

# Call-In Sub-Committee AGENDA

**DATE:** Thursday 6 December 2012

**TIME:** 7.30 pm

**VENUE:** Committee Room 5, Harrow Civic Centre

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## **MEMBERSHIP** (Quorum 3)

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**Chairman:** Councillor Jerry Miles

**Councillors:**

Sue Anderson  
Ann Gate

Susan Hall  
Paul Osborn (VC)

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## **Reserve Members:**

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1. Nana Asante  
2. Ajay Maru  
3. Krishna James

1. Barry Macleod-Cullinane  
2. Tony Ferrari  
3. Kam Chana

**Contact:** Una Sullivan, Democratic & Electoral Services Officer  
Tel: 020 8424 1785 E-mail: [una.sullivan@harrow.gov.uk](mailto:una.sullivan@harrow.gov.uk)

# **AGENDA - PART I**

## **1. ATTENDANCE BY RESERVE MEMBERS**

To note the attendance at this meeting of any duly appointed Reserve Members.

Reserve Members may attend meetings:-

- (i) to take the place of an ordinary Member for whom they are a reserve;
- (ii) where the ordinary Member will be absent for the whole of the meeting; and
- (iii) the meeting notes at the start of the meeting at the item 'Reserves' that the Reserve Member is or will be attending as a reserve;
- (iv) if a Reserve Member whose intention to attend has been noted arrives after the commencement of the meeting, then that Reserve Member can only act as a Member from the start of the next item of business on the agenda after his/her arrival.

## **2. DECLARATIONS OF INTEREST**

To receive declarations of disclosable pecuniary or non pecuniary interests, arising from business to be transacted at this meeting, from:

- (a) all Members of the Sub-Committee;
- (b) all other Members present.

## **3. MINUTES (Pages 1 - 4)**

That the minutes of the meeting held on 1 October 2012 be taken as read and signed as a correct record.

## **4. PROTOCOL FOR THE OPERATION OF THE CALL-IN SUB-COMMITTEE (Pages 5 - 6)**

## **5. CALL-IN OF CABINET DECISION (22 NOVEMBER 2012) - WHITCHURCH PLAYING FIELDS (Pages 7 - 38)**

The following documents are attached:-

- a) Notice invoking the Call-In;
- b) Extract from the Minutes of the Cabinet meeting held on 22 November;
- c) Extract from the Public Questions at the Cabinet meeting held on 22 November;
- d) Extract from the Councillor Questions at the Cabinet meeting held on 22 November;
- e) Report submitted to Cabinet on 22 November.

## **AGENDA - PART II - NIL**

### **LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985**

In accordance with the Local Government (Access to Information) Act 1985, this meeting is being called with less than 5 clear working days' notice by virtue of the special circumstances and grounds for urgency stated below :-

Under Committee Procedure Rule 46.6, a meeting of the Call-In Sub-Committee must be held within 7 clear working days of the receipt of a request for call-in. This meeting, therefore, had to be arranged at very short notice and it was not possible for the agenda to be published 5 clear working days prior to the meeting.

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# CALL-IN SUB-COMMITTEE MINUTES

## 1 OCTOBER 2012

**Chairman:** \* Councillor Jerry Miles

**Councillors:** \* Sue Anderson \* Ajay Maru (2)  
\* Susan Hall \* Paul Osborn

**In attendance:** Graham Henson Minute 26  
**(Councillors)**

\* Denotes Member present  
(2) Denotes category of Reserve Member

### 19. Attendance by Reserve Members

**RESOLVED:** To note the attendance of the following duly constituted Reserve Members:

Ordinary Member

Reserve Member

Councillor Ann Gate

Councillor Ajay Maru

### 20. Declarations of Interest

**RESOLVED:** That the following interests were declared:

Item 7 – Call-In of Cabinet decision (13 September 2012)  
Public Realm Integrated Services Model: Business Case

Councillor Susan Anderson declared a non-pecuniary interest in that she was a member of Unison, although not of the branch involved in the call-in. She would remain in the room while the matter was considered and voted upon.

Councillor Miles declared a non-pecuniary interest in that he was a Unison convenor in the Ealing branch, by virtue of his work with a charity organisation. He would remain in the room while the matter was considered and voted upon.

## **RESOLVED ITEMS**

### **21. Appointment of Vice-Chairman**

**RESOLVED:** To appoint Councillor Paul Osborn as Vice-Chairman of the Call-In Sub-Committee for the 2012/2013 Municipal Year.

### **22. Minutes**

**RESOLVED:** That the minutes of the meeting held on 28 February 2012 be taken as read and signed as a correct record.

### **23. Terms of Reference of the Call-In Sub-Committee**

**RESOLVED:** That the terms of reference of the Call-In Sub-Committee be noted.

### **24. Protocol for the Operation of the Call-In Sub-Committee**

The Chair drew attention to the document 'Protocol for the Operation of the Call-In Sub-Committee and outlined the procedure to be followed at the meeting. He explained that, in accordance with Committee Procedure Rule 46.5, a notice seeking to invoke the call-in procedure must state at least one of the following grounds in support of the request for a call-in of the decision:-

- (a) inadequate consultation with stakeholders prior to the decision;
- (b) the absence of adequate evidence on which to base a decision;
- (c) the decision is contrary to the policy framework, or contrary to, or not wholly in accordance with the budget framework;
- (d) the action is not proportionate to the desired outcome;
- (e) a potential human rights challenge;
- (f) insufficient consideration of legal and financial advice.

He informed the Sub-Committee that the grounds (a), (b) and (f) had been cited and had been deemed to be valid for the purposes of Call-In.

**RESOLVED:** That the Call-In would be determined on the basis of the following grounds:

- (a) inadequate consultation with stakeholders prior to the decision;

- (b) the absence of adequate evidence on which to base a decision;
- (f) insufficient consideration of legal and financial advice.

**25. Exclusion of the Press and Public**

Following advice from an officer in relation to Members' view that the meeting should be conducted in private, as some Members would be making reference to confidential information in presenting and discussing the case for call-in, and upon comments from other officers it was

**RESOLVED:** That in accordance with Part I of Schedule 12A to the Local Government Act 1972, the press and public, except for representatives from Unison, be excluded from the meeting for the following item for the reasons set out below:

<u>Item</u>	<u>Title</u>	<u>Reason</u>
7.	Call-In of Cabinet Decision (13 September 2012) – Public Realm Integrated Services Model: Business Case	Appendix 2 of the report contains information under paragraph 3 (contains information relating to the financial or business affairs of any particular person (including the authority holding that information)).

**26. Call-In of Cabinet Decision (13 September 2012) - Public Realm Integrated Services Model: Business Case**

The Sub-Committee received papers in respect of 2 Call-In notices, the first served by nine Members of the Council, the second served by over 150 members of the public.

The Chairman invited the Member representative of the Councillor signatories and the Unison representative of the public signatories to present their reasons for call-in to the committee.

Each representative outlined their case for call-in; Members considered the points made and the responses provided.

(The Sub-Committee then adjourned from 9.25 pm – 9.55 pm to receive legal advice).

