

CABINET

19 June 2018

Title: Parsloes Park 'Parklife' Football Hub	
Report of the Cabinet Member for Community Engagement and Leadership	
Open Report with Exempt Appendix 2 (relevant legislation: paragraph 3 of Part I of Schedule 12A of the Local Government Act 1972 as amended)	For Decision
Wards Affected: Parsloes, Mayesbrook and Alibon	Key Decision: Yes
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Accountable Director: Paul Hogan, Commissioning Director for Culture and Recreation	
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Summary <p>Parsloes Park is a critically important part of the Borough's urban infrastructure due to its size, location and catchment area and has regional significance for its football pitch provision; however, the quality of the grass pitches is poor, and the associated changing facilities are life expired.</p> <p>The Council has been working for the past two years with the Football Foundation, Sport England and the Essex County Football Association to develop a new football hub in the park as part of the Parklife programme, which is a national scheme that provides capital investment at sites of strategic importance.</p> <p>The total construction cost of the new facilities is estimated to be c£6 million and it is expected that the major funder for the scheme will be The Football Foundation.</p> <p>It is a condition of funding from The Football Foundation that the new facilities are leased to a charitable trust that has been specifically created for this purpose, that a specific framework is used for the procurement of the proposed design and build contract for the new facilities and that a leisure operator is procured to manage the facilities on a day to day basis.</p> <p>This report provides background information about the scheme and seeks approval for the proposed leasing and procurement arrangements for the football hub and authorisation to implement the scheme if the necessary funding and associated arrangements can be finalised.</p>	

Recommendation(s)

The Cabinet is recommended to:

- (i) Approve the creation of a football hub of regional significance to replace and greatly enhance the life-expired sports facilities in Parsloes Park, as set out in the report and the site plan at Appendix 1 to the report;
- (ii) Note that the delivery of the c£6 million scheme to the proposed specification shall be dependent on a significant level of external capital funding that has yet to be confirmed, although decisions are pending;
- (iii) Note that there shall be no additional revenue cost to the Council from the operation of the new facilities;
- (iv) Authorise the Director of Law and Governance, or an authorised delegate on her behalf, to enter into a 30-year lease, on a full repairing and insuring basis at a peppercorn rent, for the new Parsloes Park football hub facilities with the London Football Trust, subject to satisfactory negotiation of the lease requirements set out in the proposed funding agreement with the Football Foundation;
- (v) Approve the procurement of a design and build contract for new sports facilities at Parsloes Park (to be funded as part of the Parklife programme) utilising the existing 3G AGP Framework and the Modular Supplier Framework for Changing Rooms used by The Football Foundation and its funding partners, in accordance with the strategy set out in the report;
- (vi) Delegate authority to the Commissioning Director of Culture and Recreation, in consultation with Cabinet Members for Community Engagement and Leadership and Finance, Performance and Core Services, the Chief Operating Officer and the Director of Law and Governance, to conduct the procurement and enter into the contract and all other necessary or ancillary agreements with the successful bidder(s) in accordance with the strategy set out in the report; and
- (vii) Note the intention of the London Football Trust to undertake a single stage tender process to procure the services of a leisure operator to manage the new sports facilities at Parsloes Park via a Service Concession Contract.

Reasons

To assist the Council in achieving its corporate priorities in relation to:

Encouraging civic pride

- *Promoting a welcoming, safe, and resilient community:* Strengthen partnership arrangements for the borough; Support the development of the community and voluntary sector.
- *Promote and protect our green and public open spaces:* Adoption of a masterplan for Parsloes Park

Growing together

- *Support investment in housing, leisure, infrastructure, the creative industries and public spaces to enhance our environment.*

1.0 Introduction and Background

- 1.1 Parsloes Park is a critically important part of the Borough's urban infrastructure due to its size, location and catchment area and has regional significance for its football pitch provision; however, the quality of the grass pitches is poor, and the associated changing facilities are life expired.
- 1.2 The importance of the park is recognised in the Borough Manifesto:
 - Theme – Environment ...we have many parks and spaces such as Barking and Parsloes Park, and Abbey Green, and our river fronts contain some of the most stunning environment in London. Maintaining and enhancing these community assets, as well as making full use of them for activities and events, is a key priority essential to improving our health and wellbeing.
 - Theme – health and social care...we will enable residents to lead healthy lifestyles, with ample access to exercise facilities and healthy food options.
- 1.3 Improvements to the quality of formal and informal sport and recreational facilities in Parsloes Park is a cornerstone of both the Borough Playing Pitch and Parks and Open Spaces strategies, which were adopted in 2016 and 2017 respectively.
- 1.4 The master plan for Parsloes Park (adopted as part of the Parks and Open Spaces Strategy) includes the aspiration to develop with the community and local partners a modern, sustainable, functional, well-used community sports facility that is managed in partnership with the community, for the community.

