

**AGENDA ITEM: 13**      Pages 248 – 258

**Meeting**      Cabinet Resources Committee

**Date**      28 March 2011

**Subject**      **Copthall Athletics Stadium Greenlands  
Lane London NW4 1PS**
**Report of**      Cabinet Member for Resources and  
Performance

**Summary**      To report on the discussions held with Saracens Rugby  
Football Club and request consent to a proposal to refurbish  
the stadium and renew the pitch and to enter into a lease and  
a Management Agreement with the Saracens Copthall  
Limited Liability Partnership.

**Officer Contributors**      Julie Oldale, Assistant Director – Commercial Services  
Matthew Waters, Project Manager  
Judith Ellis, Valuation Manager

**Status (public or exempt)**      Public (with separate exempt report)

**Wards affected**      Mill Hill

**Enclosures**      Appendix A - Lease Plan  
Appendix B – Lease Principle Terms

**For decision by**      Cabinet Resources Committee

**Function of**      Executive

**Reason for urgency /  
exemption from call-in (if  
appropriate)**      Not applicable

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020 8359 6003, Judith Ellis, Valuation Manager, 020 8359 7364.

## **1. RECOMMENDATIONS**

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- 1.1 That, in exercise of the council's powers to secure the promotion or improvement of the social well-being of the council's area, pursuant to Section 2 of the Local Government Act 2000 and all other relevant powers and taking account of its Community Strategy, authority be granted to:**
  - 1.1.1 complete an agreement for lease with Saracens Copthall LLP to enable completion of the refurbishment of the stadium at the cost to the Saracens Copthall LLP.**
  - 1.1.2 grant a 99 year lease at a peppercorn rent, together with a management agreement (outlined in 1.1.3 below), to Saracens Copthall Limited Liability Partnership (LLP) on completion of the proposed refurbishments.**
  - 1.1.3 enter into a management agreement with Saracens Copthall LLP, on completion of the proposed refurbishment works.**
  - 1.1.4 grant a licence to Saracens in the event that Saracens require early occupation of the site to carry out preliminary works prior to completion of the documents detailed above.**
  - 1.1.5 negotiate with Greenwich Leisure Ltd ("GLL") the termination of the, existing, arrangements between the council and GLL, in relation to Copthall Stadium.**

## **2. RELEVANT PREVIOUS DECISIONS**

- 2.1 Subject to referral to the Secretary of State, Planning & Environment committee resolved to grant planning consent to Barnet Football Club who had planned to relocate to Copthall Stadium in 2000.
- 2.2 Cabinet Resources Committee, 9 September 2002 – agreed to grant Hendon Football Club a licence to occupy the Copthall Stadium with an agreement for a lease, to grant Hendon Football Club a 25 year head lease, at a peppercorn rent, of Copthall Stadium and that the Chief Officers concerned be authorised to negotiate these outcomes in consultation with the Cabinet Member for Children and Community Development and the Cabinet Member for Resources.
- 2.3 On 29 October 2009, the Cabinet Member for Policy and Performance authorised an eight year management agreement be granted to Greenwich Leisure Limited (GLL) for the provision of management services with effect from 1 January 2010.

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

- 3.1 The Corporate Plan 2010-2013 commits the Council to delivering 'Better services with less money'. A key principle of the medium term financial strategy is to continually review the use of Council assets so as to reduce the cost of accommodation year on year and to obtain best consideration. This is provided by encouraging private investment into the stadium which will improve and enhance the use of this asset for sports use and the community.
- 3.2 The proposal further delivers against the 'Better Services with Less Money' priority as the Council will seek to limit its outgoing revenue liability whilst ensuring the availability of high quality sports facilities for clubs and the community.

- 3.3 A key principle of the proposal from Saracens is that at least 30 hours per week of community use will be available at the stadium, free of charge or a for nominal fee to recover expenses.

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

- 4.1 As the proposal has potential to cause a degree of public concern, protecting the Council's future community use of the stadium is of significant importance and a primary objective. Failure to secure adequate controls within any arrangement with Saracens could result in reputational and financial implications for the Council. Appropriate external legal support has been secured to provide advice on the relevant controls so that the Council's objectives can be achieved. Saracens have provided an undertaking to cover the Council's legal costs relating to this proposal.
- 4.2 Access may be required in advance of the determination of an application for planning permission and completion of the legal documentation. Should this be required, a licence may be granted for works that do not require planning permission. Indemnities will be requested and an agreement documented to protect the Council's position should the proposed lessee decide not to proceed with the wider proposals.
- 4.3 Failure by Saracens to perform their obligations will be addressed within the legal agreements, with appropriate protections for the council built in and guarantors provided. This should ensure that the Council is not left with the stadium in an unusable state with no funds to remedy.
- 4.4 Failure by Saracens to perform their obligations to continue community activities will be mitigated through the management agreement.
- 4.5 As the associated car park is included within the demise, there is a risk that future parks and open space events at Cophall could be restricted where use of the car park would normally be required.
- 4.6 Officers are concerned about enforcing the restrictions in the Lease due to the Law of Property Act 1925. Section 84 of the Act allows a tenant, with a lease of 40 years or more to apply to the Leasehold Tribunal for variation or discharge of restrictions in leases, after 25 years of the term have expired, on the basis that the provisions have become obsolete or that they restrict reasonable use of the land. The external lawyers, acting for the Council, have confirmed that, due to the positive nature of the obligations on the tenant which will be contained in the Management Agreement, the restrictions in the lease will be capable of enforcement albeit it is difficult to predict the changing nature of the locality to the property or judicial changes in policy and approach.