Having re-convened, the Chair announced the decision of the Sub-Committee, and it was

**RESOLVED:** (unanimously) That

- (1) the call-in on ground (a) – inadequate consultation with stakeholders prior to the decision – not be upheld, as the Sub-Committee did not consider it had been wholly inadequate; however, the Committee stated that it would, in future, look unfavourably on items for decision

which might reasonably have been included on the Key Decision Schedule, but which had been omitted;

- (2) the call-in on ground (b) – the absence of adequate evidence on which to base a decision – not be upheld due to insufficient grounds;
- (3) the call-in on ground (f) – insufficient consideration of legal and financial advice – be upheld, as there was no evidence of legal advice having been provided or considered in the body of the Part 1 report;
- (4) that Cabinet give consideration to the inclusion of a paragraph on 'Legal Implications' in the Cabinet report template.

## **27. Termination of Meeting**

In accordance with the provisions of Committee Procedure Rule 14 (Part 4B of the Constitution) it was

**RESOLVED:** At 9.25pm to continue until 10.30pm.

(Note: The meeting, having commenced at 7.46 pm, closed at 10.07 pm).

(Signed) COUNCILLOR JERRY MILES  
Chairman



**PROTOCOL FOR THE OPERATION OF THE CALL-IN SUB-COMMITTEE**

1. Call-in is the process whereby a decision of the Executive, Portfolio Holder or Officer (where the latter is taking a Key Decision) taken but not implemented, may be examined by the Overview and Scrutiny Committee prior to implementation. The Overview and Scrutiny Committee has established the Call-in Sub-Committee to carry out this role. Committee Procedure Rule 46 sets out the rules governing the call-in process.

**The Process for Call-in**

2. Six of the Members of the Council can call in a decision of the Executive which has been taken but not implemented. In relation to Executive decisions on education matters only, the number of Members required to call in a decision which has been made but not implemented shall be six Councillors or, in the alternative, six persons comprising representatives of the voting co-opted members and at least one political group on Overview and Scrutiny Committee. Only decisions relating to Executive functions, whether delegated or not, may be called in.

150 members of the public (defined as anyone registered on the electoral roll of the Borough) can call in a decision of the Executive, which has been taken but not implemented.

3. Decisions of the Executive will not be implemented for 5 clear working days following the publication of the decision and a decision can only be called in within this period (this does not apply to urgent decisions - Committee Procedure Rule 47 refers). The notice of the decision will state the date on which the decisions may be implemented if not called in.

4. Call-in must be by notification to the Monitoring Officer in writing or by fax:

i) signed by all six Members and voting co-optees requesting the call-in. A request for call-in by e-mail will require a separate e-mail from each of the six Members concerned.

ii) signed by all 150 members of the public registered on the electoral roll, and stating their names and addresses.

5. In accordance with Committee Procedure Rule 46.5, a notice seeking to invoke the call-in procedure must state at least one of the following grounds in support of the request for a call-in of the decision:-

- (a) inadequate consultation with stakeholders prior to the decision;
- (b) the absence of adequate evidence on which to base a decision;
- (c) the decision is contrary to the policy framework, or contrary to, or not wholly in accordance with the budget framework;
- (d) the action is not proportionate to the desired outcome;
- (e) a potential human rights challenge;
- (f) insufficient consideration of legal and financial advice.

**Referral to the Call-in Sub-Committee**

6. Once a notice invoking the call-in procedure has been received, the decision may not be implemented until the Chair and nominated member have considered the guidance outlined in Appendix 1 to the Committee Procedure Rules and, if required, the Call-in Sub-Committee has considered the decision. The Monitoring Officer shall in consultation with the Chair arrange a meeting of the Call-in Sub-Committee to be held within seven clear working days of the receipt of the request for call-in.

7. The Call-in Sub-Committee will consider the decision and the reasons for call-in. The Sub-Committee may invite the Executive decision-taker and a representative of those calling in the decision to provide information at the meeting.

8. The Sub-Committee may come to one of the following conclusions:-
- (i) that the challenge to the decision should be taken no further and the decision be implemented;
  - (ii) that the decision is contrary to the policy framework or contrary to or not wholly in accordance with the budget framework, and should not therefore be referred to the Council. In such a case the Call-in sub-committee must set out the nature of its concerns for Council; or
  - (iii) that the matter should be referred back to the decision taker (i.e the Portfolio Holder or Executive, whichever took the decision) for reconsideration. In such a case the Call-in sub-committee must set out the nature of its concerns for the decision taker/Executive.

"I hereby give notice that I wish to call-in the decision 'Whitchurch Playing Fields', taken by Cabinet on 22nd November 2012.

The reasons for this call-in are as follows:

### **Inadequate consultation with stakeholders prior to the decision**

The Council claims that consultation with residents has been adequate, pointing to a 'fun day' organised by the Whitchurch Consortium in May, a widely-attended public meeting in March, and a petition also organised by the Consortium.

However, the petition's accuracy is questioned by the Abchurch and Cannons Park Residents' Associations, who state that a resident petition obtained 97% of signatures against the development in its immediate vicinity. These associations have also expressed concern that a number of the residents who attending the 'fun day' were not from the local area, and many had been 'bussed in'. Regarding the public meeting in March, the current Leader of the Council and Major Contracts portfolio holder said shortly afterwards:

*"I was not impressed with the Whitchurch Consortium's presentation and, in fairness, the Consortium's representatives have told me that they did not manage the consultation event in an effective or appropriate way."*

In addition, the Corporate Director of Place Shaping took a month to respond to a letter from the Chairmen of Abchurch and Cannons Park Residents' Associations, stating that: "Assuming that the Development Agreement is completed, I would be happy to arrange a meeting to discuss your concerns and to ensure that engagement with the local community is effective in the future".

This decision has been a live issue for many months now, yet significant resident concerns remain. There remains a lack of clarity regarding the level of local support for the proposals, and the Leader of the Council has expressed his own concerns regarding the most significant consultation event held. Further, in response to a letter from residents expressing concerns about the process and genuineness of the Whitchurch Consortium's engagement with them, the Chief Executive directed the Corporate Director of Place-Shaping to meet with them; unfortunately, the Corporate Director of Place Shaping would not offer a date to meet the residents until after the decision was made - and on the condition that it was. There is a pattern of poor consultation that is yet to be addressed to the satisfaction of local residents.

### **The absence of adequate evidence on which to base the decision**

The history of the report and tendering processes relating to this decision began in November 2008 and January 2009 respectively. The Cabinet reports on this decision from November 2011 onwards, when the Whitchurch Consortium was selected as the preferred bidder, are characterised by a complete absence of evidence that the impact of the passage of nearly 4 years and the changed economic circumstances have been properly considered. Given the passage of time between these exercises and the decision date, a re-tendering exercise should have at the very least been seriously considered – if not conducted.

