

Meeting:	Cabinet
Date:	16 th July 2009
Subject:	Consideration of a Lease of Land to Orange for a Telecommunications Site at Chapel Lane Car Park or Land Immediately Adjacent in Pinner
Key Decision:	Yes
Responsible Officer:	Andrew Trehern, Corporate Director Place Shaping
Portfolio Holder:	Councillor Tony Ferrari – Portfolio Holder for Major Contracts and Property
Exempt:	No – Part I
Enclosures:	Cabinet Report dated 4 th April 2000 Cabinet resolution dated 4 th April 2000

Section 1 – Summary and Recommendations

This report sets out the options available to the Council in providing a telecom site for Orange in Pinner.

Recommendations:

Cabinet is requested to

- 1) Consider the report in the light of the Cabinet resolution dated 4th April 2000.
- 2) Authorise the Corporate Director – Place Shaping in consultation with the Portfolio Holder Major Contracts and Property to negotiate best terms and consideration for a 15 year lease to Orange of land forming part of or immediately adjacent to Chapel Lane Car Park for use as a telecommunications site.

Reason: (For recommendation)

Facilitating an alternative telecommunications site for Orange will negate the Operators requirement for a telecom mast in a sensitive inappropriate residential area of Rayners Lane and will in isolation provide adequate coverage whereby no further Orange mast installations will be required in the area.

Section 2 – Report

2.1 Introductory paragraph

- 2.1.1 The report proposes a site for a telecommunication mast on land in the Freehold ownership of the Council to replace a Telecommunication Operators existing planning consent on a site in a sensitive residential area of Rayners Lane.
- 2.1.2 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 contents of the report contribute to improving the way the Council works for its residents and the well being of adults and children

2.2 Background

- 2.2.1 Cabinet on 4th April 2000 resolved that new telecommunications masts aerials or dishes shall not be permitted on land owned or controlled by the Council in any capacity unless expressly approved by Cabinet.
- 2.2.2 On 10th December 2008 Harrow Council Planning Department received a planning application dated 9th December for an 11.5 m telecommunications mast and 2 associated equipment cabinets on a site close to Grove Road opposite 589 Rayners Lane Pinner.
- 2.2.3 This application formed the first of a proposed three stage process whereby three street works planning applications in total were to be submitted to achieve triangulation coverage throughout Pinner with similar telecom masts and equipment. Additional masts are necessary for full coverage when mast height is not sufficient as in the case of the Rayners Lane site.
- 2.2.4 The application was registered on 12th December reference P/4003/08 with a statutory expiry date of 4th February 2009, which the Council failed to comply with resulting in the application succeeding by prior approval. The site is however considered inappropriate being in a sensitive residential area.
- 2.2.5 The Council's Legal department has experience of recent relevant case history, which has demonstrated that were the Council to apply

to the Secretary of State to issue an Article Direction on the Rayners Lane site, this is likely to be denied as it was on another similar site.

- 2.2.6 Consequently because the general principle is a presumption against issuing an Article Direction for a Prior Approval and this is the only viable remedy in law available to take away the right of Orange to implement the Rayners Lane mast, the Council has therefore engaged with Orange to find another suitable site which meets with Orange's requirements.
- 2.2.7 There are few Telecom site opportunities in Pinner and no suitable alternative roof top sites were identified as acceptable to Orange. Reverting to Greenfield mast locations the general area within or immediately adjacent to Chapel Lane Car Park has been identified upon part of which a telecom mast could be sited. Orange has confirmed this location as an acceptable alternative site to the Rayners Lane site.
- 2.2.8 The benefit of this location is that it is not in a sensitive residential location, the mast is likely to be partially obscured by adjacent tall trees and its anticipated height is approximately 25m, which will give greater coverage to the extent that it is anticipated that the Operator will not require any further installations in Pinner.
- 2.2.9 If the Rayners Lane site is built out then two similar sized masts will be required to provide adequate coverage in the area.