2.0 Proposals and Issues

Parklife

- 2.1 The Football Association, Premier League and Sport England through their delivery partner, The Football Foundation, have launched a national funding scheme called Parklife, which provides funding for capital investment at sites of strategic importance.
- 2.2 The Council has been working for the past two years with the Football Foundation, Sport England and the Essex County Football Association to develop new facilities in the park as part of the Parklife programme.
- 2.3 The development of the proposed new facilities has been informed by extensive consultation with local football clubs and leagues, residents and Members and through a rigorous demand and needs analysis and robust business planning process. In brief the proposed facility mix will comprise:
 - New changing facilities incorporating 8 team changing rooms (suitable for use by children and adult teams) and changing rooms for officials;
 - 55 station gym, dance studio and gym change;
 - Bar and café and social space
 - Public toilets and disabled toilets (to changing places standard)

- 3 artificial grass pitches with floodlighting that can be used for 11-a-side football matches and compartmentalised to accommodate multiple mini, junior and five-a-side games being played simultaneously.

- 2.4 If funding allows, one of the pitches will be to stadia standard (National Ground Grading Category F criteria), which allows for football to be played up to step 5 level.
- 2.5 Currently within the Borough only Barking F.C. at Mayesbrook Park and Dagenham and Redbridge F.C. have a facility to accommodate football at this level, with Mayesbrook Park fully booked and the Dagenham and Redbridge not feasible for a ground share at this level.
- 2.6 The stadia will allow for clubs within the Borough such as May and Baker F.C. to gain promotion within the football pyramid, whilst also engaging the community further by giving them a football offer locally that they can spectate.
- 2.7 This facility will not just be used for the step level teams on a Saturday afternoon and a Tuesday evening, but will be available for community hire throughout the week and we will a great venue for schools' finals, Essex FA representative fixtures and finals, as well as local leagues cup final days.
- 2.8 The latest version of the site plan and internal facility layout plan is attached at Appendix 1.

Decision making process and timescale

- 2.9 It is proposed to secure authority for the implementation of the scheme at this Cabinet meeting (19 June 2018).
- 2.10 A planning application is now being developed and it is expected it will be submitted in time to allow planning approval to be given by the Council's Planning Committee in September 2018 or as soon as possible thereafter.
- 2.11 It is planned that operator and construction procurement will be finalised in the final quarter of 2018.
- 2.12 Subject to Cabinet approval, planning permission and the necessary funding for the scheme is confirmed, it is anticipated that the new facilities will be operational in time for the start of the 2019/20 football season in September 2019.
- 2.13 As Parsloes Park is classed as Metropolitan Open Land it will be necessary to secure approval for the scheme from both the Council and the GLA. Experience with the Youth Zone development suggests that the involvement of the GLA could delay the implementation of the scheme; however, steps are being taken to try to minimise the likelihood of this happening.

Governance

- 2.14 It is a condition of funding from the Football Foundation that a pan-London charitable trust (The London Football Trust) is established to manage the new facilities in Parsloes Park via a long-term lease (30 years) from the Council with full

repairing and insuring responsibilities. A further condition is that the lease will be at a peppercorn, which is contrary to current custom and practice for Council leases, which are let at a commercial rent but with the potential for a rent subsidy to be provided.

- 2.15 There are currently four Parklife schemes in development in London, although the Barking and Dagenham scheme is by far the most advanced and it is expected it will be the first to be implemented. Ultimately there may be as many as eleven such projects across London. The Football Trust will appoint an established leisure operator to run the facilities on a day to day basis. This will be undertaken via a bespoke operator procurement framework probably covering all eleven potential sites.
- 2.16 A soft market testing exercise was undertaken in December 2017 and showed that there is substantial interest from the established leisure operator market for the proposal.

Funding - capital

- 2.17 The build cost for the new facilities is estimated to be c£6 million; however, this will only be confirmed once the facility mix and design scheme has been finalised and the scheme has been tendered.
- 2.18 A funding package to meet the anticipated costs for the scheme has been identified (but not all secured) and is set out in the table below.

Description	£'000s	Notes
LBBB capital funding	400	Committed
London Marathon Charitable Trust	500	Stage one bid successful. Stage 2 final bid decision expected in August 2018
Football Foundation	3,600	Earmarked. Formal funding application to be submitted in July 2018. Decision expected when planning permission is granted (estimated to be September 2018).
GLA	500	Earmarked by Football Foundation. Will be confirmed once planning permission is granted
LBBB Community Infrastructure Levy funding	600	Applied for. Decision by Cabinet on 19 June 2018
LBBB s106 funding	350	Linked to the Beam Park housing development and specifically earmarked for the proposed facilities at Parsloes Park. Expected to be confirmed in summer 2018.
TOTAL	5,950	

- 2.19 By the time the planning application is submitted c£225,000 expenditure will have been incurred on the development stage of the project. These costs are being shared across the partners but will be abortive if the scheme is not implemented.

Council capital funding

- 2.20 The Council has committed £400,000 in capital funding to the project.

London Marathon Charitable Trust funding

- 2.21 A funding bid of £500,000 has been submitted to the London Marathon Charitable Trust (LMCT). This is significantly higher than the normal maximum grant given by the LMCT, which is £150,000. However, due to the regional significance of the proposal and because grants from the LMCT to the borough have historically been disproportionately low, the funding bid was passed at stage one of the LMCT grant application process and a stage two final bid has now been submitted. It is expected that a final decision will be made during August 2018.