In addition, it also appears that no further efforts were made since this tendering process was resumed to find additional bidders who may have provided more attractive options. This is particularly relevant in light of comments in the report regarding the length of the lease. Originally tendered as a 30-year lease, the decision instead grants a 99-year lease to the Whitchurch Consortium. The November 2012 Cabinet report states:

*"The Consortium have made clear that it requires a long term lease of at least 99 years to justify the considerable initial capital expenditure of the development estimated at £3 million. **Any shorter lease term is unacceptable to the Consortium.** The other shortlisted bidder had also previously submitted their offer on the basis of a long lease term (in excess of 99 years) and it is **officers' clear view that the council would be unable to secure a comparable level of investment to that now offered on the basis of the 30 year term originally suggested in the informal tender specification.**"*

If the Council's – and, indeed, the apparent industry - view is that 30 years was insufficient a length of time to propose a lease, it would have been logical to re-run the tendering exercise encompassing a longer length of lease. This would have given other potential developers the opportunity to look again at what was being offered before submitting proposals. This decision is being made on the basis of a 4-year old tendering exercise, which presented options which appear to have been unattractive to developers. This has given the one developer which came forward the opportunity to effectively dictate a number of its own terms. This works against the notion of there being adequate evidence on which to base this decision.

### **Insufficient consideration of legal and financial advice**

There is concern over whether an actual contract between the Whitchurch Consortium and the Council exists, due to information that only came to light after Cabinet had made the decision. The Cabinet report states that the rent being charged to the Consortium is 'a peppercorn'. The Deputy Leader of the Opposition requested clarification on how much rent is being charged on 19th November, to which Corporate Director for Place Shaping responded on 22nd November: *'The Lease states that the rent agreed through officer negotiation is 'A peppercorn'*. After additional clarification was sought on the cash amount involved, the Corporate Director responded *'Cash value of the rental payment is nil'*.

This leads to concerns as to whether a valid consideration in exchange for the 99-year lease is being provided by the Whitchurch Consortium - and whether a valid contract can be said to exist. Specifically, the Council is giving the Consortium the rights to develop and run the Playing Fields development over the course of a 99-year lease, but is not receiving anything of value in direct return. Even the obligations set out in the Cabinet report are of benefit to schools and voluntary organisations, but are not inherently beneficial to the Council as an entity of itself. It is unclear therefore what the Council is due to receive in exchange for a century-long lease of its asset.

It emerged at the November Cabinet meeting that local residents had applied under the Commons Act 2006 to register the Whitchurch land as an official Open Space. This has the capacity to delay any development of the land for as long as this application takes. The legal position presented at the meeting was far from clear, and it was not made apparent what the consequences of this application would have on any development. It cannot be argued that verbal legal positions thrashed out at a public meeting constitute sufficient consideration of financial and legal advice.

Due to both the clarification needed on the validity of the Council's contract with the Whitchurch Consortium, as well as the Commons Act application, it is vital that legal advice which Cabinet did not have an opportunity to consider is formally presented to them before this decision is approved.”

**Notices submitted by the following Councillors on 30 November 2012:**

**Kam Chana**

**Barry Macleod-Cullinane**

**Chris Mote**

**Janet Mote**

**John Nickolay**

**Joyce Nickolay**

**Lynda Seymour**

**Simon Williams**

**Stephen Wright**

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# CABINET MINUTES

## 22 NOVEMBER 2012

**Chairman:** \* Councillor Thaya Idaikkadar

**Councillors:**

* Bob Currie	* Phillip O'Dell
* Margaret Davine	* David Perry
* Keith Ferry	* Sachin Shah
* Mitzi Green	* Bill Stephenson
† Graham Henson	

**In attendance:  
(Councillors)**

Husain Akhtar	Minute 529
Marilyn Ashton	Minute 529
Susan Hall	Minute 529
Barry Macleod-Cullinane	Minute 529
Paul Osborn	Minute 529

\* Denotes Member present  
† Denotes apologies received

### RESOLVED ITEMS

#### 537. Key Decision: Whitchurch Playing Fields

Cabinet received a report of the Corporate Director of Place Shaping, which set out the outcome of negotiations with the Whitchurch Playing Fields Consortium in connection with contractual arrangements for the proposed development of a Sports and Leisure Complex at Whitchurch Playing Fields.

The Leader of the Council and Portfolio Holder for Property and Major Contracts welcomed the report and the proposals which would provide superb facilities for the residents of Harrow. He drew Cabinet's attention to the obligations and termination rights, associated with the proposed Service Level Agreement (SLA) between the Council and Whitchurch Playing Fields Consortium and the benefits that such an agreement would provide to schools

and local organisations. He invited the Corporate Director of Place Shaping to set out the history of the project.

The Corporate Director of Place Shaping informed Cabinet that the project had been initiated in November 2008 culminating in a series of reports to Cabinet and the choice of a preferred bidder, Whitchurch Playing Fields Consortium, in November 2011. The Corporate Director added that the Consortium was expected to employ and deploy resources to take forward and engage with the public.

The Corporate Director added that, in June 2012, Cabinet received a detailed report providing an appropriate balance of the concerns raised by, including support received from, the wider community. Cabinet was now being asked to determine key commercial matters relating to negotiations with the Whitchurch Playing Fields Consortium. He added that the Council's regulatory process was separate from its responsibility as a land owner and the same applied to its planning and licensing processes, and each could stop the project coming to fruition.

Cabinet was advised that it had authority to decide on the commercial terms and that the application for the site to be designated as a Village Green would be considered separately. The Corporate Director informed Cabinet that a decision in favour would allow the Whitchurch Playing Fields Consortium to compile a planning application; however, it was likely that it would await the determination on the Village Green application prior to making progress on planning processes. He added that the planning and licensing processes would also involve separate and independent consultation.

The Corporate Director outlined the three elements to the recommendation before Cabinet and explained that the lease for 99 years with effect from satisfactory completion of the development works and the SLA would only be completed once the facility had been built by the Whitchurch Playing Fields Consortium. He added that the site would revert back to the Council should the proposal stop at any stage of the process.

The Portfolio Holders for Planning and Regeneration, Business Transformation and Communications, and Community and Cultural Services commended the report to Cabinet on the basis that the Council had an opportunity to open a great sports facility in Harrow and commended the recommendations. They commented as follows:

- planning and licensing processes would be impartial and judicial. The situation in relation to the Whitchurch Playing Fields might alter once these independent processes had been considered;
- Harrow had an abundance of playing fields. However, many of the fields were not 'fit for purpose', especially during the winter months;
- consideration of an application for the Whitchurch Playing Fields to be designated as a Town Green was expected to be completed within six months;



- the Council would be willing to listen to the local residents should they have a separate commercial venture in mind;
- the proposal would provide much needed facilities for the various communities, including schools and people with disabilities, at nil cost to the Council.

The Portfolio Holder for Business Transformation and Communications cited the example of Wood Farm, where those who had initially objected to the proposal to open the land had subsequently welcomed and embraced it. The Portfolio Holder for Planning and Regeneration referred to an article in a local newspaper which stated that the joint Chairmen of Abchurch Residents' Association had stated that they would be delighted to see the fields developed for sport. The question that had arisen was how best the site could be developed.

**RESOLVED:** That

- (1) having considered the proposed terms which have been negotiated, provisionally agreed and recommended by officers, Option 1 ,set out in the report, be agreed;
- (2) the Corporate Director of Place Shaping, in consultation with the Portfolio Holder for Property and Major Contracts, be authorised to conclude contractual arrangements on the basis of Option 1 and the heads of terms set out in the report.

**Reason for Decision:** To attract inward investment to establish a modern sports and leisure facility, to include substantially improved playing pitches, for the benefit of local schools and residents and at no direct financial cost to the Council.