2.3 Current Situation

- 2.3.1 Provisional lease terms are agreed with Orange for the consideration of a lease for a term of 15 years subject to tenant determination provisions at six months notice of land in or adjacent too Chapel Lane Car Park for a telecom site to provide for an approximate 25 m mast and 6 equipment cabinets conditional upon Cabinet approval, Planning consent and Orange relinquishing it's Prior Approval on the Rayners Lane site.
- 2.3.2 The preferred location is within the area of the car park.
- 2.3.3 Ward Councillors and key officers of the Pinner Association have been consulted on the issues raised in this report. Any new mast will require planning permission and the owners of nearby properties will be given the opportunity to comment upon the proposals as part of the planning process.
- 2.3.4 Whilst Orange have the legal right to commence construction of the Rayners Lane telecom mast immediately they await July Cabinet decision on this alternative location.

2.4 Options considered

2.4.1 Take no further action.

- a) Orange's requirement in Pinner is urgent primarily as a result of a lack of telecom site opportunities in the town – Orange has been investigating options for the last two years without success. Officers have been unable to find any alternative sites acceptable to Orange. Without the alternative of at least as good a mast location they would commence construction of the site at Rayners Lane shortly.
- b) The Rayners Lane telecom facility would require two further sites with similar sized masts with one of the locations probably being in the general area of Bridge Street.

2.4.2 Provide a site in or immediately adjacent to Chapel Lane Car Park for an alternative site.

- a) This is the only option identified to ensure the Rayners Lane telecom site is not constructed and as a consequence the requirement for two further telecom sites.

2.5 Implications of the Recommendation

- 2.5.1. Officers recommend option 2 as being the best alternative as no other potential sites have been identified. Furthermore in consideration of a lease the Council as Landlord would be able to exert greater control over the Operator.

2.6 Equalities impact

- 2.6.1 None.

2.7 Legal comments

- 2.7.1 Under Section 123 Local Government Act 1972, the Council shall not dispose of land other than by way of short tenancy not exceeding 7 years for less than the best consideration that can reasonably be obtained, unless the consent of the Secretary of State is obtained.
- 2.7.2 The General Disposal Consent 2003 allows disposal for less than best consideration where (i) 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, and (ii) the Council considers that the purpose for the disposal is likely to contribute to the promotion or improvement of economic, social or environmental well-being of all or any persons resident or present in the whole or any part of its area.
- 2.7.3 To the extent that the lease will be of any land forming part of open space, then under Section 123(A) of the Local Government Act 1972 the proposed disposal will need to be advertised for two consecutive weeks in a local newspaper, and any objections considered by the

Corporate Director – Place Shaping in consultation with the Portfolio Holder Major Contracts and Property.

2.8 Financial Implications

2.8.1 A small revenue stream will be received from the lease rent.

2.9 Performance Issues

Key Question	Points to Cover
Which performance indicators will be impacted by the proposal?	<p>1. Which performance indicators will be impacted?</p> <p>No National Indicators, BVPIs, or KPIs will be impacted</p> <p>2. Which key lines of enquiry under Use of Resources or Corporate Assessment would be impacted?</p> <p>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.</p>

2.10 Environmental Impact

2.10.1 The above proposal does not conflict with relevant Environmental Legislation and no Environmental Impact assessments are considered necessary.

2.11 Risk Management Implications

2.11.1 No risks have been identified nor registered on the Place Shaping Directorate Risk Register by the Co-Ordinator.

Section 3 - Statutory Officer Clearance

Name: Sheela Thackrar	<input checked="" type="checkbox"/>	on behalf of the Chief Financial Officer
Date: 11 th June 2009		
Name: Jessica Farmer	<input checked="" type="checkbox"/>	on behalf of the Monitoring Officer
Date: 15 th June 2009		

Section 4 – Performance Officer Clearance

Name: Anu Singh



on behalf of the*
Divisional Director
(Strategy and
Improvement)

Date: 9th June 2009

Section 5 – Environmental Impact Officer Clearance

Name: John Edwards



Divisional Director
(Environmental Services)

Date: 10th June 2009

Section 6 - Contact Details and Background Papers

Contact: Andrew Connell Portfolio Surveyor Corporate Estates
x2259 ddl 0208 424 1259 email Andrew.Connell@harrow.gov.uk

Background Papers: The file and a copy of the Cabinet Report and Resolution dated 4th April 2000 is held with Andrew Connell in Corporate Estates

LONDON BOROUGH OF HARROW

CABINET

CABINET REF. NO. 15

4 APRIL 2000

Telecommunications Masts: Reference from Planning Committee - 9 March 2000

1. Cabinet at its meeting on 15 February 2000 referred back to the Planning Committee for further consideration a motion requesting both support for increasing planning powers in respect of telecommunication masts and also adopting a policy for dealing with applications for telecommunication developments on Council owned land. This motion had been adopted by the Planning Committee at its meeting on 13 January 2000.