Football Foundation funding

- 2.22 If it approves the scheme, the Football Foundation will match other funding secured on a ratio of 60:40, that is £60 for every £40 secured from other sources. The Council has successfully progressed through two of the three stages of the Parklife funding process and a capital funding bid of c£3.6 million is targeted for submission to the Football Foundation in July 2018. It is expected that a decision will be made by the Football Foundation in September 2018, once planning permission has been granted and the construction works have been tendered.
- 2.23 The Football Foundation is also managing a grant allocation for the Parklife programme from the GLA. They have earmarked £500,000 from this fund to the Parsloes Park project and this will be confirmed at the same time as the anticipated funding from the Football Foundation.

Community Infrastructure Levy funding

- 2.24 A bid has been submitted for an allocation of £600,000 from Community Infrastructure Levy receipts held by the Council. A decision on how these funds are to be allocated will be decided at the same meeting of the Cabinet at which this report will be considered.

S106 funding

- 2.25 £350,000 towards the scheme has been earmarked from the Section 106 funding agreement relating to the Beam Park housing development. Following the recent decision by Havering Council not to approve the planning application for the housing development, it has been called in by the Mayor of London and it is now anticipated that it will be approved (and with it the S106 contribution) in July or August 2018.
- 2.26 Currently the release of the s106 funds will only be actioned when certain trigger points in the delivery of the housing development have been reached, which means that as things now stand the new facilities in Parsloes Park will be long built before the s106 funds are released.
- 2.27 Officers at Sport England, a Parklife partner and a statutory consultee for housing development schemes, is in negotiation with the Beam Park housing developer to

try to secure the early release of the s106 funding to coincide with the construction phase of the scheme. If this is not possible it will be necessary for the Council to bridge the funding gap on the scheme on a temporary basis.

- 2.28 If either the bids for CIL funding or to the London Marathon Charitable Trust are unsuccessful, the scheme is not viable as it currently stands. If this occurs, it may be possible, although unlikely, that there are other potential sources of funding that could be secured, such as prudential borrowing, and/or the scope of the scheme could be reduced to lower costs to make it affordable but still viable in revenue terms.
- 2.29 However, if both bids are unsuccessful then the scheme is undeliverable. Similarly, the funding anticipated from the Football Foundation is just as big a deal breaker. If this bid is unsuccessful it will not be feasible to implement any kind of improvement scheme in the park.

Funding - revenue

- 2.30 A robust demand analysis and extensive consultation with local football clubs and leagues has informed the development of the facility mix and business plan for the new facilities. The Business Plan financial summary is attached at Appendix 2, which is in the exempt section of the agenda as it contains commercially confidential information (relevant legislation - paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 (as amended)) and the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
- 2.31 The business plan identifies a licence fee payment of c£235,000 per year to the London Football Trust from the income generated by the new facilities. This payment will be ringfenced to be spent in Barking and Dagenham to support the achievement of the objects set out in the Trust's articles of association, which are:
- to promote community participation in healthy recreation by providing facilities for the playing of association football and other sports capable of improving health (facilities means land, buildings, equipment and organising sporting activities);
 - to provide and assist in providing facilities for sport, recreation or other leisure time occupation of such persons who have need for such facilities by reason of their youth, age, infirmity or disability, financial hardship, poverty or social and economic circumstances or for the public at large in the interests of social welfare and with the object of improving their conditions of life.
 - to advance public education, physical education, with a focus on children and young people with a view to helping children and young people develop and grow to maturity as members of society by such means as the Trustees think fit.
- 2.32 It is proposed that decisions on how this funding will be spent will be made by a local steering group comprising the Council and relevant stakeholders in the project. An early priority will be investment in the quality and type of playing pitches and their ongoing maintenance initially at Parsloes Park and then across the Borough.

- 2.33 Depending on the final tender price for the scheme and the level of external funding that is secured, it may be the case that the licence payment to the London Football Trust will have to be reduced to fund an element of prudential borrowing to enable the required facility mix to be delivered. Also, there may have to be changes to the proposed facility mix to satisfy planning related conditions, which could increase the cost of the proposed facilities.
- 2.34 As a result the business plan for the scheme should be considered provisional at this time as the capital cost for the scheme needs to be finalised and a leisure operator appointed to manage the facilities needs to be appointed. No capital grant will be released until the London Football Trust is in receipt of a positive operator return.
- 2.35 The scheme will remove the Council's current liability for life expired changing facilities (£400,000) and ongoing repairs and maintenance and general running costs. More importantly the quality of sports facilities in the park will be transformed and with it the potential to reduce the Council's existing grounds maintenance costs because fewer grass pitches will be required to be maintained.
- 2.36 The Council will no longer be responsible for maintaining or operating the existing pavilion in the park. It is estimated that this will save c£25,000 per annum in utility costs, NNDR, cleaning and staffing. However, this will need to be partially offset by the loss of income from the reduction in grass pitches in the park, which is estimated to be £6,000 per annum.