**Alternative Options considered and rejected:** As set out in the officer's report. Option 2 was rejected.

**Conflict of Interest relating to the matter declared by Cabinet Member / Dispensation granted:** None.

(Note: The meeting, having commenced at 7.31 pm, closed at 9.15 pm).

(Signed) COUNCILLOR THAYA IDAIKKADAR  
Chairman

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## Cabinet – 22 November 2012

### Public Questions and Answers relating to Whitchurch Playing Fields

1.

**Questioner:** Stephen Lewis

**Asked of:** Councillor Thaya Idaikkadar, Leader of the Council and Portfolio Holder for Property and Major Contracts

**Question:** What is your view on the outcome of the saga regarding the development of the Whitchurch Pavilion and Playing Fields?

**Answer:** Thank you for your question Mr Lewis. I am sorry but I cannot agree with your use of the word 'saga'.

There have been three previous Cabinet reports and extensive public consultation with local residents since the commencement of the Whitchurch Playing Fields project in November 2008.

On 26 March 2012 the Whitchurch Consortium organised a public meeting at Whitchurch School which was very well attended by local residents.

At this forum a comprehensive overview of the Consortium's proposals was provided, together with an opportunity for residents to ask questions and raise concerns.

On 12 May 2012, the Whitchurch Consortium organised a Fun Day which was also very well attended by local residents. This event was intended to provide a good example of a typical event day and, importantly, to provide extensive information on the Whitchurch Consortium's proposals for the site.

The Whitchurch Consortium also established a dialogue committee which I understand has met on two occasions so far.

In addition, the Whitchurch Consortium undertook extensive door-to-door consultations in the locality.

The outcome of this engagement was reported to Cabinet, in detail, at our meeting on 20 June 2012.

The Corporate Director's report clearly set out the many and various concerns that had been raised by residents and all residents can be assured that this administration has understood the issues that you have raised with us.

Importantly, the June Cabinet report also advised that a petition containing 1,265 signatures supporting the Whitchurch Consortium's proposals had also been compiled during the door-to-door engagement.

Although the process for selection of the Council's preferred bidder, the wide ranging engagement with local residents and the negotiations in respect of commercial terms has been time consuming, I am confident that the outcome will result in fabulous new facilities for our community.

I am therefore very pleased that this administration has persevered with these proposals, despite early difficulties and criticism and I am convinced that the proposal will become a hugely successful and well supported sports and leisure facility which will be used extensively by the residents of our Borough for many years to come.

Our careful approach and in particular, our concern for the views of local residents, has ensured that:

- the best partner for the development and operational management of the Playing Fields has been selected;
- the reasonable concerns of local residents have been openly debated in public forum, carefully and comprehensively considered by this Cabinet and will be safeguarded through the lease terms and the statutory Planning and Licensing processes;
- superb new sports and leisure facilities, and most importantly, high quality outdoor sports pitches, will be available for our sports men and women, boys and girls, to develop their skills, perhaps even going on to represent Harrow and their country in future world class competitions, in particular the Olympics.

The Service Level Agreement which has been negotiated with the Whitchurch Consortium will provide for extensive, low cost access for disadvantaged and protected groups within our community.

**Supplemental Question:** Can you tell us how the report demonstrates the safeguarding of public concerns and why did officers refuse to meet residents before submitting the report?

**Supplemental Answer:** Our Corporate Director met you on one occasion and there have been many meetings and phone calls, including extensive consultation. I do not think you are justified in saying that they have not met you.

2.

**Questioner:** Mr A J Pais

**Asked of:** Councillor Thaya Idaikkadar, Leader of the Council and Portfolio Holder for Property and Major Contracts

**Question:** The proposed development at the Whitchurch Playing Fields site will undoubtedly give rise to further nuisance to local residents from increased traffic, noise and anti-social activities. Given that the already planned increase in pupil intake at Stanburn School and a likely increase in numbers at the Whitchurch School will make the traffic situation much worse even before the Whitchurch Playing Fields project makes the situation simply unbearable.

Whilst the local residents accept that some improvements to the site are necessary, why has the Council not carried out any studies or assessments regarding traffic, noise and anti-social behaviour problems that would be generated by this project in the surrounding streets and why has the Council not sought to listen to the concerns of the local residents and take their views into account?

**Answer:** Mr Pais thank you for your question.

As I said in my response to Mr Lewis and as has been made clear at previous Cabinet meetings, the issues associated with increased traffic, noise, and any other potential adverse impacts which may arise from the operation of a modern sports and leisure facility on the Whitchurch Playing Fields site will be most carefully considered as part of the formal Planning and Licensing processes.

I am sorry but I cannot accept your view that the Council 'has not sought to listen to the concerns of the local residents and to take their views into account'.

There has been substantial engagement with local residents and there has also been much engagement with some residents at previous meetings of Cabinet.

Through this previous engagement, this Administration, in particular all of the Members of Cabinet, have been able to gain a comprehensive understanding of the concerns of local residents, in particular those whose homes immediately adjoin the site and also the strong interest and support for a new, modern, sports and leisure facility that has also been expressed by other residents.

We will do everything possible, working with the Whitchurch Consortium, to ensure that all potential adverse impacts are carefully and properly identified and managed through the Planning and Licensing processes.

These processes are fully transparent with all decisions being made at meetings which are open to the public, with officer reports that are

available to residents from the Council's website.

It is very important that we plan today to ensure that our sports men and women, boys and girls, are able to access high quality, modern, sports and leisure facilities.

Our Borough is growing. We need to recognise that growth is a positive thing and we, the entire community, need to work together, to embrace opportunities to improve the facilities essential to the life of our Borough in the future.

**Supplemental Question:** I beg to differ with what you have initially said about consultations having taken place. At a fully packed building in the Whitchurch School, all the local residents gathered together, put their hands up, bar three, all of them were against this project.

I accept that there are some improvements necessary in this place. I have not seen a questionnaire that you have sent around which listed all the questions and we could have written down our concerns. There has been nothing of the sort. You keep talking about a so-called consultation document carried out by the developer. Obviously, they are going to, if at all, frame the questions as it suits them.

The Council has already given permission to Barnet Football Club to play league matches at Prince Edward Playing Fields. Just a few hundred yards from this site. This in itself will create vastly increased traffic on match days and there is no way you could deny that fact.

My question is not going to make sense without me reading this. The traffic going towards Broadwalk in Edgware already backs up halfway to Prince Edward Playing Fields, even on working days.

We know that the Council has chosen to ignore the views of the local residents, but why has the Council failed to carry out a comprehensive assessment of traffic, parking and anti-social behaviour problems. Can the Portfolio Holder tell us whether they have consulted other agencies such as Police, Fire Brigade, Highways Agency and local establishments? Will the Council postpone its decision until this is done properly?

**Supplemental Answer:** The things you mention – traffic, noise, will be part of the planning process. You would be consulted again by the Planning Department independently and you will have an opportunity to respond to it. The decision will then be made in public. You could attend the Planning Committee to listen and make your comments and then the Planning Committee will make the decision.

7.

**Questioner:** Melanie Lewis

**Asked of:** Councillor Thaya Idaikkadar, Leader of the Council and Portfolio Holder for Property and Major Contracts

**Question:** Can the Cabinet tell me how soon I can expect to receive confirmation that, in accordance with the Commons Act of 2006/7, Whitchurch Playing Fields has been registered as an Open Space and will never be available for development?

