

	<p style="text-align: center;">London Borough of Hammersmith & Fulham</p> <p style="text-align: center;">Cabinet</p> <p style="text-align: center;">6 JULY 2015</p>
<p>HAMMERSMITH PARK SPORTS FACILITY</p>	
<p>Report of the Cabinet Member for Economic Development and Regeneration : Councillor Andrew Jones</p>	
<p>Open Report</p> <p>A separate report on the exempt Cabinet agenda provides exempt information in connection with this report.</p>	
<p>Classification - For Decision</p> <p>Key Decision: Yes</p>	
<p>Wards Affected: Shepherd's Bush, Wormholt, and White City</p>	
<p>Accountable Executive Director: Lyn Carpenter, Executive Director for Environment, Leisure and Resident's Services</p>	
<p>Report Author: Ullash Karia, Acting Director and Head of Leisure & Parks</p>	<p>Contact Details: Tel: 020 7938 8171 ullash.karia@rbkc.gov.uk</p>

1. EXECUTIVE SUMMARY

- 1.1. This report seeks Cabinet approval to vary the contract awarded to PlayFootball in July 2011 for the development and management of sports facilities in Hammersmith Park. The contract variations, if approved, will;
- reduce the current contract period from a 35 year lease to a management contract of 7 years, with an option to continue for a further 7 years subject to a review of contract performance;
 - reflect local community and park users concerns and representations as determined by the new consultation process;

- ensure that free usage rights of local residents are provided;
- offer free use for schools in the White City area during school hours;
- provide a varied offer of sports provision including football, tennis, Multi Use Games Area (MUGA) and outdoor gym.

1.2 A decision to vary the current contract with PlayFootball is needed in order to secure local community support based on a new consultation process, commence the refurbishment, and bring the sports facilities in this important local park back into public use

1.3 PlayFootball have indicated their agreement to the contract variation described in this report, which have been considered with regard to the Public Contracts Regulations 2006 (as amended).

1.4 The remainder of this report:

- briefly describes the original procurement and previous Cabinet decision;
- summarises community concerns expressed post-contract award regarding Hammersmith Park's future;
- reports the outcome of new community consultation;
- describes the contract variations proposed; and
- identifies the implications of not delivering the scheme and the potential impact on the council.

2. RECOMMENDATIONS

2.1 That approval be given to the following variations to the Council's contract with PlayFootball for the development and provision of sports and leisure management services at Hammersmith Park namely:

- The new sports and associated facilities at Hammersmith Park (namely ten 5-a-side football pitches, a clubhouse with pavilion and park café, a small car park, two refurbished tennis courts and MUGA).
- That the 35-year lease and concession awarded to PlayFootball on 18th July 2011, signed and executed noon 28th September 2012, be amended to a management agreement for a period of 7 years, with an option to extend for a further 7 years subject to a review that demonstrates that PlayFootball have delivered the contract terms.
- That the revised contract term commences 31st July 2015.
- Cabinet commits the council to consulting with the residents if there is to be any change to the arrangements proposed in this report in the future
- The Final Negotiated Terms of opening hours and financial business plan will be delegated to the Leader of the Council, the Cabinet Member for Regeneration and Arts in consultation with the Executive Director for ELRS.

3. REASONS FOR DECISION

- 3.1 The Administration's Manifesto commitment it clearly states that "*The council should be a trusted custodian of our parks. Instead Hammersmith Park was signed to private developers, who now charge £60 for football where it used to be free*". The Administration expressed significant concerns about the previous Administration's procurement approach which resulted in Hammersmith Park being given away and privatised. The principles upon which the negotiations with PlayFootball have been undertaken are:
- Regain council control of Hammersmith Park;
 - Provide a comprehensive sports facility for the community;
 - And respond positively to community concerns about operational matters, opening hours etc.
- 3.2 There is therefore a clear commitment, to deliver a sports facility that is acceptable to the local community and find a solution at minimal cost to the Council.
- 3.3 Award of the contract in July 2011 was followed by local community and park users' opposition to the proposed scheme, and two separate Judicial Reviews (JRs). As a consequence of the uncertainty and delays caused by the JR's, the much-needed refurbishment of the sports facilities at Hammersmith Park has not been carried out.
- 3.4 PlayFootball have the right to build and operate their current football scheme. They have said that if the current negotiations with the council fail, then they will consider their option to go ahead with their existing larger scheme. This will be subject to the outcome of the stayed JR. PlayFootball have all the relevant legal permissions to proceed with the larger scheme.
- 3.5 The reason for the requirement to consult on any changes is to ensure that the community have a say in any future changes to the scheme