3. Procurement

- 3.1 As required under the Council's Constitution, a distinct procurement strategy report must be approved by Cabinet for the construction of the new facilities.
- 3.2 A Cabinet decision is not required in relation to the procurement of the leisure operator to manage the facilities as this will be a matter solely for The London Football Trust. However, for the sake of completeness Members should note that it is proposed that the London Football Trust intends to undertake a single stage tender process to procure the services of a leisure operator to manage the new sports facilities via a Service Concession Contract.

State aid

- 3.3 The Parklife programme has been carefully structured in such a way to avoid having to notify the European Commission regarding state aid and instead operating within the General Block Exemption Regulation (GBER) for sport and multifunctional recreational infrastructure.
- 3.4 State aid is a complex area of law and in its simplest terms arises when a public body provides funds (state aid) to an organisation. The issue arises when this is done in a manner which has the potential to distort or threatens to distort competition by favouring one organisation over another. The risk of state aid being an issue is immunised in a number of ways, the relevant one here being by awarding contracts for the construction and operation of Parklife facilities following an open, transparent and non-discriminatory tender process.

Procurement Strategy

3.5 Outline specification of the works, goods or services being procured

As set out at paragraph 2.3 above.

3.6 Estimated Contract Value, including the value of any uplift or extension period

c£6 million (to be confirmed on completion of the tender process).

3.7 Duration of the contract, including any options for extension

Three years to September 2020.

It is anticipated that the scheme will be tendered in June 2018. The contract will be awarded in the final quarter of 2018 and the new facilities will open to the public in September 2019. However, given the complexities of the project and the requirement to seek planning approval from the GLA as well as the Council, it is prudent to extend the contract period by a further 12-month period.

3.8 Recommended procurement procedure and reasons for the recommendation

As a condition of funding, applicants to the Parklike programme must use the following procurement frameworks: the 3G AGP Framework and the Modular Supplier Framework for Changing Rooms used by The Football Foundation and its funding partners.

The frameworks both have five suppliers on each and the works would be awarded under a design and build contract. The framework management consultants (FMC) provide feasibility – inclusive of all necessary site-specific information, concept design and high-level cost estimates. The consultant's costs are wholly met by the Football Foundation.

They prepare Mini Tender Documentation for the Suppliers to price against providing competition for each project. The FMC will receive and analyse tender returns against agreed cost / quality criteria and prepare a tender report and recommendation. They carry out a Value Engineering exercise (if applicable) and draft Contract Documentation.

During the construction phase works are monitored through monthly progress meetings and independent key stage inspections. On satisfactory conclusion the FMC will issue Practical Completion and twelve months later carry out the end of defects inspection. The frameworks for both the construction works and for the FMC services are OJEU compliant and have been used across the country.

- ITT's are issued to all five suppliers who are on the Football Foundation Modular Supplier framework for the changing pavilion and to the AGP framework for the artificial grass pitches;
- Tenders are based on JCT Design & Build 2011 Form of Contract, with standard agreed Framework Alliance amendments for the changing pavilion, and for the

Artificial Grass Pitches on the NEC3 Engineering and Construction Short Form Contract April 2013 with Framework Amendments

- Tender period will be 8 weeks;
- All tenderers will be invited to attend a mid-tender interview to discuss/ resolve any queries that have arisen from the tender enquiry;
- When queries are received by the design team, they are collated by the project manager and responses are issued formally to all tenderers.

3.9 **Outcomes, savings and efficiencies expected as a consequence of awarding the proposed contract**

The scheme will remove the Council's current liability for life expired changing facilities (£400,000) and ongoing repairs and maintenance and general running costs. More importantly the quality of sports facilities in the park will be transformed and with it the potential to reduce the Council's existing grounds maintenance costs because fewer grass pitches will be required to be maintained.

The Council will no longer be responsible for maintaining or operating the existing pavilion in the park. It is estimated that this will save c£25,000 per annum in utility costs, NNDR, cleaning and staffing. However, this will need to be partially offset by the loss of income from the reduction in grass pitches in the park, which is estimated to be £6,000 per annum.

There will be a licence fee payment of c£235,000 per year to the Football Trust from the income generated by the new facilities. This payment will be ringfenced to be spent in Barking and Dagenham to support the achievement of the objects set out in the Trust's articles of association, which can be summarised as:

- to promote community participation in healthy recreation by providing facilities for the playing of association football and other sports capable of improving health
- to provide and assist in providing facilities for sport, recreation or other leisure time.
- to advance public education, in particular physical education, with a focus on children and young people.

3.10 **Criteria against which the tenderers are to be selected and contract is to be awarded**

The evaluation model for both the procurement of the changing pavilion (and associated works) and the Artificial Grass Pitches will be the same: 60% quality and 40% price.

The quality assessment for the changing pavilion and associated works will be based on the following criteria:

- Project method statement (15%) – bespoke specific method statement, referencing site specific issues, design, substructure, deliver and erection terminology, recognition of Sport England design compliance.

