	REPORT TO CABINET TO BE HELD ON 11 DECEMBER 2018
	Key Decision No Forward Plan Ref No
Corporate Priority Place Council People	Cabinet Portfolio Holder Cllr H Mallory – Portfolio Holder for Corporate Investment

REPORT OF DIRECTOR (RB) – 18/271

WARDS AFFECTED: SCALBY, HACKNESS AND STATIONDALE

**SUBJECT: LEASE OF LAND TO THE SOUTH OF SCALBY
MANOR, SCARBOROUGH TO THE BRADLEY
LOWERY FOUNDATION**

RECOMMENDATION (S):

Cabinet is recommended to:

- (i) Approve the grant of a long lease to the Trustees of the Bradley Lowery Foundation on the principal terms outlined in Appendix 1, subject to the receipt of planning consent for a change of use, to permit the construction and operation of a holiday home for children with life threatening illnesses; and
- (ii) Delegate authority to the Commercial Director in consultation with Cllr. Helen Mallory to agree the detailed terms of the lease.

REASON FOR RECOMMENDATION (S):

- To facilitate the Charity in its aim of providing a state of the art holiday home for children with life threatening illnesses and their families.
- To promote and improve the health and social wellbeing of families with children suffering from life threatening conditions, by enabling them to spend time on holiday in the Borough, when they would not otherwise be in a position to do so.
- To promote the Borough's visitor economy.

HIGHLIGHTED RISKS:

- (i) The Charity does not comply with the terms of their agreement and the agreement is terminated.
- (ii) The Charity does not get planning permission for the proposed holiday home.

1. INTRODUCTION

- 1.1 The Council is the freehold owner of the subject site to the South of Scalby Manor, Scarborough as identified edged red in Appendix 2.
- 1.2 The land is currently vacant and was previously used as grazing land.
- 1.3 The proposed leased area measures approximately 1.05 acres shown outlined red on the attached plan (Appendix 2).

2. CORPORATE OBJECTIVES AND THE COMMUNITY PLAN

- 2.1 **Place:** to protect and improve our environment, now and for the future.

Council: to be an efficient and effective Council, which is financially sustainable for the future.

People: to have a safe, happy, healthy population, with people who feel valued and included.

3. BACKGROUND AND ISSUES

- 3.1 The land is currently vacant and was formerly used as grazing land.
- 3.2 The land lies outside of development limits within the Local Plan and would require a change of use from grazing land to residential institutions.
- 3.3 The Bradley Lowery Foundation was set up by his mother Gemma following the passing of Bradley on July 7th 2017 after a battle with Neuroblastoma.
- 3.4 Scarborough was the last place Bradley visited before he passed away. The Foundation contacted the Council to locate an area of land that could be leased to build a state of the art holiday home for children with life threatening illnesses and their families.
- 3.5 The property will be built on 2 storeys comprising of 5 bedrooms, a sensory garden with hot tub/sauna/pool.

4. CONSULTATION

- 4.1 The Portfolio Holder for Corporate Investment Councillor Helen Mallory has been consulted and is supportive of the proposed disposal.
- 4.2 A presentation to Members prior to full Council was given on the 5th November 2018.

5. ASSESSMENT

- 5.1 The Foundation has been assisted by Professor Paul Jones of the Department of Architecture & Built Environment at Northumbria University in drawing up initial plans for the holiday home, with a specific focus on incorporating wellbeing principles into architectural design.
- 5.2 There exists a significant and compelling body of research evidence which recognises the quality of the built environment as being fundamental to physical, mental and social wellbeing, and, consequently, to improved overall health. A summary can be found at Appendix 3.
- 5.3 The property has been designed with 5 wellbeing principles at its heart, specifically focusing on social and environmental connection and engagement.
- 5.4 As a small family based charity, the Foundation will be relying on significant fundraising to bring this project to fruition. The Council has the ability to use its land to improve the wellbeing of those families assisted by the Foundation, by bringing them to the Borough to enjoy a state of the art facility within exceptional surroundings, during periods of serious illness, whilst also promoting the Borough's tourist economy. It is therefore proposed that a long lease at nil value is granted.
- 5.5 The Council has a fiduciary and statutory duty to obtain the best price it can, when disposing of its land, subject to certain exceptions, which are set out in further detail in the Legal Implications section of this report. It is therefore important to understand the alternative uses and alternative prices that might be obtained for the land.
- 5.6 The existing use of the land has been for grazing, although the site is presently vacant. The freehold value of the land for grazing use is circa £15,000.
- 5.7 The site lies outside development limits set out in the current Local Plan, which runs until 2032. This means that planning permission for any other development would be very unlikely to be granted, which consequently has an impact on the value of the land. It is, however, feasible that a speculative purchaser may be prepared to pay more than grazing land value in the hope that development limits move outwards after 2032, and in the hope that planning permission for a higher value use might be granted at that point. The Council's valuer values such 'hope value' at a maximum of £50,000,

however this is highly subjective and subject to a number of future variables, including the risk appetite of any potential speculative purchaser.