4. INTRODUCTION AND BACKGROUND

- 4.1 The Council granted planning permission to redevelop the existing leisure facilities at this site in March 2014. The Council and PlayFootball entered into an agreement under section 106 of the Town and Country Planning Act 1990.
- 4.2 By an agreement for lease and an agreement for the provision of Leisure Management Services both dated 28 September 2012 and made between the Council (1) and PlayFootball (2) (as subsequently varied) it was agreed that PlayFootball would construct the new facility and on completion of the construction of the facilities, the Council would grant to PlayFootball a lease of the new facility for a term of 35 years.
- 4.3 Playfootball have not commenced works at present as Judicial Review proceedings have been issued in connection with the planning permission; the proceedings are currently stayed until 10 July 2015 to enable parties to work together and reach a satisfactory conclusion.

THE PARK AND ITS SPORTS FACILITIES

- 4.4 The original all-weather pitch (AWP) at Hammersmith Park had been an established football venue for over thirty years. The park was laid out with tennis courts and a playground in November 1954, the remainder opening in September the following year. The football pitch was built in 1970's and was operated by the council on a pay as you go basis, as were the tennis courts.
- 4.5 In the 1990's a review of the condition of the all-weather sports pitch facility identified deterioration in its surface, and it was felt that it was no longer appropriate to levy the public a charge for its use. Whilst the council put together a plan to restore this facility, charging was suspended.
- 4.6 The Council advertised a contract in November 2010 seeking expressions of interest from organisations on contracting with the Council to design and build new all-weather sports pitches in return for the Council granting the successful bidder a concession to manage the new facility. Whilst the procurement to find a suitable partner did not require a fully regulated competition under the Public Contracts Regulations 2006 (as amended) - the estimated capital sum involved was below the de-minimis level of £4.3m for works, and service concessions were not subject to the Regulations – it was carried out in a transparent, robust and fair manner in accordance with the Council's own Contract Standing Orders.
- 4.7 Following return of twelve applications, three short-listed organisations were invited to participate in dialogue; one of the three later withdrew from the competition. "Best and Final Offers" (BAFOs) were submitted by the two remaining companies. The BAFO submitted by Sports & Leisure Group Ltd. (trading as PlayFootball) scored the highest points on both quality and on price and, on 18th July 2011, Cabinet agreed to award PlayFootball the contract.

4.8 The key features of PlayFootball's winning bid were:-

- £2.1m worth of capital investment to build the new floodlight facilities, which would include:
- nine 5-a-side football pitches (including one free-use pitch)
- three 7-a-side football pitches (including one free-use pitch)
- a pavilion;
- a further one-off capital payment of £75k to the Council to further develop facilities;
- an annual rent payment of £70k, reviewed at 5-yearly intervals in line with RPI;
- discounted use of the facilities for school use;-
- in return for a 35-year lease and services concession agreement to manage the new facilities.

4.9 The agreement for the lease was signed and executed on 28th September 2012. The lease and services contract are conditional on the facilities being built. PlayFootball applied for planning approval to construct the agreed scheme, and this was granted in September 2013.

COMMUNITY AND PARK USER CONCERNS

4.10 However, after award of the contract and during the statutory consultation on the planning application, local residents and community organisations expressed a number of concerns. These included a general perception that the Council had "sold" the park to PlayFootball and particular concerns:

- at the granting of a 35-year lease;
- at reduced free-use access to the sports facilities for local people and schools;
- that the tennis courts would continue to be neglected and not re-provided;
- that the new development would impact adversely on the park's attractiveness and bio-diversity, and have other adverse environmental impacts such as increased traffic, air, noise, and light pollution;
- that the licensed bar would lead to increased anti-social behaviour and was not necessary;
- that the noise from football and activities in the pavilion would adversely impact on local residents.

4.11 The Council's approval of the planning application in November 2013 became subject to a Judicial Review, brought by local residents. This led to PlayFootball submitting a second planning application which was granted approval in March 2014. This scheme is now subject to a further Judicial Review although to date, all 3 interested parties have agreed to a stay in the proceedings. PlayFootball have indicated that the current stay in the JR proceedings, in place until 10 July 2015, will be their last agreement to any further deferrals of the JR process.

