



## **1. RECOMMENDATIONS**

- 1.1 That the funding allocated for play equipment in Brent Park be retrospectively reallocated to Brookside Walk to install a play area.**
- 1.2 That the funding allocated for remedial works in Windsor Openspace be retrospectively reallocated to Brookside Walk to install a play area.**
- 1.3 That the retrospective authority to draw down funds to construct a play area in Brookside Walk subject to planning consent be authorised.**
- 1.4 That if in the event planning consent is not achieved for Brookside Walk that the funding and authority to construct the play area be reallocated to Hendon Park and any costs are to be contained within the Environment and Operations budget.**

## **2. RELEVANT PREVIOUS DECISIONS**

- 2.1 Cabinet Resources Committee, 5 March 2009 (Decision item 6) – within the Monitoring 2008/09 report's addendum report it stated in resolution 21 "That the identified Revenue projects of £348,220 be drawn down from balances". This included the allocation of funds to Brent Park of £20,000 for play equipment.
- 2.2 On 2 December 2009, the Director of Environment and Operations in consultation with the Cabinet Member for Environment and Transport approved by delegated powers (DPR 947) the DCSF Playbuilder Packages One, Two and Three, and Brent Park mini tender acceptance which included £40,000 for Brent Park Play Area.

## **3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS**

- 3.1 Within the vision of the Corporate Plan 2010-13 priority 'Sharing opportunities, and sharing responsibility' it states that "we will draw on the expertise of our diverse communities we seek to promote health and reduce crime and other inequalities". This is achieved by imbedding community cohesion.
- 3.2 The Corporate Plan 2010-13 priority 'Sharing opportunities and sharing responsibility' has a strategic objective to "improve health outcomes for all". This can be achieved through increased physical activity levels that contributes to the prevention and management of over 20 conditions and diseases including coronary heart disease, diabetes, cancer, positive mental health and weight management. Conversely, physical inactivity, together with poor diet, has contributed to the rapid increase nationally in obesity in both adults and children. Providing challenging and exciting play areas supports the involvement of children in physical activity and aids their development.
- 3.3 Within the vision of the Corporate Plan 2010-13 priority of 'A Successful London suburb' has a vision it states that "we want Barnet to continue to be a successful, prosperous place where people want to live. We will ensure that the borough is clean and safe, preserve green spaces etc". This is achieved through the play area at Brookside Walk as the site gives a central focus for the community and compliments the setting within which it sits, providing a valuable and lasting resource for the community.

#### **4. RISK MANAGEMENT ISSUES**

- 4.1 Retrospective planning permission may not be granted for the play area at Brookside Walk and subsequently the removal of the play area will be required at further cost to the Council. To limit the financial loss an alternative location has been identified and provision made for the relocation of the facility to Hendon Park.
- 4.2 The same Contractor who installed the play area will be employed in its removal to maintain warranties and limit the risk of damage to the equipment. Provision within the procurement process has been made for the removal and re-installation of the play area into Hendon Park if required.

#### **5. EQUALITIES AND DIVERSITY ISSUES**

- 5.1 Play areas are integral to children's development, in developing skills and contributing to physical activity, the play area in Brookside Walk was designed to be physically challenging, fun, contain elements of risk and integrate natural elements of play such as landscaping, logs and boulders. Specifically the play area was designed with the community with a focus on providing access to all children with the pieces of equipment and access designed to enable both children with and without disabilities to use and play together.
- 5.2 The 47 play areas (including Brookside Walk) in the borough benefit all sectors of the community. The provision of a play area at Brookside Walk addresses a previous deficiency in play provision for this residential area with no play areas falling within the recommended 5 minute walk. The nearest play area is located in Hendon park 600 metres away, and located across very busy roads.

#### **6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)**

- 6.1 The play area project for Brookside Walk, known as Brent Park, was procured alongside the eleven playbuilder play areas, with Brookside Walk forming the basis of award for the contract packages for the playbuilder projects. The procurement process utilised the ESPO Pro 5 Framework Contract 115 – Playground and outdoor equipment. The successful contractor submitted a scheme that met with the criteria and the available budget of £40,000. The scheme was significantly discounted in terms of the package / volume award by approximately £15,000. The real value of installed equipment and landscaping is estimated to be around £55,000.
- 6.2 The play area cost £40,000 and was funded from the revenue allocated for a number of projects by the Cabinet Resources Committee. The identified projects were subsequently varied to facilitate the actual delivery of the projects on the ground and to make the best use of the funds available at the time, substituting funds from other grants to achieve the best outcome for Barnet.
- 6.3 To remove and re-install the play area at Hendon Park will cost approximately £60,000, which will need to be met by the Greenspaces revenue budget, and will result in a budget pressure that will be contained within Environment & Operations overall budget.