**Answer:** An application made under the Commons Act 2006 to register Whitchurch Playing Fields as a Town or Village Green was received by the Director of Legal & Governance Services on 16 November 2012.

That application will be reviewed by Legal Services in due course, in accordance with the provisions of the Act and associated regulations, to ensure that it has been validly made and meets the necessary minimum procedural requirements.

If so, the application will be advertised and all those with legal interests in the land, including the Council in its capacity as landowner, will be given the opportunity to object.

Evidence submitted by the objectors and by the applicant will be considered by the Council, in its entirely separate statutory capacity as the relevant registration authority for applications under the Act.

I would emphasise that the decision to allow or refuse the application is not a matter for Cabinet but will be made by a non-executive licensing panel, following appropriate legal advice, as to the merits of the application.

The application will be progressed by the Council, as registration authority, with all reasonable speed but that process will take place independently from the matters in respect of the Council's landholding being considered by Cabinet this evening.

**Supplemental Question:** First of all the inquiry has to be completely independent and cannot be anyone within the Council, that is the law and secondly, once the application has gone in, nobody may encroach on the land until the inquiry is over.

I understand the inquiry is going to take up to two years, so who is going to inform the Consortium that they have now got a possible two year wait until they can get hold of that land?

**Supplemental Answer:** Our Legal Department will inform the Whitchurch Consortium and follow the due legal process.

8.

**Questioner:** Michelle Stern

**Asked of:** Councillor Thaya Idaikkadar, Leader of the Council and Portfolio Holder for Property and Major Contracts

**Question:** Why hasn't the Corporate Director for Place Shaping met with us, the residents living around Whitchurch Playing Fields, to discuss with us our continuing concerns prior to the submission of the paper for decision by Cabinet on the future of Whitchurch Pavilion and Playing Fields, despite his being directed to do so in writing by the Chief Executive, and does the Leader feel confident, therefore, that the decision being made tonight is really being made on the basis of full and meaningful consultation with local residents?

**Answer:** Thank you for your question.

A comprehensive report regarding consultation with residents, in respect of this project, was presented to Cabinet by the Corporate Director Place Shaping on 20 June 2012.

A meeting with the representatives of local residents which was attended by a number of Councillors and the Corporate Director Place Shaping, was held in Civic Centre Committee Room 5 at 4.00 pm on Thursday 7 June 2012.

The matter to be considered by Cabinet this evening deals with the commercial formalities relevant to any future partnership between the Council and the Whitchurch Consortium.

I understand that the Corporate Director of Place Shaping wrote to Stephen Lewis, the Co-Chair of the Abchurch Residents' Association on 19 November advising that he 'would be happy to arrange a meeting to discuss concerns and to ensure that engagement with the local community is effective in the future'.

As the Portfolio Holder who has had overall responsibility for this project since May 2010, I am really disappointed that residents continue to express strong concerns regarding the extent and quality of the engagement, in respect of this important project.

I fully accept that your concerns regarding the consultation efforts are presented to us in good faith and I am very keen that we develop our approach with our partner, the Whitchurch Consortium, in a way which, as far as is reasonably possible, meets your needs and expectations.

I would be more than happy to attend the meeting which the Corporate Director of Place Shaping arranges with you and other residents.

**Supplemental Question:** What was your comment on the Consortium's presentation of 26 March, your personal comment about that?



**Ms Stern:** I would like to say that taking a petition around, coming from Whitchurch Consortium; that is not consulting local residents, that is just making it up what they feel like. Also, the Fun Day was not for local residents but the Whitchurch Consortium had 'shipped in' to their Fun Day.

We have not been consulted and for you to say anything else is not true. Also, I would like to point out that this is high flood area land. How can it possibly be developed on and how can you sign this contract tonight when it is about to be declared as an open space?

**Supplemental Answer:** Sorry, you are incorrect.

Any issues will have to be dealt with by the Courts.

9.

**Questioner:** Raymond Read

**Asked of:** Councillor Thaya Idaikkadar, Leader of the Council and Portfolio Holder for Property and Major Contracts

**Question:** The report mentions "numerous similar LA schemes" regarding the development of playing field sites. Could you name some of these schemes?

**Answer:** Mr Read, thank you for your question.

I think you are referring to the statement made in the last paragraph on page 255 of this evening's agenda papers.

I am advised by officers that other examples of long lease agreements to enable inward investment for the development of sports and leisure facilities are in place or in the process of being developed at:-

- Wimbledon Park Sports Centre, Portsmouth
- Patcham Court Farm, Brighton
- Patcham Place, Brighton
- Blake Hall Sports Club, Wanstead
- Copthall Stadium, Mill Hill
- Warren Farm, Southall;

and our very own

- Prince Edward Playing Fields, Edgware

**Supplemental Question:** Were any of these developments ones where the authority was acting against the wishes of the local residents? Were any of these sites inspected by the Council to see that they are in a similar situation to us here in Whitchurch Playing Fields?

**Supplemental Answer:** There are several places even in Harrow that are very similar and also there are school halls in Harrow. There are school halls backing onto houses.

Everything will be considered and this is where the Planning Committee will make sure any disturbances to the residents are to a minimum.

Further, the Licensing Panel will make sure appropriate gadgets are available to stop excess noise and sound coming to your properties. If you are disturbed, the Environment Department will come and fit a noise limiter inside your house, with your permission and monitor the noise levels and if they are too high, they will take appropriate action.

## Cabinet – 22 November 2012

### Councillor Question and Answer relating to Whitchurch Playing Fields

4.

**Questioner:** Councillor Barry Macleod-Cullinane

**Asked of:** Councillor Thaya Idaikkadar, Leader of the Council and Portfolio Holder for Property and Major Contracts

**Question:** Given the original tendering exercise for the Whitchurch development took place in 2009, are you confident that in making the decision now based on that tender, it is compliant with all relevant EU and other legislation and regulations?

**Answer:** Yes, I am entirely confident that all of the decisions taken by this Administration in respect of this important project are compliant with all relevant legislations and regulations.

**Supplemental Question:** So you are happy that it meets the Public Procurement Miscellaneous Amendments Regulations 2011 and also it complies entirely with the Open Space Regulations in the Commons Act 2006; that you have said so tonight.

Where does the Common Space application leave the decision tonight? Are you going ahead with the decision or are you going to defer it until after the Common Space application has been decided?

We are trying to clarify it because this is an important legal question. I would like to have advice otherwise we are putting the Council's finances and the interests of the residents at risk. Can we please have a clear statement?

**Supplemental Answer:** In my own opinion, the developers will not spend any money until the Open Space thing is settled.

The decision will be made today but there will be no further developments until the decision is made. That is my understanding.

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**REPORT FOR: CABINET**

**Date of Meeting:** 22 November 2012

**Subject:** Whitchurch Playing Fields

**Key Decision:** Yes

**Responsible Officer:** Andrew Trehern, Corporate Director of Place Shaping

**Portfolio Holder:** Councillor Thaya Idaikkadar, Portfolio Holder for Property and Major Contracts

**Exempt:** No

**Decision subject to Call-in:** Yes

**Enclosures:** None

**Section 1 – Summary and Recommendations**

This report, as required by June 2012 Cabinet, provides details of the outcome of negotiations with the Whitchurch Fields Consortium in connection with contractual arrangements for the proposed development of a Sports and Leisure complex at Whitchurch Playing Fields.