5. PROPOSAL AND ISSUES

5.1. Building work on the site has not started and the site is surrounded by hoardings with security in place 24/7.

5.2. Since May 2014, negotiations have been ongoing with PlayFootball to establish how the current contract between the two parties could be varied in a way that is mutually acceptable, addresses the concerns of the local community and park users, and does not breach public procurement rules. Following community consultation, these discussions have reached the point where the following variations can be recommended for Cabinet approval. Specifically, that:

- the scheme be reduced to ten 5-a-side football pitches (with no 7-a-side pitches);
- a clubhouse that will include changing facilities and a cafe/bar;
- The café/licensed bar will only be for use associated with sports activities and not for parties;
- three pitches are allocated for dedicated/exclusive use by residents of the White City estate;
- the proposed car park is 19 spaces which will be for disabled visitors, school coaches, mini buses, cycles, a few 'fixed visit time' spaces of up to 30 minutes and limited staff parking. There will be no specific allocation of parking for users of the pitches;
- PlayFootball will fund the building of the new facilities with a gained donation from the neighbouring Stanhope development;
- the lease will no longer be granted and the concession contract is reduced from 35-years to 7 years with a review based on contract performance to negotiate the further extension of 7 years;
- a Community Advisory Panel will be set up to advise and assist on decisions of community access to the 3 designated pitches provided free of charge for the local community;
- any ground covered by the previous scheme which is not part of the reduced scheme will be refurbished to be fit for purpose. This includes the upgrading of the tennis and basketball courts, upgrade of the children's play area, and the introduction of a new outdoor gym, estimated to cost £410k in total. Stanhope have indicated that they will contribute £250k towards the cost of these works and it is expected that the £160k balance can be funded from further donations from Stanhope (being negotiated) or from existing unallocated section 106 monies (being explored);

6. ANALYSIS OF OPTION

Analysis of options is in the exempt part of this Cabinet Report.

7. CONSULTATION

- 7.1 A new round of public consultation has just concluded on the proposed variations. This included an opening and closing meeting (14th May & 3rd June) and two drop-in session meetings (19th & 21st May) at the White City Community Centre.
- 7.2 The consultation has also involved over forty (40) groups across the borough including community representatives throughout the process, a number of meetings have been held involving both the Council and the PlayFootball

7.3 In addition there were two distributions of leaflets to the housing area surrounding the park totalling 4,000 households, use of council social media with a reach in excess of 40,000 people, and information dropped to key community venues including schools, faith buildings, library and health centre. All of these exercises sought residents and park user's views on:

- the hours of operation for the sports pitches, the pavilion, floodlights and café;
- community access to and use of these;
- car parking;
- noise, lighting and traffic impacts;
- wider community benefits.

7.4 The full Hammersmith Park consultation summary report (produced 8th June) is attached with further detail (appendix 1). Some of the key issues raised include;

- Would you like to see other sports played at Hammersmith Park as well as football: 85% Yes, 15% No
- What facilities would you like to see: 79% tennis, 67% toilet, 65% café, 51% MUGA, 47% football, 43% outdoor gym, 16% other
- Is floodlight operation until 22.15pm (Mon-Sat) and 21.15 Sunday acceptable: 59% Yes, 41% No
- Is floodlight operation until 21.15 on all days acceptable: 69% Yes, 31% No
- The car park in the development is approved. Do you agree with the following: 70% no private parking, 69% secure cycle area, 54% disabled parking, 39% turning area for school buses, 21% staff parking
- Are you happy with the pavilion bar opening times, 23.00 (Mon-Sat) and 22.00 on Sunday: 27% Yes, 73% No
- Would you prefer pavilion bar amendment to 22.30 (Mon-Fri) and 21.00 on the weekend: 70% Yes, 30% No
- Would you support the refurbishment of tennis courts and MUGA: 94% Yes, 6% No
- Should provision for any other sports be free for all, part free and part book and pay, all book and pay in advance: 51% free to all, 43% part free and part book, 7% all book and pay in advance

PlayFootball have agreed in principle to manage the MUGA and tennis courts on behalf of the council. This would reduce costs and provide an enhanced offer for residents as they would be able to use the associated changing facilities and pavilion.

In future there will be further consultation in the event that any changes to the scheme described in this report are proposed.

8. IMPLICATIONS OF NOT DELIVERING THE SCHEME

- 8.1 One of the options considered is to 'do nothing' which has been debated at the recent consultation meetings. However, it should be recognised that PlayFootball do have all the legal consents (including a licence to operation the larger scheme for 35 years) they require, subject to the outcome of the JR, to build the original scheme.
- 8.2 Should the council not reach an agreed position with PlayFootball, the latter may decide to progress the development of the larger scheme, subject to the outcome of the JR, for which they have all legal consents. This scheme is not supported by the community and the council could be seen as having not acted to renegotiate a smaller, revised and more acceptable proposal on behalf of the local community.
- 8.3 Other potential sites in the borough were considered for this scheme but none were deemed to be suitable by either PlayFootball or the council.
- 8.4 PlayFootball have stated that they will not consider a "buy out" of their contract and the council currently have no legal way to challenge this position.
- 8.5 The recent community consultation demonstrates that although not all the community concerns will be fully addressed in the revised scheme, the majority of points raised as being of concern to local residents have been incorporated in the new proposal. There has been a significant shift in acceptance of the proposed alternative scheme by the community.
- 8.6 There is a point beyond which PlayFootball will withdraw from the current renegotiations if they perceive the commercial advantages of the new offer are not viable for them as a business. The consequence of this action is detailed in paras 8.1 to 8.5 above.