## **7. LEGAL ISSUES**

- 7.1 Funding was allocated for play equipment in Brent Park by CRC in March 2009, however, following consultation with local residents it was determined that Brent Park was not suitable for such a facility and the site; Brookside walk located across the road was identified to deliver the project. Further authority was then required, but not sought to:
- a. draw down the funding to construct the play area and
  - b. change the location from Brent Park to Brookside Walk.
- 7.2 The Council was challenged in July 2010 and it became apparent that there had been a significant failing in governance and the authority to construct the playground in Brookside Walk was not in place. The Council have conceded this point and that of the requirement for planning permission for the play area. In order to rectify this position the Council is required to apply for the requisite authority and retrospective planning permission.
- 7.3 The Court ordered on 13 August 2010 that the play area be closed to public use and the play area removed. If in the event planning permission is obtained during its dismantling the dismantling would no longer be required.
- 7.4 At a further Court hearing on 9 September the Court ruled that subject to the grant of retrospective planning permission the Council remove the play area from Brookside Walk be time limited to take place by 30 November.

## **8. CONSTITUTIONAL POWERS**

- 8.1. The Council's constitution in Part 3, Responsibility for Functions, paragraph 3.6 states the functions of the Cabinet Resources Committee including all matters relating to land and buildings owned, rented or proposed to be acquired or disposed of by the Council.

## **9. BACKGROUND INFORMATION**

- 9.1 In May 2008 a petition was lodged at the Hendon Resident's forum for the provision of a play area in the Brent Park area, either in Brent Park or Brookside Walk, further lobbying of the Council on this matter ensued and funding was allocated at Cabinet Resources Committee on 5 March 2009 for play equipment in Brent Park.
- 9.2 In April 2009 a site meeting with lead residents took place to determine the initial scope of their requirements and to identify any suitable locations for delivering the project. Agreement to reallocate funding from Windsor Open space to maximise funding potential from the Help a London Park award and to build a play area to the value of £40,000 in Brent Park or Brookside Walk was also sought.
- 9.3 The initial concept and location of the play area was agreed on 29 July 2009 with residents and Ward Councillor's. With a final design brief determined at a consultation event in Brookside Walk open space on 25 October 2009.
- 9.4 In developing the design brief it was determined that the only viable location for the play area was Brookside Walk.

Brookside Walk was chosen as it offered the following benefits;

- ❖ The large openspace available;
- ❖ Availability of space to incorporate a challenging playspace;

- ❖ Play area could be incorporated into the existing landscape;
- ❖ It is visible from the road and the flats opposite;
- ❖ High level of footfall through the area – used as an access route;
- ❖ Accessibility to potential users from various locations; and
- ❖ CCTV at the underpass.

Brent Park site was deemed unsuitable for the following reasons:

- ❖ Original location of a previous play area is in the heart of the park in an isolated and secluded location leaving it vulnerable to vandalism and an unsafe area to play;;
- ❖ The location at the front of the park was not available due to the trees/root zones
- ❖ Its proximity to the lake and river;
- ❖ Secluded nature;
- ❖ High levels of vandalism experienced in the park; and
- ❖ Brent Park has grown into a more natural wildlife park, providing residents with access to wildlife in an otherwise very urban area. The installation of a play area does not fit with its primary function.

- 9.5 On 4 December 2009 authorisation to implement the project was received and on 4<sup>th</sup> January 2010 it was determined that planning permission was not required for the play area at a panel review meeting, as it could be constructed under permitted development delegation. Following the receipt of a judicial review, an investigation determined that the authorisation that was obtained was not sufficient and inline with the required governance process and that planning permission may have been required.
- 9.6 Construction on the play area commenced on 6 June 2010, with the site open to the public on 16 July 2010, whilst final snagging works were completed by 12 August 2010.
- 9.7 Following a Judicial Review Hearing (Alex Martin-Sklan v London Borough Barnet) it was decided by Order dated 13 August 2010;
- ❖ That the application for Judicial Review be granted by consent and the declaration made that the decision to erect the play equipment was without lawful authority and planning permission was required and not obtained;
  - ❖ That the defendant does prevent access to the play area and does remove the play equipment and restore the land to its former condition;
  - ❖ Further the judge made clear in his judgement that should retrospective planning permission be granted in the interim to the Council, they would not have to continue to remove the play equipment; and
  - ❖ In addition, he made clear that although he would not set a date and time for works to be carried out, he expect the council to act reasonably and take all steps to comply with the terms of the Order.
- 9.8 Following an Administrative Court Hearing– (Alex Martin-Sklan v London Borough Barnet) it was decided by Order dated 9 September 2010;
- ❖ The Respondent do remove the play equipment and restore the land its former condition by 30 November 2010;
  - ❖ The obligation to comply with (1) above comes to an end if planning permission for the play area, associated equipment and works is granted prior to 30 November 2010;
  - ❖ The Respondent do pay the costs of Applicant in the sum of £1849.25; and
  - ❖ The Respondent be granted liberty to apply in respect of the timescale in (1) above.
- 9.9 A retrospective planning application for the play area at Brookside Walk was submitted on 27 August 2010.

9.10 Should retrospective permission not be obtained for the play area at Brookside Walk, Hendon Park, which is the nearest park to this residential area can accommodate the play equipment within the current play area.

## **10. LIST OF BACKGROUND PAPERS**

10.1 None.

Legal –a PR  
CFO – CM