

King George's Fields Charity Board 11th July 2018	 TOWER HAMLETS
Report of: Debbie Jones, Corporate Director of Childrens Services	Classification: Unrestricted
Proposal to Upgrade Mile End Stadium to Step 4 of the Football National League system	

Lead Member	Councillor Amina Ali, Cabinet Member for Culture, Arts and Brexit
Originating Officer(s)	Lisa Pottinger, Head of Sport & Physical Activity
Wards affected	Mile End
Key Decision?	No
Community Plan Theme	A Great Place to Live

Executive Summary

To consider a proposal to upgrade Mile End Stadium to Step 4 of the Football National League system.

Recommendations:

The Board is recommended to:

1. Consider the proposal to upgrade Mile End Stadium to Step 4 of the Football National League system. Due to the high risk of challenge, it is recommended that the proposal is not approved.

1. REASONS FOR THE DECISIONS

- 1.1 Mile End Stadium is designated Fields in Trust (FiT) Land and use of the land needs to comply with the designated charitable restrictions.
- 1.2 FiT has stated that the development of the stadium site is not in keeping with the designations of the land and objected to the proposal to create a football stadium on the site for this reason. The inclusion of an opaque, boundary wall and turnstiles are of particular concern to the Trust because these environmental changes impact on the aesthetics of the park.
- 1.3 The FA technical committee has objected to a temporary wall boundary that may have been acceptable to FiT, making the alternative proposal to mitigate the concerns of FiT untenable.
- 1.4 The risk of challenge is extremely high should the King George's Fields Board

decide to implement the scheme in face of the FiT objection.

- 1.5 The risks associated with a successful challenge are significant, which include reputational damage for the Council as well as financial and personal liability for individual trustees and Council officers]

2. ALTERNATIVE OPTIONS

- 2.1 There are no alternative solutions for the Mile End Stadium site due to the restrictions placed upon King George's Fields land, however, developing a football stadium compliant with Step 4 guidelines could be explored should a suitable alternative location be found elsewhere.

3. DETAILS OF REPORT

- 3.1 [This briefing report outlines the governance of Mile End Stadium and the facility improvements that would be required to upgrade the Stadium to Football Association Ground Grading Criteria D. These improvements are being proposed in response to a request from the borough's two semi-professional football clubs, Sporting Bengal and Tower Hamlets Football Club, to enable them to compete in Step 4 of the National League System (NLS), which has stringent requirements for football grounds at this level of play.
- 3.2 These two clubs are based at Mile End Stadium currently play at Step 5 of the Football National League System. However, if either one or both of these teams were to obtain promotion they would need to play at the next level of the National league system and Mile End Stadium would need to meet the Football Association's Ground Grading Criteria D for Step 4. This would require extensive development of the infrastructure of the stadium to include:
 - An opaque, permanent 1.83m fixed boundary fence,
 - the installation of two sets of turnstiles,
 - the development of a clubhouse and
 - other minor changes. (Please See Appendix 1 for FA Ground Grading Criteria D for Step 4)
- 3.3 Mile End Stadium is located within Mile End Park and is governed by the charitable objects of The King George's Field Charity, which comes under the auspices of Fields in Trust (FiT). Under the 2000 Scheme, approved by the Charities Commission, Tower Hamlets Council is the trustee of the Charity. Article 7 of the Scheme, empowers the Council to delegate its trustee function to a committee consisting of any two or more members, provided that the Council exercises reasonable supervision over the committee. This function is currently performed by Cabinet members acting as Trustees on behalf of the Charity. The Council's Constitution establishes the King George's Field Trust Board to administer the Charity's affairs and discharge the Council's trustee functions.

