

CABINET

18 December 2013

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| Title: Lease of Mayesbrook Park Football Stadium | |
| Report of the Leader of the Council | |
| Open Report | For Decision |
| Wards Affected: All | Key Decision: No |
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| Accountable Divisional Director: Paul Hogan, Divisional Director of Culture and Sport | |
| Accountable Director: Anne Bristow, Corporate Director of Adult and Community Services | |
| Summary: Authority is sought to grant a lease to the Academy of Dreams to enable them to operate and develop the facilities at the Mayesbrook Park football stadium at no revenue cost to the Council. The proposal would provide substantial investment to the site that would significantly enhance the facilities available to Barking Football Club as well as other local sports clubs and the wider community. As well as replacing the existing club house, which is no longer in use, and the dilapidated changing rooms, two new floodlit artificial turf pitches and associated facilities will be provided. The business case for this proposal is dependent upon planning permission being approved for the new facilities that are proposed. Except for the demolition of the existing club house and changing rooms and other remedial works, which it is proposed will be funded from previously committed s106 developer contributions, all of the costs associated with the replacement of existing facilities and the new provision at the site will be borne by the Academy of Dreams. It is intended that the grass pitch and associated changing rooms will be sub let to the Barking Football Club for the full term of the lease so that they have security of tenure. There are significant community benefits from these proposals: the future of both Barking Football Club and the football stadium itself, two of the Borough's most important community assets, will be secured for the foreseeable future. Also new sports facilities will be provided at the site which will be available for wider club and community use. | |

Recommendation(s)

The Cabinet is asked to authorise the Chief Executive, in consultation with the Head of Legal and Democratic Services and Chief Finance Officer, to grant a 35 year lease for the Mayesbrook Park football stadium, shown edged red on the plan attached at Appendix 1, to the Academy of Dreams, subject to satisfactory negotiation of the lease including the provision of a sub lease to the Barking Football Club for the full duration of the lease.

Reason(s)

The proposal will assist the Council in making better use of its resources and assets and links to the overall priority and vision for better health and wellbeing.

1. Introduction and Background

- 1.1 Mayesbrook Park is a key sporting hub in the Borough. The football stadium in the park is located directly adjacent to the SportHouse leisure centre and the recently renovated Jim Peters stadium (athletics arena). A plan showing the location of the football stadium is attached at **Appendix 1**.
- 1.2 The wider park is also home to EuroDagenham, Barking Cricket Club and Barking Canoe Club and several football teams use the playing pitches in the park on a pay and play basis.
- 1.3 The football stadium is owned by the Council and managed by the Housing and Environment department. In effect this means that the department meets the relevant utility costs as well as undertaking some pitch maintenance, as part of a pitch hire agreement, and other essential repairs.
- 1.4 The facilities are dilapidated and are not fit for purpose. Significant investment is required in the short term if the stadium is to continue to operate.

History

- 1.5 New Barking Football Club Ltd took over the lease to operate on Mayesbrook Park from Barking Football Club 1980 Ltd in February 1997. The club was bought out by another party in 2002.
- 1.6 The club's premises were subsequently closed when they were forfeit to the Council for non-payment of rent after the sole remaining Director put the club into liquidation.
- 1.7 The Liquidator disclaimed the lease in July 2007. Soon after this bailiffs appointed by the Council forced entry and secured the premises.
- 1.8 The repairing obligations on the facilities were the responsibility of the tenant; however, they were not maintained and have deteriorated to the extent that the club house building is unsafe and is no longer in use. Although they are dilapidated, the changing rooms adjacent to the club house remain in use.

- 1.9 It subsequently transpired that the old Barking Football Club lease had become vested in the Crown, so although the Council had physical possession of the premises they had no legal rights over them as there was a substantial portion of the unexpired lease in place.
- 1.10 The Crown, following a court application, disclaimed the lease (rather than pay the arrears of rent) and so the Council has legitimate possession of the whole premises.
- 1.11 A further case was heard to obtain/enforce possession against the sundry telecom masts attached to the grounds floodlighting since all but one were erected without Council permission.
- 1.12 Since 2007 it has been the intention of the Council that football should be retained on the site via a seasonal licence until the long term future of the site had been decided by Cabinet.

Barking Football Club

- 1.13 The Club is managed as a not for profit organisation and has been transformed over the past five years. The Club had just two teams in 2008 and this has now grown to 14 comprising about 260 children and adults and including: two ladies' teams, six youth teams from u13s to u18s, three college u-19 teams and three men's teams.
- 1.14 As part of its educational programme, the club also delivers a wide variety of community based programmes:
- The club has 16 qualified coaches who deliver sports projects in the community and in educational settings.
 - Holiday activity programmes are delivered during the summer and at half term.
 - Barking FC summer coaching - a 20 day programme during the summer holidays.
 - Barking & Dagenham College 16-21year olds coaching every month
 - FA Skills training for 5-11 year olds every week.
 - Futsal coaching and league administration every week.
 - Lunchtime and after school clubs coaching provided at Valence school
- 1.15 The club's senior team plays in the Essex Senior League, which is level five in the football pyramid or five promotions away from the football league. This is the highest level of football being played in the Borough apart from Dagenham and Redbridge Football Club.