**Recommendations:**

Cabinet is requested to:

- (1) Consider the proposed terms which have been negotiated, provisionally agreed and are recommended by officers and agree to Option 1 set out in this report.
- (2) Authorise the Corporate Director Place Shaping in consultation with the Portfolio Holder for Property and Major Contracts to conclude contractual arrangements on the basis of Option 1 and the heads of terms set out in this report.

**Reason (for Recommendation):**

To attract inward investment to establish a modern sports and leisure facility, to include substantially improved playing pitches, for the benefit of local schools and residents and at no direct financial cost to the Council.

## **Section 2 – Report**

### **2.1 Introduction**

Whitchurch Pavilion has remained vacant since it was fire damaged some eight years ago. Prior to this it was used as changing facilities, in connection with the adjacent 25 acre playing fields. The playing fields are used on a much reduced basis since the closure of the pavilion and more recently the temporary portastore changing facilities. The playing fields are in poor condition requiring levelling and drainage improvements.

The Mayor of London has recently set up a Mayoral Development Corporation that will be responsible for the regeneration legacy from the London 2012 Games. It intends to do this by working in partnership with the Greater London Authority, Central Government, the Olympic Host Boroughs, residents in neighbouring local communities, local organisations, businesses and regeneration agencies and other partners in both the public and private sector, including national and international sporting, cultural and leisure organisations to leverage public assets to attract and secure private investment for the development of sustainable sports and leisure development.

The proposals for Whitchurch Playing Fields exemplify the Development Corporation's aspirations in this respect.

November 2011 Cabinet authorised the appointment of the Whitchurch Fields Consortium as the Council's preferred bidder. June 2012 Cabinet resolved that, having considered the feedback from the consultation and engagement activity summarised within the report:

- (1) the Whitchurch Consortium be commissioned to develop a community sport and leisure facility, at the Whitchurch Playing Fields, subject to agreement in respect of commercial terms;
- (2) it be noted that negotiations in respect of the Development Agreement, associated Service Level Agreement and Lease terms would now commence, as previously authorised by Cabinet;
- (3) it be noted that the outcome of the negotiations would be reported to Cabinet for final approval.

This report summarises the main terms provisionally agreed by officers with the Whitchurch Fields Consortium.

## **2.2 The Proposals**

The basic provisionally agreed terms will be incorporated into the following three documents -

### **A The Development Agreement**

#### **1) The Facility**

The development agreement places an obligation on the developer to construct a new sports complex comprising a pavilion with changing facilities for sports, leisure and community use including improvements to the playing fields' surface and incorporating :-

A new sports and leisure pavilion of approximately 1600m<sup>2</sup> to comprise as a minimum 12 changing rooms with shower facilities, a multipurpose function hall, bar, kitchen and café.

- 1 x full sized floodlit 3G football pitch
- 4 x small sized grass junior football pitches
- 4 x full sized football pitches
- 2 cricket tables / pitches
- An Eco Project on poor drainage land to the south of Edgware Brook for nature reserve and horticultural use for schools projects.

The cost, including improvements to the existing playing fields and drainage, is estimated at approximately £3 million and will be borne by the Whitchurch Fields Consortium.

#### **2) Conditionality**

Subject to

- i) Landlord's consent to the planning application and the subsequent obtaining of planning permission and any other relevant statutory consents.
- ii) Agreement to Lease.
- iii) Service Level Agreement (SLA) for school and community use.

iv) Assignment – strict prohibition other than to an organisation in the same group.

v) Termination and Step in Rights - In the event of insolvency, a serious breach of the developer's obligations or failure to complete by an agreed long stop date (subject to force majeure / planning and reasonable attempt to remedy caveats) the Agreement can be terminated by the Authority with the unencumbered site reverting back to the Council.

### **3) Timing**

Subject to the obtaining of planning permission and receipt of an anticipated grant from the Football Foundation it is expected that the Eco Project and the 3G football pitch will be completed by March 2014 with the remainder of the development completed by the end of December 2014.

## **B The Lease**

i) **Term** 99 years with effect from satisfactory completion of the development works.

ii) **Demise** - The land and buildings fronting Wemborough Road currently known as Whitchurch Playing Fields amounting to approximately 25 acres excluding two existing occupations on the site to Virgin Media and EDF.

iii) **Rent** – A peppercorn

iv) **Use** - the Tenant to use the premises for the operation of a sports leisure and community pavilion and as sports playing fields.

The Tenant is required to:

- (a) make the premises available for use in accordance with the agreed Service Level Agreement;
- (b) secure the Premises at all times and ensure that there is a resident on site caretaker.

The Tenant is not permitted to:

- (a) use the premises in such a way as to create a nuisance or annoyance or to damage the service conduits or deposit any noxious substance on the premises;
- (b) install any telecommunications apparatus (e.g. aerials, cell phone towers) on the Premises;
- (c) carry out any residential development on the site;
- (d) use the premises for:
  - i) any residential use other than for the provision of a caretaker flat to be incorporated within the pavilion;
  - ii) any illegal or immoral purpose;



iii) any betting or gaming;

iv) public auctions;

(e) create any artificial or amplified noise which emanates from the playing fields, other than the use of a tannoy system for announcements on occasional open/ sports days.

v) **Forfeiture** - At any time after 28 days following failure to remedy a persisting breach in the lease or SLA.

vi) **Operation Hours**

Subject to Planning and Licensing consents the hours of operation of the pavilion shall unless otherwise confirmed be:

Monday to Thursday	6.30 am to 11.00pm
Friday	6.30 am to 11.30pm
Weekends and Public Holidays	6.30 am to 11.30pm

In the event that the Tenant is granted occasional late night licensing the premises will be vacated and locked down within 30 minutes of expiry of the late licence extension to allow for an orderly vacation of the premises.

Night time restrictions:

All external floodlighting to be extinguished and no further external sporting or leisure events nor artificial or amplified sound to take place on the playing fields after 10.00pm.

Early morning restrictions:

No team sporting events, nor artificial or amplified sound to commence on the playing fields before 9.00 am.

**C The Service Level Agreement**

**a) The Obligations:**

1. A minimum of 1000 hours use per year during School Core Time (9.00am – 5.00pm weekdays during School term time ) of the playing fields and changing rooms free of charge to Stanburn First, Stanburn Junior, Whitchurch First & Nursery and Whitchurch Junior Schools whilst they remain community schools.
2. A minimum of 200 hours per year during School Core Time of the facility at 50% of the standard off peak charge to any of the Borough's other community schools.
3. Harrow Schools FA up to 10 priority bookings annually of a full size pitch at 50% of the standard charge.
4. One annual community event for Stanmore Baptist Church (subject to the Authority's consent which can be withheld at its discretion).

