

Meeting:	Cabinet
Date:	14 May 2009
Subject:	Cedars Hall, Uxbridge Road, Harrow
Key Decision:	Yes
Responsible Officer:	Andrew Trehern – Corporate Director of Place Shaping
Portfolio Holder:	Councillor Tony Ferrari, Portfolio Holder for Major Projects and Property
Exempt:	Part 1
Enclosures:	None

## Section 1 – Summary and Recommendations

This report updates the current position with Cedars Hall and seeks approval of the following recommendations:

### **Recommendations:**

It is recommended that the Corporate Director Place Shaping in conjunction with Portfolio Holder for Major Projects and Property is authorised to:

- a) Permit a letting of Cedars Hall to Kids Can Achieve (KCA) subject to KCA receiving a quote for the refurbishment in line with their funding from Futurebuilders and KCA granting a sub lease to Weald Tenants and Residents Association (WTRA) at a peppercorn rent for the duration of their lease and other terms to be approved by the Corporate Director Place Shaping.
- b) The timeline for the submission of the planning application is to be relaxed and KCA is to submit a planning application no later than 6 weeks following the completion of the lease.
- c) To agree alienation terms which permit Futurebuilders (the proposed funders) only to assign having first given the Council the option to take the property back on agreed terms. Assignment is to be with

- landlord's consent which will be statutorily qualified not be unreasonably withheld.
- d) In the event of the Cedars Hall letting not proceeding to confirm the decision of Cabinet 21 May 2008 to authorise the Corporate Director Community and Environment, now Place Shaping to conclude the disposal of Cedars Hall site for residential development at best consideration, noting that the necessary marketing exercise will commence when suitable economic conditions prevail.

**Reason: (For recommendation)**

If the letting of Cedars Hall proceeds the recommendation will allow KCA access to funding from Futurebuilders to bring the property back into community use, providing a base for WTRA. If the option to accommodate WTRA in the new Cedar's Youth Centre, to be redeveloped with the £4.1m grant, and KCA within the Council's existing school property is deemed suitable, then the leasing of Cedars Hall will not need to proceed. This will permit Cedars Hall to be disposed of for residential development generating a capital receipt in accordance with Option 2 in the May 2008 Cabinet Report.

## **Section 2 – Report**

### **Introductory paragraph**

1. Cabinet at its meeting on 21 May 2008 agreed for WTRA to act as the lead organisation to submit a formal proposal to use Cedars Hall (the property) for community purposes. The Cabinet Report set out a timetable for achieving this which was later amended by a Leader's Action agreed in July 2008 which gave further time for the submission of the Business Plan.
2. Since the Cabinet meeting on 21 May 2008 Watford FC Community Sports and Education Trust have recently won a MyPlace bid and have been awarded £4.1 million to develop a Youth and Community Centre on the Cedars Youth Centre site, adjacent to Cedars Hall. The money will be used to develop a 21<sup>st</sup> century youth outreach and development centre. The grant is subject to a number of fundamental conditions including a partnership agreement with Harrow Council, production of a satisfactory business plan, grant of planning consent and grant of a lease for 25 years with a legal charge in favour of MyPlace.
3. This report provides an overview of progress and seeks further amendment to the previously agreed timeline together with other decisions to enable the project to proceed.
4. This project is not without its risks and Members are advised to reference the Risk Management Implications Section.

