


Executive Report of the: KING GEORGE'S BOARD 26 July 2016	 TOWER HAMLETS
Report of: Shazia Hussain - Service Head Culture learning and Leisure	Classification: Unrestricted
Leisure Management Contract Lease Arrangements for Mile End Park Leisure Centre	

Originating Officer(s)	Lisa Pottinger
Wards affected	Mile End

Summary

This report sets out the arrangements with Greenwich Leisure Ltd (GLL) in respect of the contract for leisure services and seeks the Board's agreement to the granting of a lease of land at Mile End Park to Greenwich Leisure Ltd pursuant to those contractual arrangements. It also seeks the Board's agreement to enter a deed of dedication on the property in respect of the monies previously provided by Sport England for the building of the Mile End Leisure Centre.

Recommendations:

Members are recommended to:

1. Agree they are satisfied, having considered this report, that the terms on which the disposal set out in recommendation 2 is proposed to be made are the best that can reasonably be obtained for the trust;
2. Agree in principle to Lease the land shown red in Appendix 1 to Greenwich Leisure Limited until 1 May 2019 with effect from date of completion;
3. Agree to the publication of notices under S121(2) of Charities Act 2011 and S123(1) (2A) Local Government Act 1972 which are required when disposing of public space which is held on trust;
4. Agree that in the absence of representations or objections being made in response to the notice in 3 above, the lease will be granted. If representations or objections are made, the final decision be referred back to the Board.
5. Agree to a Deed of Dedication in respect of Sport England which places a restriction on the disposal of the Leisure Centre ;
6. Agree to the Service Head of Culture, Learning and Leisure arranging for the publication of the notices and negotiating the terms of the lease & restriction, this includes incurring costs to give effect to these.

1. REASONS FOR THE DECISIONS

- 1.1 This decision is required to regulate the current arrangements in place for the Mile End Leisure Centre and to provide Sport England with the required restriction on the Leisure Centre.

2. ALTERNATIVE OPTIONS

- 2.1 The Council has entered into arrangements in which GLL manage and provide leisure services across the borough, including the leisure services at Mile End Park. Those arrangements include that leases be granted to GLL in respect of the sites. It would potentially place the provision of the services under the contract at Mile End Leisure Centre at risk if the lease is not granted.
- 2.2 Sport England gave a grant for £5,483,500 in order to assist in constructing the Mile End Park Leisure Centre. The Board could refuse to enter in to the Deed of Dedication but this would have a detrimental impact on the Council's relationship with Sport England and could jeopardise future funding.

3. DETAILS OF REPORT

Overview of relevant powers & duties

- 3.1 The Council is the sole trustee of the land at Mile End Park proposed to be leased to GLL as shown in Appendix 1. The 2000 Charity Commission Scheme (the Scheme) states that the Council should use the land to satisfy the recreational purposes set out in the Recreational Charities Act 1958. The 1958 Act has been replaced by the Charities Act 2011.
- 3.2 The Charities Act 2011 provides that it is charitable to provide, or assist in the provision of, facilities for recreation or other leisure-time occupation, provided that it is in the interests of social welfare and for the public benefit. In order to satisfy the requirement that the provision be in the interests of social welfare, the facilities must be provided with the object of improving the conditions of life for the persons for whom the facilities are primarily intended.
- 3.3 When making decisions about the trust land the Council must ensure that the charitable purposes are fulfilled. The Council as trustee must also protect the trust finances and in this regard the duty is similar to the Best Value duty under section 3 of the Local Government Act 1999.
- 3.4 The power to decide matters pertaining to the land held on Trust is reserved to the Board and functions of the Board are set out in the Council's constitution. The Charity Commission Scheme provides that decisions must be taken by a committee of members. The Board has the same membership

as the cabinet and in making decisions about the trust land it is carrying out executive functions.