5. A minimum of 250 hours per year during the peak use period to be made available for sports clubs from within the Borough of Harrow.
6. A minimum 250 hours per year for instructive sports development initiatives provided to disability organisations.
7. Make available for a minimum of 100 hours per year selected local groups (to be agreed with Harrow Council's Sports Development Unit) the opportunity to have priority booking rights for the artificial turf pitches at agreed off-peak times.
8. In July and August each year to offer priority booking rights to local schools and clubs who block book the facility for the whole season.
9. Enable schools in the Borough to hire the 3G pitch for up to 10 Cup Finals each year during the peak use period at the standard off peak rate.
10. Subject to prior booking make available the facilities at cost for the selection and training of squads to represent Harrow in the London Youth Games.
11. Participate in any Harrow Card / Leisure Card scheme and offer discounted rates at the site for Borough residents during off peak periods.
12. A minimum of 100 hours per year use of the pavilion for Harrow Age Concern to hold instructive/educational meetings for Silver Surfer, Fit as a Fiddle and any of its other national programmes.

The school usage obligations have been negotiated with the Consortium following communication with the relevant local schools and taking into consideration recommended outdoor play / sports requirements set out in the national curriculum.

#### **b) Termination Rights**

The Authority shall be entitled to terminate the Agreement upon failure to comply with rectification notices outlining breaches of the SLA.

This will be subject to a dispute resolution clause.

## **2.3 Options considered**

### **1) Grant a Development Agreement and Lease option to the Whitchurch Fields Consortium on the aforementioned terms**

The grant of a lease upon the aforementioned terms conditional upon rebuilding the pavilion and improving the playing fields, together with a sports and leisure related SLA for the benefit of local schools and the local community, would result in a substantially improved sports and leisure facility at no cost to the Council.

## 2) Do not accept officers' recommended Heads of Terms.

The existing pavilion structure is not safe. Estimated demolition and remediation costs for the pavilion are in the region of £80K. Additionally maintenance and security costs of the playing fields now substantially exceed income with the loss of the temporary changing facilities in 2008 and are estimated at £48,000 per annum.

The 25 acre playing fields are comprehensively under utilised although clearly have potential to provide good quality modern sports and leisure facilities.

Major drainage and general grounds maintenance improvements at substantial cost are required, if the playing fields are not to continue to deteriorate.

## Recommendation

Officers recommend **Option 1** as being the best alternative to ensure substantial inward investment to provide new and substantially improved facilities at Whitchurch Playing Fields which will contribute to the Council's stated aim of increasing participation in sport and physical activity across the Borough.

By entering into a partnership with the Whitchurch Fields Consortium on a leasehold basis, the Council are able to control development of the site and influence the subsequent operation of the facility, thereby securing provision of facilities that are high quality and sustainable for sports, leisure and community related uses, at no direct financial cost to the Council.

The Planning and Licensing processes, combined with the lease terms, will ensure that any development will only be taken forward in a way which is sensitive to the impacts on the local community, whilst providing much needed modern sports and leisure facilities, to be available to the entire community of Harrow.

The Consortium have made clear that it requires a long term lease of at least 99 years to justify the considerable initial capital expenditure of the development estimated at £3 million. Any shorter lease term is unacceptable to the Consortium. The other shortlisted bidder had also previously submitted their offer on the basis of a long lease term (in excess of 99 years) and it is officers' clear view that the council would be unable to secure a comparable level of investment to that now offered on the basis of the 30 year term originally suggested in the informal tender specification. The negotiated terms also offer a much more comprehensive solution than the refurbishment of the existing pavilion, which neither of the shortlisted bidders had considered to be a viable option.

Such joint development proposals are increasingly popular with Local Authorities who own playing fields but do not have adequate resources to finance development of leisure facilities. There are consequently numerous similar Local Authority schemes and in the vast majority of cases a long lease of at least 99 years has been granted although legally there are no restrictions to the length of lease a Local Authority can grant.

The site is designated as open land and there is no realistic prospect of residential development, or other commercial development not linked to the existing sports and leisure use. The open market value of the site to the Council is therefore limited by its planning designations.

Officers consider that the current proposal contributes to the achievement of the promotion and improvement of the economic, social and environmental well-being of the Borough and its residents. Officers also consider that taking into account the commercial benefits being offered by the Tenant in terms of substantial capital investment in the new facilities, assuming ongoing maintenance costs, and obligations to provide community use in the service level agreement, that the provisionally agreed terms represent the best consideration that can reasonably be achieved in the circumstances.

## **2.4 Community Safety**

The pavilion is a relatively large and currently derelict building which, whilst protected by a perimeter fence, continues to attract anti social behaviour.

Once completed the facility will provide much needed alternative diversionary sport and leisure interests and with on site security should alleviate the site of its past history for anti social behaviour.

## **2.5 Legal Implications**

The Council has power under section 123 of the Local Government Act 1972 to dispose of land on any terms it wishes provided that the consideration is not less than the best reasonably obtainable.

In addition, under the General Disposal Consent 2003, if the Authority wishes, it can allow up to £2 million reduction on the unrestricted value in the case of a potential user who will contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of the Borough or its residents.

Where the land to be disposed off is or includes public open space, section 123(2A) of the 1972 Act imposes a requirement for notice of the proposed disposal to be published in a local paper for two consecutive weeks and any representations received to be considered by the authority before the disposal is concluded. This process has been concluded and the results were reported to Cabinet in June.

There is no legal duty to consult the public on the length of the term of the lease or the commercial terms of the lease. These are matters for the authority. Cabinet is entitled to determine them at its discretion, notwithstanding any previous decisions it has made, having considered the contents of this report.

The provisions of the lease would not be in contravention of any matters affecting the title to the property.

The European procurement rules set out in the Public Contracts Regulations 2006 (as amended) (the 'Regulations') do not apply to the arrangement because land transactions and the provision of sports and leisure services are exempt from the prescriptive procurement regime set out in the Regulations. In addition, the estimated value of the proposed development works is under the relevant financial threshold of around £4.4m above which construction works may potentially become a 'public works contract' subject to the Regulations.

The playing fields are not reserved for school use and it is understood that any use by schools has been only occasional to supplement other playing field provision. It is therefore considered that the general consent to section 77 of the School Standards and Framework Act 1998 applies and that the specific consent of the secretary of state is not required to the grant of the lease. The agreed arrangements set out in this report do however secure a substantial level of free /reduced rate access to the improved facilities for local schools going forward.

## **2.6 Financial Implications**

If the Council decides to enter into a development agreement with the Whitchurch Fields Consortium the general fund revenue costs, which supports the existing day to day operation and maintenance of the playing fields, will be saved.

Furthermore the Council will be able to avoid future capital costs associated with backlog maintenance, revenue costs associated with the ongoing security and demolition of the existing derelict pavilion.

## **2.7 Performance Issues**

The Council's corporate priorities will be positively impacted by any leasing arrangement.

The proposed change while likely to have only a minor impact at borough level, will nevertheless contribute to indicators around activity and health, in particular, the Active People indicator of participation in sport. The latest survey is APS 6 and Harrow scored 19.1%, which is just below the median of London boroughs (Median score = 20%). This is a much better position than APS2/3, when Harrow was the second lowest performing London borough (15.3%), just ahead of Brent (14.7%).

## **2.8 Environmental Impact**

The proposals will lead to a greater intensification of use of the playing fields which will inevitably lead to issues relating to noise /light pollution increased traffic and concerns over the effect of development on a designated Environment Agency flood plain.