## Current situation

5. WTRA have joined with KCA and have put forward a bid for Cedars Hall, led by KCA. The parties are seeking to use the property for the following:
  - A community and resource centre providing a range of services and support for the local community.
  - Bigger premises for Kids Can Achieve providing more spaces for services, workstations and outdoor play and parking.
  - Offices and services space for five other community organisations – WTRA, Attention Deficit Hyperactivity Disorder (ADHD), Support Harrow, National Autistic Society Harrow (NASH) and Harrow Offering Parents Empowerment (HOPE).
6. KCA have produced a business plan and cash flow which has been independently reviewed by Tribal Consulting and is considered acceptable,. They have approached Futurebuilders which is a lottery funded organisation to provide funding for the scheme. Futurebuilders have offered KCA investment of £708,800, made up of a loan of £533,800 and a grant of £175,000. The loan is divided into two parts; Loan 1 (£325,000) is over 25 years and Loan 2 (£208,900) is over 15 years. Interest on the loans will be 6% per annum for the first three years and will then be reviewed.
7. KCA have produced site plans setting out their proposed changes to the layout of the building and the site. At this stage there are no significant planning concerns. KCA have yet to obtain a construction cost for the project which demonstrates that the project can be delivered within the resources available.
8. Futurebuilders have stated as a condition of the grant and loan that they will require security for their loan in the form of a legal charge over the leasehold interest in the property. This will necessitate the lease being granted to KCA rather than WTRA as envisaged by the May 2008 Cabinet report and alterations to the proposed alienation clause in the lease permitting assignment of the property.
9. Harrow Council's normal position in transactions of this type is that the lease granted by the Council will not permit either sub-letting or assignment of the whole of the property by the tenant. This position protects the use of the property in the future and gives the Council absolute control over the site. This position prevents Futurebuilders from assigning the lease should they take possession if KCA default on their loan and therefore makes their legal charge worthless. Futurebuilders will not lend on this basis. This issue is being explored with Futurebuilders. The Council are seeking to include a provision that will restrict any assignment to Futurebuilders should the property revert to them during the loan periods and a requirement for Futurebuilders to first offer the property back to the Council on payment of any sums due under the loans. The exact terms of this are still in discussion but early indications are that a solution in this form should be acceptable to both parties.
10. Officers strongly recommend that the Council does not cede absolute control of the property to Futurebuilders but seek to agree a first option to take the property back and ensure that any assignment is with landlord's consent, which will be statutorily qualified by not to be unreasonably withheld.
11. KCA have not yet submitted a planning application in respect of their proposed refurbishment of Cedars Hall as this will incur costs for the organisation which they will not be able to recoup should the Council not agree to KCA being the lessee for the property. This is in contravention of the terms agreed in the May 2008 Cabinet

report which required a planning application to be submitted by 30 November 2008. Officers are recommending a retrospective extension of this requirement.

12. The Corporate Director of Children's Services advised that the work undertaken by KCA is commendable and that the funding for work with children on "the Autistic Spectrum" comes from Schools and Children's Services, mostly from the use of grant funding. The development of specialist "Autistic Bases" at three schools will reduce the necessity to purchase services from KCA (January to April 2010). Additionally the Advocacy Service is funded from grant income via Children's Services. There is no guarantee of this funding beyond 2010/11. Overall there can be no guarantee of the amount of funding provided for KCA from Children's Services beyond March 2011.
13. The successful bid for £4.1 million bid for Cedars Youth Centre has the possibility to be sufficiently flexible to permit the Council to offer the WTRA a room. Initial discussions with WTRA suggest they are willing to accept this offer if it forms part of a solution that is acceptable to KCA
14. Children's Services have also identified a possible opportunity within the change of age transfer to High School and resultant re-designation of school facilities to allow the Council to offer KCA a facility within vacated school facilities so that they have reduced funding pressures. Initial discussions have taken place with KCA about this by the Director of Schools and Children's Development, and KCA would consider such an offer. However, their space requirements seem to be larger than any one school could accommodate.
15. Ward Members have been notified of this report being submitted to Cabinet.

## **Options considered**

16. In respect of the May 2008 Cabinet Report, Cabinet has to consider whether they wish to make changes to the recommendations contained therein to permit Cedars Hall to be redeveloped for community purposes. These decisions need to be taken in light of the recent developments at Cedars Youth and Community Centre and the other options these bring for KCA and WTRA.

### **Option 1 - Lessee for Cedars Hall**

The May 2008 Cabinet Report authorised a letting to WTRA. For KCA to be able to receive the money from Futurebuilders the lessee for Cedars Hall will need to be KCA.

**Option 1a** - Refuse the application from KCA to lease the property. This would be in accordance with the terms of the May 2008 Cabinet report but Futurebuilders will not release the funds to WTRA. This prevents Cedars Hall being used for a community facility by WTRA and will permit the Council to dispose of the land for development.

**Option 1b** - Amend the terms of the May 2008 Cabinet Report permitting a letting of Cedars Hall to KCA. Any letting is to be subject to KCA receiving a quote for the refurbishment in line with their funding from Futurebuilders and KCA granting a sub lease to WTRA at a peppercorn rent for the duration of their lease.

## **Option 2 –Planning Application**

The May 2008 Cabinet Report required WTRA to submit a full planning application before 30 November 2008. This deadline has passed and the scheme on offer at the moment will need KCA to apply for planning permission which they are unwilling to do until they know that the Council will offer them a lease.

**Option 2a** –Refuse to adjust the timetable for the submission of planning permission. KCA have stated that they do not wish to expend funds applying for planning permission until they know that the Council are willing to lease the property to their organisation. This will mean that WTRA have not fulfilled the conditions of the May 2008 Cabinet Report and permit the Council to dispose of the land for development.