2. Proposal and Issues

- 2.1 There are considered to be four potential options for the future of the site:
- The Council funds the re-development of the site and then either operates the facility 'in house' or transfers operational responsibility to Barking Football Club or another third party;
 - Barking Football Club takes on responsibility for the operation of the stadium and secures the funds to re-develop the site;

- A commercial operator is identified to take on the operation of the site and provide the necessary investment; or
- Demolition of the dilapidated facilities by the Council, which would result in the facilities being unsuitable for anything other than casual pitch hire, if at all.

3. Options Appraisal

Option one

- 3.1 The Council could fund the re-development of the site and then either operate the facility 'in house' or transfer operational responsibility to Barking Football Club or another third party. This is not the preferred option at this time.
- 3.2 This is because the draft development plans drawn up by the Council indicate that it would cost c£900,000 to replace the existing facilities, if these works were delivered by the Council.
- 3.3 Whilst these works could be funded via committed s106 funding relating to the housing development on the former UEL site, it is considered that other options should first be exhausted before a decision is made on whether this would be the best use of the s106 funds compared to other competing and perhaps more compelling demands for investment.
- 3.4 A further consideration in this respect is that although bringing the facilities up to standard would resolve the immediate asset management liabilities facing the Council; this would not resolve the equally important issue in these times of austerity of how the venue could be operated at no revenue cost on an ongoing basis.

Option two

- 3.5 Barking Football Club takes on responsibility for the operation of the stadium and secures the funds to re-develop the site. This is not the preferred option at this time.
- 3.6 The development of the Club has come on in leaps and bounds over the past five years and they are now one of the Borough's key sporting assets. However, it is considered that there would be a high level of risk associated with the Club having responsibility for the management of the site via a long term lease at this stage in its development.
- 3.7 Also whilst there has been positive soundings from Sport England and the Football Association about the potential to access their relevant funding streams to support the re-development of facilities, this would only be confirmed via a lengthy grant application process and would, if successful, only provide part of the total funding package that is required.

Option three

- 3.8 A commercial operator is identified to take on the operation of the site and provide the necessary investment. This is the preferred option because it would secure the long term future of the football stadium with enhanced provision and at no revenue cost to the Council.

Option four

- 3.9 Demolition of the dilapidated facilities by the Council, which would result in the playing pitch being unsuitable for anything than casual pitch hire. This would be the option of last resort and should only be considered if none of the other options outlined above is tenable.
- 3.10 It is difficult to see how it would be possible for the Club to continue to operate in the Borough if this option is implemented.

The preferred option

- 3.11 Option three is the option being recommended to Members for approval.
- 3.12 Four private sector organisations with relevant experience of managing football facilities were approached to investigate whether there was any appetite from a commercial operator to invest in and manage the facilities at the site.
- 3.13 One positive response was received from the Academy of Dreams, which is the organisation that the Council recently granted a long term lease to manage the Manor Road football ground in Dagenham but with security of tenure for the Dagenham United Football Club.
- 3.13 Officers subsequently met with the Academy of Dreams, Barking Football Club and Dagenham United to discuss this opportunity in more detail and Members are now asked to approve a long term lease to the Academy of Dreams to enable this proposal to be implemented.
- 3.14 If the lease is approved, Academy of Dreams will implement and pay for the replacement of the existing changing rooms and associated facilities with the following facility mix:
- Changing room provision to the relevant FA and Sport England standards including showers, referees room and flexible in design to enable use by male and female users
 - Treatment clinic for preventative advice, rehabilitation and treatment
 - Toilets for male and female use, accessible toilet and baby changing facilities
 - A lounge that can be used for refreshments, catering, coach education workshops and meetings and parties/special occasions.
- 3.15 They will also pay for, provide and operate:
- Two new artificial turf pitches with floodlighting: one would be an academy size pitch 60m x 40m and the other a regulation mini soccer pitch measuring 45m x 30m.
 - Changing rooms adjacent to the new all weather pitches so that these facilities can be used when there are games in the football stadium.
 - A pathway from the pavilion to the new all weather pitches.
- 3.16 The Council will be required to pay for and arrange the demolition and site clearance of the existing club house and changing rooms and other remedial works.

It is estimated that these works will cost c£100,000. Funding to wholly meet these costs is available from s106 developer contributions that have been received and are ring fenced for improvement to sports facilities in Mayesbrook Park and have previously been committed for this purpose by Cabinet (16 March 2010; minute 146 refers).

- 3.17 Barking Football Club will have security of tenure via a sub lease that gives them guaranteed use of the grass football pitches and associated changing facilities at a peppercorn rent as well as priority booking status for the new facilities to be provided but for which a charge would be made.

4. Consultation

- 4.1 Consultation with the Leader of the Council, members of the Council's Property Advisory Group (including the Cabinet members for Regeneration and the Deputy Leader), Mayesbrook ward councillors and representatives from the Barking Football Club has been undertaken to inform the development of the proposals set out in this report.