- Project team (15%) – logical, project specific organisational chart, CV of project manager with relevant experience.
- Proposed specification for the structure of the facility, key fixtures, fittings and systems (35%) – bespoke project specific specification that reflects desired life of facility, robust design for low maintenance, and specification that meets Employers Requirements.
- Management of health and safety (10%) – bespoke, project specific H&S statement highlighting risk assessment and management, site controls, CDM responsibilities and head office review/input.
- Quality Control methodology (15%) – bespoke statement noting off-site manufacture and onsite installation with proposal for minimal defects.
- Programme proposals (10%) – logical compliant project programme with key stages identified, or alternative programme highlighting why tender programme cannot be achieved.

For the Artificial Grass Pitches, the quality criteria will be project related:

- Design and installation and methodology approach
- Programme
- Project related experience
- Management structure and project related personnel experience
- Project maintenance plan
- Project related produce specification
- Project related laboratory test certificates
- Health and Safety policy and methodology

And linked to past project performance:

- Last project KPI score
- Average project KPI score
- Maintenance aftercare demonstrated on previous projects
- Innovation demonstrated by supplier to date

3.11 **How the procurement will address and implement the Council's Social Value policies**

Compliance with the Council's social value policies for the construction stage of the project will be confirmed as part of the planning application process.

The new facilities will make a significant contribution to the health and well-being of borough residents and help to address health inequalities. They will provide:

- a home base for local sports clubs
- quality coaching, playing and ancillary facilities and development opportunities for football and other community sports.
- quality facilities and development opportunities for the development of football for women, boys and girls

- Link with local schools, the elderly, faith groups and any other community groups that would benefit from the facilities
- indoor meeting and recreational facilities for local community groups
- and promote personal and educational development by establishing a programme to enable young people to develop skills in becoming coaches in their chosen fields.

Making the new facilities, in particular, the café, toilets and baby changing facilities available to all park users will also encourage more use of the park for informal recreation.

4. Options Appraisal

- 4.1 The delivery partner appointed by Sport England, the Football Association and the Premier League for the Parklife scheme is the Football Foundation. It is expected that 60% of the cost of the Parsloes Park scheme will be provided by the Football Foundation. Without this support the scheme is unaffordable.
- 4.2 It is a condition of funding from the Football Foundation that there is a prescribed approach in relation to the governance, lease, construction and operational arrangements for the scheme, which form the basis of the recommendations set out in this report.
- 4.3 The options available to the Cabinet are to approve the proposed governance, lease and procurement arrangements for the Parklife scheme in Parsloes Park or to reject them.
- 4.4 Not to approve these would mean that there is no realistic means of delivering the leadership's aspirations for Parsloes Park as set out in the Parks and Open Spaces Strategy and the Borough Playing Pitch Strategy.

5. Consultation

- 5.1 Sport England, the Football Foundation, Premier League, Essex County Football Association and the Football Association are working in partnership with the Council to deliver this scheme.
- 5.2 An officer from the Essex County Football Association has been seconded to the council for a period of at least two years to enable effective consultation with stakeholders, the development of a sustainable business plan for the scheme and a football development plan for the Borough. He has undertaken extensive face to face consultation meetings with representatives from numerous local football clubs, schools, and football leagues.
- 5.3 If they are to be successful in increasing participation, particularly in grass roots football but also physical activity more widely, it is critically important that the facilities are accessible and affordable to residents and local groups.
- 5.4 Led by the Essex County Football Association, a football forum has been established to give local football clubs and leagues a meaningful say about the

pricing policy, programme and facility mix for the scheme. The forum has unanimously agreed the pricing policy and wider business plan including the commitment to ensure that 40% of peak slots (6.00pm to 9.00pm, Monday to Thursday) are protected for local community use.

- 5.5 Key partner clubs and leagues will agree service level agreements year on year to allow them to book the appropriate number of pitch slots to develop their organisation in a way that makes sense to them.
- 5.6 Community groups have been consulted throughout the process and a close working relationship is established with West Ham United Foundation who will be the delivery arm for a number of community projects.
- 5.7 The gym will be an Inclusive Fitness Initiative Gym which means it is accessible for disabled people and the studio space is fully enclosed, which will enable partners such as the Muslimah Sports Association to utilise the facility.
- 5.8 During 2017, Council officers held consultation meetings with the public and Members to inform the development of the Parsloes Park masterplan and the wider Parks and Open Spaces Strategy.
- 5.9 Further public, Member and stakeholder consultation events were held in March 2018 on the specific proposals for this project.
- 5.10 Meetings have been held with planning officers in Be First about the proposals and a pre-planning application meeting is being scheduled with the GLA to try to minimise the timescale for the planning approval process.
- 5.11 Reports on the proposals have also been presented to and endorsed by the Assets and Capital Board (14 March 2018) and Procurement Board (21 May 2018).