**Option 2b** –Amend the terms set out in the May 2008 Cabinet Report, allowing for planning permission to be sought once the Council have authorised a lease to KCA.

## **Option 3 – Lease Terms**

The current lease terms proposed by the Council include an absolute prohibition on alienation. Futurebuilders have stated that they need the ability to assign the lease should KCA default on their loan and they wish to have a legal charge on the leasehold interest as security for the loans.

**Option 3a** -Refuse to amend the Heads of Terms in respect of the lease and thereby refuse to alter the alienation provisions in the lease. This will result in Futurebuilders not releasing the funding to KCA and the project not proceeding. The Council under the May 2008 Cabinet Report will then be able to dispose of the land for residential development.

**Option 3b** - Amend the terms of the May 2008 Cabinet Report agreeing to Futurebuilders' requirement for a legal charge subject to the Council being given first option to take the property back on agreed terms. The exact terms of the alienation clause are to be approved by the Corporate Director for Place Shaping but will include a requirement for landlord's consent, which will be statutorily qualified by not being unreasonably refused. The Council will benefit from external funding to refurbish Cedars Hall and bring it back into beneficial use and to provide community facilities for WTRA. The Council will retain an element of control by being able to take back the lease should KCA default.

## **Option 4 – Site to be sold for Private Housing**

The intention of the May 2008 Cabinet Report was to achieve the use of Cedars Hall as a community facility. If it is not possible to conclude a letting on this basis this will result in the site being available for disposal for residential development in accordance with Option 2 in the May 2008 Cabinet Report.

## **Recommendation**

17. It is recommended that the Corporate Director Place Shaping in conjunction with Portfolio Holder for Major Projects and Property is authorised to :

- a) Permit a letting of Cedars Hall to KCA subject to KCA receiving a quote for the refurbishment in line with their funding from Futurebuilders and KCA granting a sub lease to WTRA at a peppercorn rent for the duration of their lease.
  - b) Relax the timeline for the submission of the planning application; KCA is to submit a planning application to the Council no later than 6 weeks following the completion of the lease.
  - c) Agree alienation terms which permit Futurebuilders only to assign having first given the Council the option to take the property back on agreed terms. Assignment is to be with landlord's consent which will be statutorily qualified not be unreasonable withheld.
18. In the event of Cedars Hall letting not proceeding, to confirm the decision of Cabinet 21 May 2008 to authorise the Corporate Director Community and Environment, now Place Shaping to conclude the disposal of Cedars Hall site for residential development at best consideration, noting that the necessary marketing exercise will commence when suitable economic conditions prevail.

## **Equalities Impact**

19. Extensive consultation took place with the local community prior to the May 2008 Cabinet Report and a further public meeting has been held since then. Thus the proposals comply with Corporate Equalities Plan Section 2.1 Effective Consultation with Communities and Partners; 3.1 Equality in Service Access and Deliver; and 3.3 Equalities Impacts are built into Procurement arrangements.
20. The strategic development of this land will enhance the quality of life for all sections of the community and has the potential, therefore, to strengthen community cohesion through good public space and interaction. To ensure that services are fully accessible to all sections of Harrow's diverse community, equality and cultural sensitivity will be integral to the design, planning and implementation of the proposed developments of this land.

## **Legal Implications**

21. Under section 123 of the Local Government Act 1972, except with the consent of the Secretary of State, a Council shall not dispose of land under this section (otherwise than by way of a short tenancy, i.e. for a term not exceeding 7 years) for a consideration less than the best that can reasonably be obtained. However, the General Disposal Consent (England) 2003 provides for the disposal of land at less than best consideration other than by way of a short tenancy in the following circumstances;-

(1) The Local Authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of the following objects in respect of the whole or any part of its area, or of all or any persons resident or present in its area:

- a) The promotion or improvement of economic well-being;
- b) The promotion or improvement of social well-being;
- c) The promotion or improvement of environmental well-being; and

(2) The difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2,000,000.

Under Section 123(A) of the Local Government Act 1972, any disposal of land consisting or forming part of any open space would need to be advertised for two consecutive weeks in a local newspaper, and any objections considered.

## **Financial Implications**

22. The proposal and the recommendation of the letting will have to be agreed such that should KCA default, Futurebuilders only to assign having first given the Council the option to take the property back on agreed terms. The implications of taking up this option would the Council would have to pay for all outstanding debt and accrued interest charges.
23. The report from Tribal indicates that the business plan is financially robust in the short term. It does however point out that in the medium term there is greater risk due to the uncertainties of continuing funding from the Council and other service commissioners.
24. Cedars Hall will benefit from external funding to refurbish the premises and bring it back into beneficial use and to provide community facilities for WTRA.