5. Financial Implications

Financial implications completed by: Roger Hampson, Group Manager - Finance

- 5.1 There are no ongoing financial implications for the Council. The preferred option would see the sports ground operated at no cost to the Council by a third party via a long term lease.
- 5.2 The funding required to undertake the demolition of the club house, changing rooms and associated works is available from s106 funding ring fenced for Mayesbrook Park and previously committed by the Council.
- 5.3 The income generated from the mobile phone masts within the footprint of the football stadium will continue to be paid to the Housing and Environment department, although there is a degree of risk over the level of income achieved as lease arrangements with telecom companies come up for renewal.
- 5.4 It is proposed that the financial terms of the lease will be a commercial rent at a similar level to the rent set for the Manor Road ground in Dagenham, which will have a similar facility mix.
- 5.5 It should be noted that the football stadium would revert to the Council if the lease is terminated. If this occurs it is likely that the Council would incur revenue costs until a new management arrangement could be put in place.

6. Legal Implications

Implications completed by: Jason Ofosu, Acting Senior Property Lawyer

- 6.1 The Council will retain the freehold interest and grant a long lease of 35 years for a commercial rent to the Academy of Dreams with a sub-lease for the same duration to the Barking Football Club.

- 6.2 The Council and the Academy of Dreams will agree heads of terms for the leasing arrangements.
- 6.3 The Chief Executive can agree the terms of the lease and management agreements in consultation with the Chief Finance Officer (Constitution Land Acquisition and Disposals Rules refer) and on the advice of Property Services and the Legal Practice.
- 6.4 Section 123 Local Government Act 1972 and the Council's Land Disposal rules require land to be disposed of at market value. The Council has a general power of competence under section 1 of the Localism Act, although as always its application of these powers must be carefully considered and appropriate to the relevant circumstances. Section 1 of the Localism Act allows the Council "to do anything that individuals generally may do". Therefore the Council could decide the rent does not have to be market value since the lease holder is acting for the benefit of the Council, its area or persons' resident or present in the area.
- 6.5 The lease should be a full repairing and insuring lease so that the Council do not bear the cost of repair and maintenance of the Property. The Legal Practice should be consulted on the preparation and completion of the lease.

7. Other Implications

- 7.1 Risk Management** – This proposal is intended to remove the current risk the Council carries in relation to its duty of care responsibilities for a dilapidated facility for which there is only a seasonal hire agreement in place and no effective control of operational costs.

The key risks associated with this proposal relate to asset management, governance, planning considerations, and sustainability. Action has been or will be taken to transfer, manage or mitigate these risks.

Asset management

Under the terms of the proposed lease, the lease holder will be responsible for repairs, maintenance and insurance of the site and an inspection regime will be put in place to ensure compliance.

Governance

All of the facilities on the site will be managed on a day to day basis by the Academy of Dreams via a long term lease; however, Barking Football Club will be provided with a sub-lease at a peppercorn rent so that the club has security of tenure for the duration of the lease (35 years).

The proposed length of lease will enable the Barking Football Club to apply for funding to Sport England and to charitable trusts and relevant National Governing Bodies for sport.

Planning

The viability of this proposal is dependent on planning permission being approved for the provision of the proposed artificial turf pitches, floodlighting and changing rooms. To help mitigate the risk in this respect meetings have been held with the

Council's Property Advisory Group and officers in the planning team to inform the development of these proposals.

Also advice has been received that the scope of the proposed development at the site is in keeping with Mayesbrook Park's classification as Metropolitan Open Land.

- 7.2 **Contractual issues** – The legal implications section sets out the Council's powers in relation to this matter. Legal Services will be fully consulted and will prepare all the necessary legal documentation.
- 7.3 **Customer impact** - It is expected that the existing clubs and individuals who currently use the football stadium and associated facilities will continue to do so under the proposed management regime but that there will also be improved access for other clubs and the wider community resulting from the enhanced facilities that are proposed.
- 7.4 **Crime and Disorder Issues** - The Council has a statutory duty to consider crime and disorder implications in all its decision making. The football stadium will provide a wide range of activities and quality facilities, which will provide positive activities for all residents.
- 7.5 **Health issues** – It is well known that a lack of physical activity is one of the main risk factors for heart disease and diabetes. But less well known is the fact that a lack of physical activity can increase risk factors in a range of other health areas, including mental health.

The activities delivered at the football stadium are consistent with our Health and Wellbeing Strategy to improve the health and well-being of individuals and build community cohesion through increased participation of children, young people and adults in sport and physical activity.

- 7.6 **Safeguarding Vulnerable Adults and Children** - The football stadium will provide an extensive programme of positive and diversionary activities for young people.

It will be a condition of use that clubs using the sports ground will have appropriate procedures in place in line with the safeguarding policies of their respective National Governing Bodies.

- 7.7 **Property/Asset issues** – it is intended that the terms of the lease will require the lease holder to repair, maintain and insure the facilities at the football ground. This proposal will also see the replacement of dilapidated changing rooms and club house with new, fit for purpose facilities.

Background Papers Used in the Preparation of the Report: None

List of appendices:

- **Appendix 1** - Site Plan