6. Financial Implications

Implications completed by: Katherine Heffernan, Finance Group Manager

- 6.1 As set out in this report the total cost of the scheme is not yet confirmed but is expected to be in the region of £6m – this will however be subject to the final design requirements and the procurement process. Around 60% of this funding is earmarked from the Football Foundation and a further £1m is expected from the GLA and London Marathon; however the remaining £1.35m is to be found from LBBBD funds.
- 6.2 This includes £0.35m section 106 monies and £0.6m from the Community Infrastructure Levy. This funding has already been provisionally allocated and can be funded within in the total available monies although this will be subject to confirmation of Cabinet approval. The remaining £0.4m will be funded as part of the LBBBD capital programme. This is likely to mean it will be funded from borrowing with the council incurring interest costs and Minimum Revenue Provision. The revenue costs of this are estimated to be in the region of £0.027m (assuming a usable life of 30 years and interest rate of 3.5%.) The MTFs includes provision for the cost of the Capital Programme.

- 6.3 The proposals will produce a small net saving to the Council's Parks budget of £0.019m as costs will no longer be incurred to maintain the pavilion.
- 6.4 The report sets out that there is still some uncertainty about the final costs of the project and the business case for the new facility. It is important that financial and legal advice is sought once the outstanding questions are clarified.
- 6.5 If the scheme does not proceed for some reason, the expected costs of the development phase are expected to be in the region of £0.225m of which around £0.05m to £0.09m could fall to the Council. These would need to be met from revenue and so could be a pressure to the Parks budget.

7. Legal Implications

Implications completed by: Pamela Igbo, Contracts and Procurement Solicitor and Erol Islek, Senior Property Solicitor, Law & Governance

Procurement Issues

7.1 This report seeks approval to invite tenders for the construction of a new football changing pavilion and three artificial grass pitches in Parsloes Park utilising the Modular Supplier Framework Agreement for Changing Rooms and associated facilities and the 3G AGP framework agreement.

7.2 The Modular Supplier Framework Agreement

The parties to this agreement are the Lead Authorities comprising:

- The Football Foundation, the Football Association and Sport England;
- Modular Suppliers (Contracting organisations responsible for the design, manufacture and installation of modular buildings; and
- Framework Managing Consultants (the Consultants responsible for the design and project management of facilities and in particular acting in the role of Employer's Agent)

7.3 The Agreement has been set up in accordance with Regulations 33(2) to 33(6) of the Public Contract Regulations 2015 in that it is between one or more contracting authorities and one or more economic operators for the purpose of establishing the terms of proposed call off contracts and it is OJEU compliant.

7.4 Clause 33.1 of LBBD's Contract Rules permits officers to call off from Framework agreements, provided that the Council is specifically named, described or referred to in acceptable geographical terms and the scope of the Council's requirements are specified.

7.5 Clause 1.11 of the The Modular Supplier Framework lists Local Authorities in England and Wales as organisations which qualify to join the Modular Supplier Framework's Alliance and OJEU Notice (ref no: 2016/S 151 – 272171) states that local authorities are permitted to call off from this framework agreement therefore 33.1 of LBBD's contract rules are satisfied

7.6 The framework's economic operators are referred to as "Modular Suppliers" and "Consultants" (Framework Managing Consultants). In total 6 modular suppliers and 2 consultants have been appointed to the framework agreement and the procedure for the award of works and services is set out at schedule 4 of the agreement. There are principally two main methods of awarding works and services under the framework:

- By direct award; and
- By way of a competitive procedure.

In general, Modular Suppliers will compete against each other using the Competitive Award Procedure whilst the Consultants will be awarded work using the Direct Award Procedure.

The principal method of awarding "Work" under the framework will be by way of competition in accordance with the requirements of the framework agreement and LBBB will be required to utilise the mini competition template which is attached to the framework agreement.

The default method of award to Consultants is by direct award and LBBB will use the framework prices provided by the Consultant as set out in the Consultant's Framework Proposals at Schedule 10 of the Agreement. LBBB shall also complete a Mini Competition Template and request that the Consultant provide a fee in connection with the "Project Brief" set out at Schedule 5 of the Agreement

7.7 Schedule 9 of the Modular Supplier Framework Agreement sets out the scope of works required. The Modular Supplier is required to undertake the detailed design of modular buildings based on outline designs and Employer's Requirements prepared by the Framework Managing Consultant (FMC) who will be undertaking the role of Employer's Agent and Design Team in a single multi-disciplinary service.

7.8 The FMC will be required to develop LBBB's brief, establish the project programme and agree the scope of the project. They will also be responsible for preparing feasibility reports on sites in order to assess the suitability for the construction of the new changing rooms and /or extensions and modifications to existing facilities.

7.9 The Framework Agreement for the AGP Framework Managing Consultant is a single supplier framework agreement which provides quantity surveyor, architectural services and permits the appointment of a Framework Management Consultant (FMC) to manage a manufacturer led framework of organisations to supply and install artificial grass pitches (AGP), the framework agreement comprises the following parties:

- The Football Foundation
- The Rugby Football Union
- The Football Association
- The English Sports Council and
- England Hockey collectively referred to as the framework representatives and Robinson Low Francis is the sole economic operator. This agreement has also been set up in accordance with Regulations 33(2) to 33(6) of the Public Contracts Regulations 2015 and is OJEU compliant as stated above.