## **Performance Issues**

25. No National Indicators, BVPIs, or KPIs will be impacted by this proposal. This action will contribute to improving the management of our Assets; both UoR and CAA require the Council and partners to demonstrate improvement and innovation in Asset Management.

## **Environmental Impact**

26. Cedars Hall is currently a derelict facility which while securely boarded, is likely to attract anti-social behaviour. By pursuing the proposals from KCA and WTRA the Council will secure the refurbishment of the premises for community use. The above proposal does not conflict with relevant Environmental Legislation and no Environmental Impact assessments are considered necessary.
27. Refurbishment of Cedars Hall offers the opportunity to bring the energy performance of the building up to modern standards by improving insulation, using renewable energy technologies, and ensuring that efficient heating, heating controls and lighting are installed. This would result in lower carbon emissions and reduced running costs.
28. Similarly, the refurbishment should seek to install water efficient equipment wherever possible to minimise demand for potable water. This would reduce running costs and help to minimise additional demand for water in a area of the country that is classified as water-stressed by the Environment Agency

## Risk Management Implications

29. The proposals by KCA have been independently assessed by Tribal Consulting on behalf of the Director of Community and Cultural Services, and the financial risks to the Council have been identified as low as the Council will not be assisting the scheme financially. Tribal have also looked at Service Risk and Reputational Risk of the project and they judge both to be low at the outset of the project. They comment that these could increase during the project as the methods for commissioning and paying for services from KCA may alter and therefore KCA's income stream is less secure.
30. Children's Services have commented that KCA are likely to see a drop in revenue due to the development of specialist "Autistic Bases" at three schools in the Borough. Furthermore there can be no guarantee regarding the amount of funding from the Council beyond March 2011. KCA have not presented within the Business Plan alternative sources of funding to cover any shortfall.
31. It is therefore Officer's view that the following potential risks should be brought to Member's attention in respect of a proposed letting to KCA of Cedars Hall.
32. Firstly the detailed design work for this project has yet to be undertaken and costed and this may generate further cost pressures on the budget for the project.
33. There are then two further potential areas for risk; one, that KCA run out of funds before the building can be brought back into use and two the organisation cannot earn sufficient revenue to keep the building. This first issue will be mitigated by requiring KCA to have a building quote in line with their funding from Futurebuilders before the lease is completed. Should the enterprise fail commercially Futurebuilders require rights to assign the lease.
34. The majority of KCA's income comes from the Council and PCT. The cash flows submitted by KCA include some optimistic forecast of income growth that Tribal describe as aggressive. Children's Services have identified real risks in the level of funding after March 2011. If funding for KCA falls several years into the project the risks to the Council are:
  - KCA are unable to pay the rent and the Council will have to subsidise the service via a reduction in the rent received for Cedars Hall.
  - KCA will increase the costs of the SLA commissioned and paid for by the Council and other users. This will increase pressure on the Council's scarce resources.
  - KCA will close, the Council will have to source their services elsewhere or provide it themselves, the building will be in the control of Futurebuilders unless the Council wishes to acquire the property back under its option. If the Council takes the property back it will have a refurbished community property to deal with.
35. If the Council do not lease Cedars Hall to KCA it will not lose KCA's services. KCA have stated that it is their priority to move to better and more appropriate premises and while they would prefer to move to Cedars Hall they are prepared to look at other suitable premises. Children's Services have identified a possibility of leasing redundant school facilities at preferential rates.



### Section 3 - Statutory Officer Clearance

Name: Sheela Thakrar	<input checked="" type="checkbox"/>	on behalf of the Chief Financial Officer
Date: ... 25 March 2009		
Name: Jessica Farmer	<input checked="" type="checkbox"/>	on behalf of the Monitoring Officer
Date: 25 March 2009		

### Section 4 – Performance Officer Clearance

Name: Anu Singh	<input checked="" type="checkbox"/>	on behalf of the* Divisional Director (Strategy and Improvement)
Date: 24 March 2009		

### Section 5 – Environmental Impact Officer Clearance

Name: Andrew Baker	<input checked="" type="checkbox"/>	on behalf of the* Divisional Director (Environmental Services)
Date: 16 March 2009		

### Section 6 - Contact Details and Background Papers

Contact: Belinda Prichard - SP Valuation, Ext; 5330,  
Belinda.prichard@harrow.gov.uk

Background Papers: Cabinet Report 21 May 2008 and the Leader's Action  
July 2008