9. TIMESCALES

- 9.1 The stay of proceedings for the current JR is due to expire on 10 July 2015. PlayFootball have stated that they will not be willing to agree any further stay on the JR and are happy for it to proceed through the judicial system to a decision.
- 9.2 The council decision on whether to proceed with the revised scheme which has been subject to extensive community consultation and input needs to be taken by 10 July 2015.
- 9.3 If the council agrees to the recommendations in this report, the redevelopment of the site will commence in August for a period of approximately 19 weeks. It is estimated that the new sports facility will be open in November 2015.

10. EQUALITY IMPLICATIONS

- 10.1 A completed Equality Impact Assessment was provided as part of the original Cabinet Report and highlighted the deficiency of this type of facility in this part of the Borough.

11. LEGAL IMPLICATIONS

More Analysis of legal options are in the exempt part of this Cabinet Report.

Property and planning law implications

The Council are now exploring options for delivery of the scheme which would better serve the community and the parties have agreed to vary the arrangements that will be set out in these Heads of Terms, subject to contract.

- 11.5 A new Agreement between the Council and PlayFootball pursuant to which PlayFootball will agree to construct the new facilities.

- A new services agreement between the Council and PlayFootball which will be in substantially the same terms as the existing services agreement.
- An amendment to the existing section 106 agreement between the Council and PlayFootball.
- Any amendment to the existing Section 106 agreement under Section 106A of the Town and Country Planning Act 1990 or the planning permission under Section 73 of Town and Country Planning Act 1990 will require consideration by the Local Planning Authority following receipt of full details of the new proposal.
- A building contract between PlayFootball and its chosen contractor.
- A warranty/third party rights from the contractor in favour of the Council.
- The appointment of an employer's agent by PlayFootball
- A warranty/third party rights from the contractor in favour of the Council.
- Although it is proposed to grant a management agreement instead of a lease there will need to be an ancillary occupation agreement to exclude any like hood of security of tenure under the 1954 Landlord and Tenant Act being given

General public law implications

- 11.6 There is currently a judicial review application in Court, which has been stayed with the consent of all parties. A further consent order will be required withdrawing the judicial review application.

- 11.7 If the Claimant decides to withdraw her claim for judicial review, the Claimant, the Council and the Defendant can agree to enter into a consent order agreeing that the application is withdrawn. A decision will need to be made regarding the payment of costs incurred by all parties
- 11.8 Implications verified/completed by: (Tasnim Shawkat Director of Law, Shared Legal Services, telephone 020 8753 2700)

12. PLANNING IMPLICATIONS

- 12.1. The planning implications will be dependent on the scale and nature of the new scheme. Any necessary amendments to, or need for additional planning permissions will be addressed once the nature of the revised scheme for provision of facilities is agreed. In any case, the existing S106 agreement and conditions attached to the existing planning permission would need to be varied to ensure that there is adherence to the terms of the new scheme. PlayFootball will need to work with the Planning Department to determine what changes need to be made to the existing planning permission, once the new proposals have been decided.

13. FINANCIAL AND RESOURCES IMPLICATIONS

Analysis of the financial options is in the exempt part of this Cabinet Report.

- 13.1. Implications verified/completed by: Mark Jones, Director for Finance (ELRS and TTS), telephone: 0208 753 6700.

14. RISK MANAGEMENT

- 14.1. The department actively manage risk; risks are identified and reviewed quarterly by the senior leadership. Market testing is a corporately identified risk, risk number 4 on the Shared Services Risk Register. Legal risks are also noted, specifically the Judicial Review referred to in 11.6., risk number 9 compliance with laws and regulations.
- 14.2. Implications completed by: Michael Sloniowski, Shared Services Risk Manager telephone 020 8753 2587

15. DRAFT PROCUREMENT AND IT STRATEGY IMPLICATIONS

Analysis of procurement options are in main report on the exempt part of this Cabinet Report.

- 15.9 (Draft) Implications completed by John Francis: Principal Procurement Officer, H&F Procurement, FCS 020-8753-2582. (dated 12th June 2015)

LOCAL GOVERNMENT ACT 2000
LIST OF BACKGROUND PAPERS USED IN PREPARING THIS REPORT

No.	Description of Background Papers	Name/Ext of holder of file/copy	Department/ Location
1.	None		