

**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>

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<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]*