- 3.4 The proposed development of the Mile End site into a football stadium has highlighted a number of key issues. Most importantly, and the key issue, is that the Council does not own the land on which Mile End Stadium is located. The site is designated King George V land as part of the King George's Field Charity, which comes under the auspices of the Fields in Trust (FiT) and the Charities Commission.
- 3.5 Due to Mile End Stadium's designation as King George V land, it was necessary to seek the view of FiT on the proposal to turn the site into a football stadium that meets the FA's ground grading criteria D. In its response FiT has made it clear that the proposal is not in keeping with the land dedication and charitable objects of the site, i.e. they do not approve of the proposed development. (Please see Appendix 2 for the FiT response to the proposed development in 2010 & 2018.)
- 3.6 FiT's response has also highlighted that approval for the development would also need to be obtained from the Charities Commission. This further approval is also highly unlikely as the "more formal usage by the clubs" is unlikely to fit with the charitable status of the land, especially as FiT has already lodged its objection of the proposal.
- 3.7 Having received the FiT response to the proposed development, officers' sought legal advice on undertaking the proposed development, despite their objection. Legal advice, which can be viewed in Appendix 3, highlights that the risk of challenge against the development is extremely high.
- 3.8 In addition to the charitable land status of Mile End Stadium, there are also a number of other issues which require consideration as a result of this proposal. Mile End Stadium is part of a leisure centre site, managed via a contract, and the lease arrangement with the Council's leisure operator, which precludes sub-letting, could cause additional complications, particularly with regard to re-letting the leisure contract in 2022.
- 3.9 Another issue which causes concern is funding the development. Although the Football Stadium Improvement Fund (FSIF) provides funding for ground improvements, clubs can only apply for funding for the Step level of the League System in which they are currently playing and not the level that they aspire to compete in. As a result, the two Tower Hamlets' teams would not be able to apply for funding to meet the Step 4 Ground Grading D criteria because they are already Ground Grading F compliant at step 5. This means that the circa £250k-£350k of works required to upgrade Mile End Stadium would not be eligible for FSIF funding and would need to be funded from elsewhere.
- 3.10 Furthermore, it is important to note that this development has not been identified as a strategic priority either via the Council's Indoor Sports Facilities or Open Spaces Strategies or the Council's Capital Programme and as a result no funding is currently allocated to this project. S106 Capital funding could only be earmarked for this development at the expense of other

projects, which have been identified as a priority for development through a rigorous, evidence based needs assessment.

- 3.11 In addition, to the capital costs of the scheme, there would also be considerable lifecycle costs to consider. The installation of turnstiles and a boundary wall would require ongoing maintenance and there is currently no designated budget for these additional costs. Implementing these changes to the stadium would create an additional budget pressure for the service at a time of reducing financial resources, unless these ongoing costs could be met from finances elsewhere.
- 3.12 Mile End Stadium is a multi-use site and the current configuration and operation enhances its multi-functional nature to accommodate the needs of footballers, athletes and hockey players alike. By upgrading the stadium to Step 4, the Council would essentially create a football stadium, making football the preeminent sport at the expense of athletes and hockey players that currently share the facility. If this upgrade were to be implemented it would generate conflict between the user groups, especially as part of any community consultation exercise on the development, and would need to be managed.
- 3.13 In 2010, when this matter was previously investigated, the Council sought a mobile boundary fence solution to mitigate the concerns of FiT regarding the significant change to the park aesthetic that a permanent, fixed boundary wall would create. However, the mobile boundary solution, which may have satisfied FiT, was rejected by the Football Association (FA) Technical Committee. The most recent approach to the FA has reiterated their objection to a temporary boundary and confirmed their position that the FA would not approve the stadium as being ground grading D compliant with a temporary boundary wall. The FA technical committee objections can be viewed in in Appendices 4 & 5.
- 3.14 From the consultation undertaken to date, FiT has made clear its objections to the required changes to the Stadium to meet Ground Grading D criteria. Attempts to mitigate the concerns of FiT by proposing temporary solutions were rejected by the FA Technical committee. Consequently, there is no site development proposal that would meet the needs of both key stakeholders and consequently the development is untenable.]

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 The proposed recommendation does not require any financial commitment from the Council.
- 4.2 If FiT and the Charities Commission in the future choose to provide approval for the upgrade of Mile End Stadium to step 4 of the National Football League System, a robust financial analysis will be undertaken to assess the costs and financial risks posed to the Council.