- 3.5 As the trustee, the Council needs to comply both with the Scheme, and with the relevant provisions of the Charities Act 2011. Clause 5(1) of the Scheme gives the Council as trustee power to let part or parts of the land:

“to third parties on leases not exceeding 10 years to provide to the public recreational facilities or such services reasonably ancillary to recreation as are mentioned in Article 7 of the Greater London Parks and Open Spaces Order 1967 on the terms therein mentioned”

- 3.6 Clause 5(1) of the Scheme also recites, in brackets, that the trustee must comply with the restrictions on disposal imposed by s 36 of the Charities Act 1993, subject to the exceptions in ss 36(9)(b) and (c) and 36(10). They impose restrictions upon the disposal, including by way of lease, of land held by or in trust for a charity. The provisions have been replaced by S119 to S121 of the Charities Act 2011.

The lease for Mile End Leisure Centre

- 3.7 On 11 February 2004 the Cabinet considered the evaluation of tenders in relation to the Leisure Management Contract (the Contract) following a competitive procurement exercise. That contract was designed to include the provision of improvements and services at Mile End Leisure Centre, together with such services at the council’s other leisure centre facilities. After carefully consideration of the respective bids the Council awarded the 15 year contract to Greenwich Leisure Ltd on the basis that it offered the best value.
- 3.8 The Contract was let in May 2004 for a period of fifteen years and operates on a peppercorn rent of each premises, full repairing lease and surplus share basis. The Contract was awarded to Greenwich Leisure Limited (GLL) subject to mutual agreement on a number of outstanding items including the leisure centre leases. The contract was formally executed in 2014 and the only remaining lease for execution is the Mile End Park Leisure Centre & Stadium.
- 3.9 In reaching its decision, the Cabinet did not directly address the position of Mile End Park as land held on trust. However, it is apparent that the factors considered in making the decision are those which are relevant to the Council as trustee regarding the fiduciary duty.
- 3.10 The use of the land (and buildings) as shown in Appendix 1 for leisure services under the GLL contract is consistent with the charitable purposes – the arrangement provides for quality cost effective leisure and sport facilities for the public as tested by the procurement process. In order to secure the provision of the services the Council makes payments under the Contract (with various complex finance arrangements) and GLL seeks the security of the sites. In the case of Mile End the ‘contribution’ towards the provision of this service is the granting of a lease at peppercorn rent.

- 3.11 The scheme provides that the council as trustee can place the management of any part of the land in to the hands of a third party contractor to exercise the powers of the Council on its behalf. The Scheme also allows the Board to enter into leases with third parties for a term up to 10 years. Members of the Board are therefore requested to agree to the granting of a lease to GLL until 1 May 2019 with effect from the date of completion.

Advice that the disposal is the best that can reasonably be obtained for the charity

- 3.12 In accordance with S120(2) of Charities Act 2011 the Board must, before entering into an agreement for the lease of less than 7 years obtain and consider the advice on the proposed disposal of a person who is reasonably believed by the trustees to have the requisite ability and practical experience to provide them with competent advice on the proposed disposal, and decide that they are satisfied, having considered that person's advice, that the terms on which the disposal is proposed to be made are the best that can reasonably be obtained for the charity. This advice is provided by Richard Chilcott, Head of Asset Management, at paragraph 3.16.
- 3.13 Legal Services obtained advice from leading Counsel who advised that in order to assess whether the terms and consideration are the best that can be reasonably obtained this has to be judged by reference to the circumstances as they actually exist. The land is occupied by a leisure centre that needs to be managed and maintained. There is an existing management contract with GLL for a number of leisure facilities. Even if the Council was at this point contractually entitled to terminate GLL's management of the Mile End Leisure Centre alone it is unlikely that any contractor would be found to undertake those tasks in relation to this Centre alone, for the short period until re-procurement of the main contract, on any terms that would be at all favourable. It is also unlikely that the management and maintenance of a single leisure centre can be achieved on better terms by dealing with it in isolation, whether in the short term or the long term, as opposed to treating it as one of a number of facilities to be managed by a single contractor. The Council could not sensibly grant a short lease of the Centre otherwise than in connection with a contract for its management, and any such contract would have to be procured through a formal procurement process. By the time that had been conducted, the period left until the expiry of the main contract would be even shorter than it is already.
- 3.14 Leisure facilities play an important role in enabling the residents of Tower Hamlets to take part in sport and physical activity by providing an accessible and welcoming environment for people of all ages, ethnicities, religious beliefs and backgrounds. Sport and physical activity make an important contribution to social outcomes including health, community cohesion and safety, meeting the needs of children and young people, and economic prosperity. Mile End Leisure centre is 1 of 5 Leisure centres that makes up the Leisure Facilities network in Tower Hamlets. It is based geographically central to the borough

