 and with the consent of the contingent beneficiaries, advances the land indicated on the attached plan to trustees appointed by, and representing, MCC.

We therefore ask Maidstone Borough Council, as representatives of the inhabitants of Maidstone, to formally consent to the advancement of the said land to trustees appointed by, and representing, MCC.

Malcolm Bassett
One of the Trustees of The Mote Cricket Ground/
Honorary Secretary – The Mote Cricket Club

28 June 2013