5. LEGAL COMMENTS

- 5.1 The legal relationship between the Council and the King George's Field Charity is complex but in summary the Council holds the assets of the King George's Field Charity on trust and to the benefit of the Charity.
- 5.2 The Council's actions as Trustee are carried out by the King George's Field Board.
- 5.3 A trustee is legally bound to act in a manner it reasonably believes is in the best interests of the beneficiary. Therefore, the Board should only implement any course of action it reasonably believes is in the best interests of the Charity.
- 5.4 The decision whether to implement the subject matter of this report is one which properly falls within the discretion of the Board and this discretion should operate unfettered of the interests of the Council itself.
- 5.5 However, the matters and risks raised in this report relating to the implementation of the upgrade could cause the Board to reasonably consider that the implementation is not in the best interests of the Charity although the Board should consider all the circumstances surrounding the upgrade when making this decision one way or the other.
- 5.6 In the event that the Council through the Board is deemed to have breached its legal duties as trustee (by not reasonably acting in the best interests of the Charity) the Council itself could face legal action by the Charities Commission and or by the Charity itself.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1 None.

7. BEST VALUE (BV) IMPLICATIONS

- 7.1 The costs associated with upgrading Mile End Stadium are considerable. Capital costs alone are estimated to be between £250k-350k, with additional lifecycle (revenue costs) for maintenance, repair and replacement, for which no budget currently exists. This provision would create an additional ongoing budget pressure for the service's reducing financial resources. It should also be noted that this project is not aligned with any of the Council's key strategic objectives from the Indoor Leisure Facilities Strategy, Open Spaces Strategy or the objectives for sport & physical activity, which targets resources towards inactive people and under-represented participation groups such as women and girls, disabled and older people. In addition to the lack of evidence based strategic need for the development, when the benefits of this development are considered, which at best will advance the aspirations of approximately 30 adult male football players of the two football clubs this project, the 6 figure development and lifecycle costs are difficult to justify.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

8.1 There are no greener environment implications for this report.

9. RISK MANAGEMENT IMPLICATIONS

9.1 There are several risks and challenges associated with upgrading Mile End Stadium each of which are considered below:-

9.2 If the Council were to continue with the development proposal the likelihood of challenge by FiT and the Charities Commission would be extremely high. FiT has clearly indicated that the development requirements of Step 4 of the Football National League System would not be compatible with the charitable purpose. Consequently, if the King George V Board were to approve the works in spite of this objection and a successful challenge was executed, individual trustees could be financially and personally liable for not complying with the requirements of the King George V Charitable scheme for which they are trustees.

9.3 The Charities Commission also has powers to issue an official warning if it considers there has been “a breach of trust, breach of duty, misconduct or mismanagement” which could lead to an official warning which may be published without a right of appeal. This would have reputational consequences for the Council and the trustees involved with making the decision.

9.4 Any failure by the trustees to comply with remedial actions required in an Official Warning could lead to a suspension for up to 2 years. Trustees could also be removed following a Charity Commission inquiry and this would also have implications for the officers who facilitated or failed to take reasonable steps to prevent the situation. Ultimately, the Charity Commission has the power to direct the winding up of a charity following on from a Charity Commission inquiry.

9.5 Additional risks associated with the proposal include an increase in lifecycle costs of the stadium for the Council (associated with maintenance/repair costs to the turnstiles and boundary wall) at a time when departments have reduced revenue costs, it could create unplanned budget pressures.

9.6 Any decision to continue with the development could prejudice or preclude any future development plans for Mile End Park Leisure Centre and Stadium which may be proposed as part of the retender of the leisure management contract.

9.7 Any development which places one sport above the other is likely to increase tension between the sporting communities. The current format, layout and management of the site is designed to allow football, hockey and athletics to coexist on the site and be treated as equitably as possible. This balance would not be possible if one sport were deemed to be more important or

significant than the other. Any such development would require stakeholder consultation and would be need to managed accordingly.

- 9.8 As highlighted by legal advice, if the King George V Board were to continue with the development proposal, the likelihood of challenge would be extremely high. FiT has clearly indicated that the development requirements of Step 4 of the Football National League System would not be compatible with the charitable purpose, a view that is also likely to be shared by the Charities Commission. Due to the high risk of challenge and the consequences of such as a challenge for the Council, trustees and Council officers, the proposed development is untenable and it is recommended that this development proposal not be pursued.]

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 10.1 The proposed development of the Mile End stadium does not contribute to the reduction of crime and disorder.

11. SAFEGUARDING IMPLICATIONS

- 11.1 The development of the stadium site does not pose any safeguarding risks or benefits as detailed in the report.

Linked Reports, Appendices and Background Documents

Linked Report

- NONE.

Appendices

- NONE.

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

- NONE.

Officer contact details for documents:

N/A