and has high usage from participants from across the whole borough not just the immediate local area.

- 3.15 The Leisure centre has helped to meet the gaps in provision and provide facilities in an area of historically low participation. There has been significant investment in the development and improvement of the Leisure centre with hundreds of thousands of council supported finance invested in the site over the years. Survey results demonstrate that residents feel this investment has improved their experience of leisure and sports facilities in the area with a consistent year on year increase in resident satisfaction and ratings. The council continues to invest in the building and its services to ensure there is active participation from the local community. The Mile End Leisure Centre not only meets the original charitable objectives of the Trust in providing a leisure facility for the use of local people, but also brings additional benefits which the Trust alone would not be able to provide. This demonstrates exceptionally good value for the Trust in the past and in the future as investment continues to be made to the facility for the local people of Tower Hamlets.
- 3.16 The proposed lease of the Mile End Leisure Centre to GLL has been reviewed by the Head of Asset Management. The proposed term of 3 years at a peppercorn rent will regularise the occupation of this property and follows the same lease structure and general terms agreed in leases for John Orwell, Whitechapel and York Hall which were all completed between the Council and GLL in 2011. The Head of Asset Management confirms that the proposed terms of the lease and in conjunction with the terms set out in the service delivery contract with GLL are the best that can be obtained for the charity under the circumstances.

Publishing the intended disposal

- 3.17 Section 123(1), (2A) Local Government Act 1972 requires the Council to advertise its intention to dispose of open land for two consecutive weeks prior to the disposal. If the Board agrees to the first and second recommendation, officers will advertise the intended disposal. If objections are raised this matter will be brought back before the Board for consideration and a decision.
- 3.18 Further, Section 121 (2) Charities Act 2011 requires public notice to be given of the proposed disposal, inviting representations to be made to them within a time specified in the notice, which must be not less than one month from the date of the notice. If representations are made this matter will be brought back before the Board to allow the Board to consider those representations and make a decision.

Deed of dedication to Sport England

- 3.19 Sport England gave the Council a grant of £5,483,500 to build the Mile End Leisure Centre. In return for the grant Sport England require a restriction on the land which requires:

- The Council to seek the agreement of Sport England prior to granting any lease or license or enter into or permit any parting with possession or sharing arrangements
- The Council to seek the agreement of Sport England prior to using the Land other than for the purpose of the Project; and
- The Council not damage or destroy the Project and Land.