- 7.10 LBBB is permitted to call off from this framework agreement as it is a “Framework Partner” as defined within the agreement.
- 7.11 Call offs are to be awarded in accordance with the procedure set out at clause 8.3 of the framework agreement by the Framework Partner issuing a “Scope” to the Framework Operator and a draft call off contract (the NEC3 Professional Services Short Contract April 2013 version, with amendments), subject to the Framework Partner’s agreement to the proposed lump sum price for the services. In addition, the lump sum price shall be based on the Framework fee rates and any applicable discounts
- 7.12 Officers are to ensure that the draft call off contracts in relation to the above framework agreements are circulated to Legal Services for review before being finalised (ie the JCT Design and Build 2011 contract with amendments and the NEC3 Professional Services Short Contract with amendments). In addition, details of the awarded contracts are to be provided to Corporate Procurement who shall publish this information on the Contracts Finder website.

Property Issues

- 7.13 It is a condition of funding from the Football Foundation that London Football Trust manage the new facilities in Parsloes Park via a long-term lease (30 years) from the Council to the Trust. A leisure operator will be procured to manage the facilities on a day to day basis. A further condition is that the lease will be at a peppercorn, which is contrary to current custom and practice for Council leases, which are let at a commercial rent but with the potential for a rent subsidy to be provided.
- 7.14 There are currently four Parklife schemes in development in London and ultimately there may be as many as eleven such projects implemented. The Trust will appoint an established leisure operator to run the facilities on a day to day basis. This will be undertaken via a bespoke operator procurement framework covering all eleven potential sites.
- 7.15 It is a condition of funding from the Football Foundation that any operational surplus is ringfenced to further the achievement of the Trust’s objectives as set out in its articles of association.
- 7.16 The Council is required to obtain best consideration for the disposal of its assets. The proposed grant of a 30-year lease at peppercorn is a land disposal. The Council has the power to dispose of land but must do so in compliance with law and the Council’s acquisition and land disposal rules.
- 7.17 The Council’s disposal powers are contained in section 123 of the Local Government Act 1972, and Section 1 of the Localism Act 2011 provides a general power of competence enabling the Council to do anything individuals generally may do, therefore allowing the Council to undertake a wide range of activities.
- 7.18 Furthermore Section 111 of the Local Government Act 1972 enables the Council to do anything which is calculated to facilitate, or is conducive to or incidental to, the discharge of any of its functions, whether or not involving expenditure, borrowing or lending money, or the acquisition or disposal of any rights or property.

- 7.19 Under section 123 and 127 of the Local Government Act 1972 the Council has the power to dispose of land in any manner that they wish which includes grant of long leases of land. One constraint is that the disposal must be for the best consideration reasonably obtainable unless there is ministerial consent or the transfer is to further local wellbeing.
- 7.20 Under General Disposal Consent 2003, the Government offers Local Authorities greater freedom than previously to exercise discretion in the disposal of their land.
- 7.21 The 2003 Consent removes the requirement for authorities to seek specific consent from the Deputy Prime Minister and First Secretary of State ("the Secretary of State") for any disposal of land where the difference between the unrestricted value of the interest to be disposed of and the consideration accepted ("the undervalue") is £2,000,000 (two million pounds) or less.
- 7.22 The Secretary of State in exercise of the powers conferred by sections 123(2), 127(2) and 128(1) of the Local Government Act 1972, provides consent to a disposal of land otherwise than by way of a short tenancy by a local authority in England in the circumstances specified in paragraph 4.6 below:
- 7.23 The specified circumstances are:
- a) 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;
 - i) the promotion or improvement of economic well-being;
 - ii) the promotion or improvement of social well-being;
 - iii) the promotion or improvement of environmental well-being; and
 - b) 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 (two million pounds).
- 7.24 The Council is at liberty to proceed with the proposed disposal once an independent valuation is carried out and there is evidence that conditions 6.15 (a) and (b) above are satisfied. If the difference between the unrestricted value of the land to be disposed of and the actual consideration for the disposal (which is a peppercorn rent) exceeds £2,000,000 (two million pounds) ministerial consent for the transaction will be required. It is therefore essential that before further costs are incurred an independent valuation is commissioned in order to determine the potential undervalue for the lease over the term of 50 years.
- 7.25 It is the responsibility of the authority to undertake any further procedures which may be necessary to enable it to dispose of any particular area of land. For example, sections 123(2A) and 127(3) of the Local Government Act 1972 and section 233(4) of the Town and Country Planning Act 1990 ("the 1990 Act") require a local authority wishing to dispose of open space under those powers to advertise its intentions in a local newspaper for two consecutive weeks and to consider objections. The Council should carry out these procedures before making any final

decisions about disposal as the public response to the notices may be material to any such decision. It could also be an important factor in any determination by the Secretary of State of an application for specific consent.