- 5.8 In granting a long lease at a nil value, the Council is effectively foregoing the prospect of a potential increased capital receipt in the future, however any potential increase in value of the land would be dictated by the prospect of a future planning designation in the Local Plan and permission for a higher value planning use being granted at that time. The potential 'undervalue' is well within the threshold at which the Council is permitted under statute to dispose of its land.
- 5.9 The proposed lease conditions ensure that the land can be used only for charitable purposes, with either party able to exercise break provisions should the Foundation or a successor charity cease to use the property for the purposes of a holiday home for seriously ill children.

6. IMPLICATIONS

6.1 Policy

- 6.1.1 The proposal is in accordance with the Council's policy framework.

6.2 Financial Implications

- 6.2.1 Outlined in the body of the report.

6.3 Legal

- 6.3.1 s.123(2) Local Government Act 1972 requires a local authority to obtain 'best consideration' when disposing of its land under a lease of more than 7 years, unless the Secretary of State gives consent to a disposal at an undervalue. Best consideration, in the main, equates to best price.
- 6.3.2 However, under the Local Government Act 1972: General Disposal Consent (England) 2003, the Secretary of State has granted a general consent in certain circumstances, in order to give local authorities the freedom to exercise discretion in disposing of their land for less than best price available.
- 6.3.3 In order to fall within the Secretary of State's General Consent, the undervalue for which the property is being disposed of must be less than £2million and the Authority must consider that the purpose for which the property is to be disposed of will be likely to contribute to the promotion or improvement of the social, economic or environmental wellbeing of the Council's area, or of any persons resident or present in its area.
- 6.3.4 On the basis of the valuation carried out by the Council's valuers, detailed in the body of this Report, officers are satisfied that the undervalue falls well under the £2 million threshold required by the 2003 General Consent.

6.3.5 Officers consider that the disposal would contribute to the achievement of the promotion or improvement of the:-

6.3.5.1 **social wellbeing** of persons resident or present in the Council's area, through the clear social and family connection and engagement that the holiday home will facilitate for its visitors;

6.3.5.2 **economic wellbeing** of the the Council's area, by attracting visiting families to spend time enjoying the attractions of the Borough, and contributing to its economy;

6.3.5.3 **environmental wellbeing** of persons resident or present in its area, through the interaction of visitors with the natural enviroment, enabled through intentionally environmentally conscious design.

6.3.6 The Council's Constitution states that as a general rule all land and property disposals, (in this case a disposal by way of a long lease), should be by way of competitive tender, unless, subject to Cabinet approval, an alternate method of disposal is deemed preferable. For the reasons set out in this report Cabinet authority is sought to dispose of the land to the Foundation directly.

6.3.7 The Council's Legal team will prepare all the relevant legal documentation pertaining to the long lease.

6.4 **Risk**

6.4.1 Detailed in the attached Risk Matrix

6.5 **Planning Implications**

6.5.1 The site is presently outside of development limits in the Local Plan, meaning that permission for development would not be granted without the existence of exceptional circumstances.

6.5.2 The Foundation will need to apply for planning permission for a change of use as an exception site. Pre-planning discussions have already taken place with the Planning Authority to discuss the proposed design of the building to be built on the land.

6.5.3 The proposed Lease is to be subject to planning approval.

6.6 **Crime and Disorder Implications**

6.6.1 None presently.

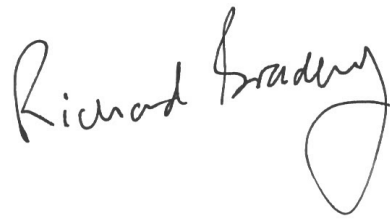
6.7 **Environmental Implications**

6.7.1 There are no environmental implications.

7. ACTION PLAN

7.1 The proposed timeline to dispose of the property is:

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|-----------------------------------|------------------|
| • Report to Cabinet | 11 December 2018 |
| • Planning application submitted | 4 January 2019 |
| • Planning application determined | 7 March 2019 |
| • Completion of lease | 31 March 2019 |

A handwritten signature in black ink that reads "Richard Bradley". The signature is written in a cursive style with a large, looped flourish at the end.

Richard Bradley
Commercial Director

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Risk Matrix

Risk Ref.	Date	Risk	Consequences	Mitigation	Current Risk Score	Target Score	Service Unit Manager/ Responsible Officer	Action Plan
1	November 2018	Cabinet not agreeing to the long lease.	Land remains untenanted	The land will be subject to a marketing exercise to locate a new grazing tenant.	A4	A4	Estates	
2	November 2018	The Charity do not comply with the terms of their agreement	Construction not completed in a timely fashion, land not managed appropriately	The Council is able to exercise termination provisions in the lease to regain possession of the land and any buildings upon it.	A4	A4	Estates	
3	November 2018	Once the lease is granted, construction ceases part way through and Council exercises right to break the lease	Land with partial build reverts to Council with need to secure site and complete construction					
4	November 2018	The Charity does not obtain planning permission	The lease of the land will not go ahead and the Council will remain liable for the management and maintenance of the land.	The land can be re-let as grazing land	A4	A4	Estates	
5	November 2018	Charity ceases to use the property for the purposes	Property left unused and unmaintained	Ability in lease for Charity to assign			Estates	

		of facilitating holidays for children with a life threatening illness/ Charity ceases to operate/ changes its focus of activity		unexpired residue of lease to another charity with similar objects, subject to prior approval of the Council. Alternatively, Council able to exercise its termination rights under the lease to regain possession of the land				
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