3.20 Members are advised that this is a reasonable request given the grant awarded by Sport England. The charitable objects require the land to be used for recreational use and to maintain it in perpetuity therefore this restriction is no more restrictive than those which are already in place.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 The report seeks the agreement of the board to grant a lease for the land at Mile End Park to Greenwich Leisure Ltd (GLL). The current contract for the management of the Councils leisure facilities commenced May 2004 and was awarded to GLL for a 15 year period.
- 4.2 The contract includes the payment of a management fee of £2,102,292 which is reviewed annually and adjusted by the retail price index (RPI). In addition, there is a profit share arrangement agreed as part of the Medium Term Financial Strategy (MTFS) which generates income of £1,050,000 as a variation to the contract.
- 4.3 The 2016-17 MTFS includes a proposed saving that ceases the payment of the management fee and current profit share arrangements. Negotiations are currently being undertaken with GLL to deliver the savings opportunity.
- 4.4 The report also seeks the board's agreement to enter a deed of dedication on the Mile End Park Leisure Centre with Sport England. The Leisure Centre was built with Sport England providing grant funding of £5,483,500. The requirement for the deed is that it places a restriction on the disposal of the Leisure Centre and protects the investment made by Sport England.
- 4.5 Appendix 1 shows the area of land own by the Trust to be leased by GLL. Under the terms of the contract GLL provide leisure services, in order to do so, a lease at peppercorn rent is proposed which the Council is able to grant in exercising its powers. The proposal is that the lease be granted until 1 May 2019 which is when the current contract is due to end.
- 4.6 The disposal of the land by way of lease held by or in trust for a charity must comply both with the Charity Commission Scheme and with the relevant provisions of the Charities Act 2011, and appropriate legal advice obtained on the proposal being the best that can reasonably be obtained by the charity. The legal advice obtained is set out in Para 3.14 and 3.15 of the report which in protecting the Trust, ensures that the current arrangements continue to deliver value for money.

5. LEGAL COMMENTS

5.1 Legal comments have been incorporated in to the body of this report.

6. ONE TOWER HAMLETS CONSIDERATIONS

6.1 The Leisure Management contract was let in 2004, which is prior to the 'Stimulating the local Economy' requirements which were introduced at the end of 2012.

6.2 Throughout the contract a significant number of community based initiatives have been developed and delivered. These initiatives involve joint working and delivery by the Contractor and a few have been included below:

- Sport4Women Programme: An initiative developed for the most deprived areas/wards to engage with women and provide opportunities for activity in partnership with, and involving, local community organisations. This activity is currently funded by a Sport England grant secured by the Council with the aim of embedding the programme into leisure centre service delivery. Free Swim Friday Programme
- Young@Heart (50+): A health, fitness & social scheme funded initially by a Sport England Grant secured by the Council's Sports Team and subsequently embedded in core delivery as part of the leisure centre programme
- Get Active - An initiative developed for the most deprived areas/wards to engage with inactive people to increase participation levels in sport and physical activity
- Free Swimming Programmes: Free Swim Friday, Free Swim Family Saturday, Under 16 free swimming, and Women and Girls Programmes.
- The provision of an improved aquatics programme, including the development of diving and synchronised swimming through the Aquatics Manager position jointly funded by the Amateur Swimming Association, The Council and GLL.

7. BEST VALUE (BV) IMPLICATIONS

7.1 Best Value was considered as part of the competitive procurement process in 2003.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

8.1 The Mile End Park Leisure Centre works alongside the Carbon Trust who advise and guide on policy and strategy. This has resulted in numerous initiatives assisting the centre to achieve a reduced carbon output and control its waste efficiently.

8.2 Mile End Park Leisure Centre and stadium as part of its infrastructure has Pool covers to reduce heat loss overnight. Variable speed drives on the electronic motors to assist in reducing consumption. CHP (Combined Heat and Power) is installed as a energy efficient form of power. LED lights have been installed across the centre during 2015 and 2016. Consumption is tracked both internally and externally with KPIs in place to ensure both good practise and to track trends. Recycling bins are available and utilised. The centre also has a Green Champion who monitors all the above and provides staff awareness and training.

8.3 Mile End Park Leisure Centre, which is the subject of this lease, was built in 2006 and as the most recently built of all the borough's facilities, is also the most energy efficient of leisure centres, meeting its sustainable, green environment responsibilities. .

9. RISK MANAGEMENT IMPLICATIONS

9.1 This has been considered in the body of this report.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

10.1 There are no immediate implications for the Council's Community Safety Partnership Plan.

Linked Reports, Appendices and Background Documents

Linked Report

- No linked report

Appendices

- **Appendix 1- Map of the land which is to be subject to the lease**

Local Government Act, 1972 Section 100D (As amended)

List of "Background Papers" used in the preparation of this report

List any background documents not already in the public domain including officer contact information.

- State NONE if none.

Officer contact details for documents:

- N/A