All the above matters will be considered and controlled through the Planning and Licensing processes and conditionality in the lease documentation although the proposal to locate the new pavilion more centrally within the site away from the boundaries will help to mitigate many concerns.

## **2.9 Risk Management Implications**

Risk included on Directorate risk register? No

Separate risk register in place? No

Major risks identified are

- 1) A Council decision to grant a shorter term lease would result in the Council's preferred bidder dropping out and probably result in the inability to secure another development partner for a similar development proposal.
- 2) The proposal could fail on consideration of Planning (onerous planning obligations e.g. additional community benefit and access to open space requirements).
- 3) The proposal could fail on consideration of Licensing (onerous Licensing obligations e.g. hours of operation).
- 4) Police (principally public order and event management issues).
- 5) Traffic or Fire Service considerations.
- 6) Over ambitious financial forecasts by the Whitchurch Fields Consortium could result in insufficient revenue to finance ongoing annual costs, although under such conditions the unencumbered site would revert back to the council with the benefit of improvements carried out to that date.
- 7) Possibility of negotiation between the parties failing at the detail stage.
- 8) Planning restrictions might reduce commercial revenues.

## **2.10 Equalities Implications**

Members should have due regard to the public sector equality duty when making decisions. The equalities duties are continuing duties they are not duties to secure a particular outcome. Consideration of the duties should precede the decision. It is important that Cabinet has regard to the statutory grounds in the light of all available material. The statutory grounds of the public sector equality duty are found at section 149 of the Equality Act 2010 and are as follows:

A public authority must, in the exercise of its functions, have due regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The relevant protected characteristics are:

- Age
- Disability
- Gender reassignment
- Pregnancy and maternity
- Race,
- Religion or belief
- Sex
- Sexual orientation
- Marriage and Civil partnership

By consulting with interested community groups, as reported to Cabinet in June, and by the preparation of informative tender documentation highlighting the requirements of an effective bid, steps have been taken to ensure that all groups are treated fairly.

The Whitchurch Fields Consortium's mission statement as a community and sports organisation is to bring members of the local and wider community together by providing multi facility sports and leisure activities as well as educational and social opportunities.

The Consortium's vision is to have a community sports and social club accessible to all with no barriers to membership. The construction of the facility will also need to comply with all relevant statutory requirements ensuring disabled access.

The proposals are consistent with Corporate Estate's existing Disposal of Property Policy and it is considered that there will be a range of positive impacts to protected equality groups through the Service Level Agreement which provides access upon beneficial terms to amongst others, children, young people, the elderly and disabled residents of the Borough.

## **2.11 Corporate Priorities**

The Proposal will not impact on any National Indicators, BVPIs or KPIs but this action will contribute to improving the management of the Council's Assets; both Use of Resources and Comprehensive Area Assessment require the Council and its partners to demonstrate improvement and innovation in Asset Management.

In terms of the Council's Corporate Priorities the report's proposals and recommendations contribute to:-

- Keeping neighbourhoods clean, green and safe.
- United and involved communities: A Council that listens and leads.
- Supporting and protecting people who are most in need.

### **Section 3 - Statutory Officer Clearance**

Name: Kanta Hirani	<input checked="" type="checkbox"/>	on behalf of the Chief Financial Officer
Date: 24 October 2012		
Name: Matthew Adams	<input checked="" type="checkbox"/>	on behalf of the Monitoring Officer
Date: 29 October 2012		

### **Section 4 – Performance Officer Clearance**

Name: David Harrington	<input checked="" type="checkbox"/>	on behalf of the Divisional Director
Date: 24 October 2012		Partnership, Development and Performance

### **Section 5 – Environmental Impact Officer Clearance**

Name: John Edwards	<input checked="" type="checkbox"/>	Divisional Director (Environmental Services)
Date: 19 October 2012		

### **Section 6 - Contact Details and Background Papers**

**Contact:** Andrew Connell  
Senior Professional - Estate Development  
Corporate Estate  
Place Shaping Directorate  
d/I 0208 424 1259 x2259 [andrew.connell@harrow.gov.uk](mailto:andrew.connell@harrow.gov.uk)



## **Background Papers:**

**June 20 2012**

[Committee report](#)

<http://www.harrow.gov.uk/www2/documents/s98406/Whitchurch%20-%20cover%20report.pdf>

[Appendix 1 – Leaflet and distribution details](#)

<http://www.harrow.gov.uk/www2/documents/s98407/Whitchurch%20-%20App1%20Leaflet%20and%20Distribution%20details.pdf>

[Appendix 2 – Public consultation presentation](#)

<http://www.harrow.gov.uk/www2/documents/s98407/Whitchurch%20-%20App1%20Leaflet%20and%20Distribution%20details.pdf>

[Appendix 3 – Feedback – Consortium presentation](#)

<http://www.harrow.gov.uk/www2/documents/s98409/Whitchurch%20-%20App3%20Feedback-Consortium%20presentation.pdf>

[Appendix 4 – Fun Day](#)

<http://www.harrow.gov.uk/www2/documents/s98410/Whitchurch%20-%20App4%20Fun%20Day.pdf>

[Appendix 5 – Overview of Proposed Development](#)

<http://www.harrow.gov.uk/www2/documents/s98411/Whitchurch%20-%20App5%20Overview%20of%20proposed%20development.pdf>

[Appendix 6 – Local organisation support letters](#)

<http://www.harrow.gov.uk/www2/documents/s98422/WhitchurchApp6LocalorganisationsupportlettersR.pdf>

**November 2011**

[Committee report](#)

<http://www.harrow.gov.uk/www2/documents/s93143/Whitchurch%20-%20cover%20report.pdf>

[Appendix 1 –Whitchurch tender](#)

<http://www.harrow.gov.uk/www2/documents/s93134/Whitchurch%20-Appendix%201%20-Whitchurch%20Tender.pdf>

[Appendix 2 – Preferred bidders consultation letter](#)

<http://www.harrow.gov.uk/www2/documents/s93135/Whitchurch%20-%20Appendix%202%20-%20Preferred%20bidders%20Public%20Consultation%20leaflets..pdf>

[Appendix 3 – Harrow RFC Consortium sustainability report](#)

<http://www.harrow.gov.uk/www2/documents/s93136/Whitchurch%20-%20Appendix%203%20-%20Harrow%20RFC%20Consortium%20Sustainability%20Report.pdf>

[Appendix 4 – Whitchurch Consortium 3 Year cash flow](#)

<http://www.harrow.gov.uk/www2/documents/s93137/Whitchurch%20-%20Appendix%204%20-%20Whitchurch%20Consortium%203%20Year%20Cash%20Flow.pdf>

[Amendments to recommendations](#)

<http://www.harrow.gov.uk/www2/documents/s93376/Whitchurch%20Pavilion%20Playing%20Field%20-%20Amendments%20to%20Recommendations.pdf>

[Tabled recommendations](#)

<http://www.harrow.gov.uk/www2/documents/s93494/Whitchurch%20-%20tabled%20recommendations.pdf>

**November 2008**

[Committee report](#)

<http://www.harrow.gov.uk/www2/documents/s31878/Whitchurch%20Playing%20Field%20and%20Pavilion.pdf>

**Call-In Waived by the  
Chairman of Overview  
and Scrutiny  
Committee**

**NOT APPLICABLE**

*[Call-in applies]*

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