The Planning Committee on 9 March 2000 resolved that **Cabinet be requested to agree that**

(1) Representations be made to the Secretary of State for Environment, Transport and the Regions, requesting that

(a) all telecommunications development should be subject to full planning control so that planning applications for such development would be considered by reference to the normal planning criteria applicable to all other departments; and

(b) planning authorities should be able, when considering applications for telecommunications development to give proper weight to public concern about the health and safety implications of such equipment.

(2) The Members of Parliament for Harrow West and Harrow East, the Local Government Association and the Association of London Government be requested to support those representations through any Parliamentary or other channels which are open to them.

(3) New telecommunication masts, or aerials or dishes emitting radiation, shall not normally be permitted on land owned by the Council in any capacity, and any proposal to permit such structures to be sited on Council-owned land shall not be taken by officers or by executive action but shall be reported to the full Cabinet, together with information as to the powers under which the land in question is held.

2. The Borough Secretary and Solicitor to the Council comments as follows:

Members are advised that a ban is likely to be declared unlawful if challenged in Court, and the matter is best dealt with by considering each request on its own merits. The problem with a qualified ban (ie the insertion of the word "normally") is that, if challenged, there will be a heavy burden on the Council to show that it has acted properly, and therefore the risk is increased that a refusal will be overturned and the operator be able to achieve his objective.

FOR DECISION

Contact: Committee Section, Room 143, Ex 2881

Background Documents: Draft Minutes of Planning Committee - 9.3.00

(3) to agree in principle to adopt the London Local Authorities Act 1990 to provide the legislative framework to achieve this objective;

(4) to receive a further report on market location and street designations to enable formal adoption of the London Local Authorities Act 1990.

159. **Telecommunications Masts:** The Cabinet had previously referred back to the Planning Committee a motion, requesting both support for increasing planning powers in respect of telecommunication masts and also adopting a policy for dealing with applications for telecommunication developments on Council-owned land. The Cabinet now received a further reference on this matter from the Planning Committee of 9 March 2000, together with advice from the Borough Secretary and Solicitor to the Council.

In discussing a Conservative Group amendment as outlined in clause 3 of the resolution below (as amended at the meeting), the Development and Planning Portfolio Holder confirmed that approval to telecommunications development on Council-owned land would not normally be given by executive action.

RESOLVED: That (1) the views of the Planning Committee be noted;

(2) representations be made to the Secretary of State for the Environment, Transport and the Regions, requesting that

(a) all telecommunications development should be subject to full planning control so that planning applications for such development would be considered by reference to the normal planning criteria applicable to all other departments; and

(b) planning authorities should be able, when considering applications for telecommunications development, to give proper weight to public concern about the health and safety implications of such equipment;

(3) the Members of Parliament for Harrow West and Harrow East, the Local Government Association and the Association of Local Government be requested to support those representations through any Parliamentary or other channels which are open to them;

(4) new telecommunication masts, aerials or dishes emitting radiation, shall not be permitted on land owned or controlled by the Council in any capacity unless expressly approved by the Cabinet, such approval not normally to be given by executive action. Any proposal to permit such development shall be accompanied by full information as to the powers under which the land in question is held or controlled.

160. **Managed Work Spaces:** In accordance with the Council's Regeneration Strategy, Council officers, in consultation with regeneration partners, had been looking for opportunities to establish managed workspace opportunities, to support a growth in new businesses. The Cabinet now received a report of the Head of Property and Development which advised of the opportunity to pilot a small scheme of this nature at the Central Depot in Wealdstone.

The Cabinet considered, in conjunction with this item, a paper from Unison raising concerns at the possible impact of this proposal on Council staff and other tenants at the Depot site, together with a motion from the Conservative Group seeking further investigation into the proposal.