- 7.26 Parsloes Park is designated Metropolitan Open Land to which more stringent planning policies apply in determining planning applications. MOL is given the strongest possible protection in accordance with the local development plan and development having an adverse impact on the openness of MOL is generally deemed inappropriate development except in very special circumstances. In addition, other constraints may apply which could raise challenges in obtaining planning permission. Officers are advised to carry out appropriate due diligence as to the likelihood of obtaining planning permission in the early planning stages of this project.
- 7.27 Procurement implications for the pan-London arrangement will need to be given full consideration at Cabinet as necessary. Further information will be required as to whether the Trust or some other body will lead the pan London procurement and how the operational surplus arrangements will be given effect.
- 7.28 State aid implications may also arise on this project. State aid is any advantage granted by public authorities through state resources on a selective basis to any organisations engaged in economic activity that could potentially distort competition and trade in the European Union.
- 7.29 The definition of state aid is very broad because 'an advantage' can take many forms. Although, de-minimis thresholds are available, the quantum involved may not fall within the threshold. Alternatively, officers may wish to consider whether the aid falls within the scope of the General Block Exemption Rules, if this is not the case officers will need to consider whether any state aid given has the potential to distort competition in the EU. There are three ways in which state aid may arguably arise on this project: -
- i. the proposed 30-year lease to the Trust is at a peppercorn rather than the usual rule that it should be for the best consideration reasonably obtainable on the open market in an arm's length transaction;
 - ii. the treatment of operational surplus;
 - iii. borrowing to bridge the funding gap and any other funding being made available.
- 7.30 When a valuation of the leasehold interest has taken place and other specific details on the project crystallise, it would be appropriate to revisit the issue of state aid and obtain a definitive opinion.
- 7.31 The Legal Practice should be consulted further on any property and procurement implications and instructed on the preparation and completion of the necessary legal documentation.

8. Corporate Procurement

Implications completed by: Euan Beales, Head of Procurement and Accounts Payable

- 8.1 The use of an open framework to access the market is a legally compliant route and has been let under EU Legislation.
- 8.2 The evaluation criteria as set out is 60% Quality and 40% Cost. Based on the technical and specialist nature of the project it is considered that this will yield a good quality provider.

9. Other Implications

- 9.1 **Risk Management** – the key risks associated with the project at this time relate to capital funding, operator procurement and planning approval. These are set out in the table below.

Type of risk	Risk	Risk Reduction Strategy	Risk Owner
Failure to deliver the construction of the new facilities within budget and to the agreed timescale and specification	High	<ul style="list-style-type: none"> Design and build contractual approach. Tried and tested procurement framework should ensure that a contractor with the appropriate skills, knowledge and experience is appointed. 	LBBB
Lack of funding to implement the project	High	<ul style="list-style-type: none"> Investigate additional funding. Reduce scope of facility mix where feasible. Bids made/pending to Football Foundation, LMCT, CIL 	Barking and Dagenham Parklife Project Board
Planning permission refused	High	<ul style="list-style-type: none"> Early dialogue with LBBB planning team. Pre-planning meeting with GLA. Advice sought from Sport England Reduce the footprint of the facility if feasible and required. 	Barking and Dagenham Parklife Project Board
Failure to appoint an operator	High	<ul style="list-style-type: none"> Soft market test undertaken. Feedback taken on board from potential operators to inform facility mix and development of operator procurement framework. 	LBBB & Football Foundation

- 9.2 **Customer Impact** – The football hub facility mix has been informed by extensive consultation with local football clubs and leagues and is intended to transform the quality of football provision in the borough, especially in relation to girls, boys, disability, and women's football.

The views of park users and residents have also been responded to positively with the inclusion of a café, social facilities, toilets and baby changing facilities into the

facility mix. The facilities will include adapted toilet facilities to the changing places standard, the industry standard of excellence for disabled WC and changing facilities.

9.3 **Health issues** – The overall aim of the project is to increase physical activity participation levels in the Borough. The key outcomes will be:

- Increased physical activity and opportunities for women and girls.
- Increased participation for children and young people.
- Increased physical activity amongst disabled participants within the Borough.
- Increased physical activity amongst older people within the Borough.
- Increased physical activity opportunities for adults.
- To upskill and educate the local community.
- To become a Community Hub for physical activity.

9.4 **Safeguarding Vulnerable Adults and Children** - It is expected that the football hub will provide a programme of positive and diversionary activities for children and young people. The operator of the football hub and the football clubs using the facilities will be required to adopt robust safeguarding procedures that satisfy both the Council and the National Governing Body for football.

9.5 **Crime and Disorder Issues** - The Council has a statutory duty to consider crime and disorder implications in all its decision making. This will be carefully considered in both the design and delivery elements of this scheme,

Experience at Mayesbrook Park suggests that the provision of high quality and accessible sports facilities with extensive operating hours will have a profound impact on levels of anti-social behaviour and wider perceptions of safety in Parsloes Park, which will encourage greater and more regular use by children and families.

9.6 **Property / Asset Issues** - the terms of the lease will require the lease holder to repair, maintain and insure the facilities. A key requirement in the procurement process for the operator of the new facilities is the provision of a substantial sinking fund to ensure that the facilities are maintained appropriately and can be replaced when they become life expired.

Regular monitoring by My Place will ensure that the lease holder is complying with the lease conditions, enabling action to be taken as appropriate if any are in breach.

Public Background Papers Used in the Preparation of the Report: None

List of appendices:

- Appendix 1 Site plan
- Appendix 2 Business Plan financial summary (exempt information)