#### **5. EQUALITY AND DIVERSITY ISSUES**

- 5.1 The Council is committed to improving the quality of life and wider participation for all in the economic, educational, cultural, social and community life of the Borough. This proposal does this by bringing into use sports facilities for the community's use, widening coaching opportunities for athletics and rugby and improving disabled access as part of the refurbishment process.
- 5.2 A recent report investigating sports resources in the borough identified a shortage of Rugby pitches in the borough. Saracens will be under a general obligation to ensure an artificial pitch is provided as part of the proposal which will be available for use by local

teams at a rate which the Council can object to. To ensure accessibility the pitch will be available free of charge to schools within the Borough.

5.3 The newly refurbished facility will provide a hub for the Saracens Sport Foundation which aims to meet the needs of schools and clubs in the area, helping to build strong, genuine and purposeful relationships via partner training sessions and fundraising through ticket sales.

5.4 Saracens Sport Foundation is a registered charity whose mission is to inspire communities and change lives through the power of sport. Programmes engage and challenge children and young people to lead an active, healthy and rewarding lifestyle.

5.5 An Equalities Impact Assessment will be undertaken as part of the project.

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

### 6.1 Finance

6.1.1 The Saracens shareholders have established a Limited Liability Partnership (Saracens Cophall LLP). The Agreement for Lease (enabling completion of the refurbishment of the stadium), Lease, Management Agreement and Licence for Works (if required) will be between the Council and the LLP.

6.1.2 The LLP are proposing to invest in the refurbishment of Barnet Cophall Stadium. All costs associated with this proposal and the commissioning of the construction work are the responsibility of the LLP. A guarantor has been confirmed for the stadium refurbishment project in the event of the LLP defaulting.

6.1.3 The LLP has undertaken to pay the Council's legal fees in preparation of the agreement for lease and the lease. Any other project related costs incurred by the Council will need to be contained within the respective service areas within the Council..

6.1.4 The Council's staff in conjunction with Bevan Brittan LLP (the external lawyers acting for the council on this project) have undertaken project due diligence.

6.1.5 The lease and management agreement will enable an element of ancillary / non-rugby usage for which there may be financial benefits in terms of increased income and scope for a profit sharing arrangement. At this stage it is not possible to quantify the level of additional income that could be generated.

6.1.6 Over the next three years the Leisure service will be reviewed to deliver a significantly reduced cost to the Council but without affecting the level of service. The 2011/12 to 2013/14 budgets will be reduced to demonstrate the desired outcome in line with the councils corporate objective of Better Services with Less Money. The Saracens project helps to support this goal. There is no impact on the Council's ability to deliver the leisure medium term financial strategy as a result of this proposal.

### 6.2 Property

6.2.1 Three documents will form the agreement between the Council and Saracens Cophall LLP, the Agreement for Lease, the Lease and a Management Agreement. These are summarised as follows:

A) Agreement for Lease

The Agreement for Lease will be completed dependant on Saracens obtaining planning consent for their proposals. Saracens will be able to carry out works at the site under this agreement.

Works that may be required prior to the completion of the Agreement for Lease can be carried out permitting Saracens to occupy under a licence with suitable indemnities in place to protect the Council's position.

#### B) Lease

The proposal is to grant Saracens a 99 year full repairing and insuring lease at a £1 rent p.a. and a minimum of 30 hours per week for community use as defined in a linked management agreement. The area to be demised is outlined in "Appendix A – Lease Plan". The Lease will be granted once all obligations relating to the development have been met by Saracens, Principle terms of the Lease are included in "Appendix B".

#### C) Management Agreement

In order to protect the long term use of the stadium for community use, a separate management agreement is required in addition to the lease. This will ensure that the short term community use requirement can be met and allows for flexibility to accommodate changes in the Council's future requirements. The management agreement is currently still in negotiation. However, the provisional terms sought are summarised below;

- ❖ Saracens must use reasonable care in their use of the property. They must use their reasonable efforts to co-operate with any Council initiatives aimed at encouraging the community to make use of the services being provided by the stadium. The charges made for the use of the facility can be disputed by the Council and Saracens must have due regard to the Council's suggestions.
- ❖ Saracens will be obliged to provide an indemnity for any claim brought out of the operation of the property.
- ❖ To ensure the effective provision of leisure services from the Property, nominated representatives of the Council and Saracens shall meet regularly to discuss issues, but such meetings shall not be more than once a month.
- ❖ The Council and Saracens shall meet for full review meetings every five years to review: type of use, intensity of use, net operating profit and cost of use. In the event that the parties are unable to agree any of these issues then either party may refer the dispute for resolution.
- ❖ The service that Saracens are required to provide needs to have regard to the community service principles. They are to provide a community delivery plan setting out the running of the leisure services for the forthcoming five years. The plan will be reviewed every five years. The plan must be in accordance with the community leisure principles. These are 30 hours of free community use, provision of an adequate booking facility and the obligation to provide details of the actual use by the community. Thus, the Council could have sufficient recourse if these broad principles are not adhered to. However, the Council does need to be aware that they are passing responsibility over to Saracens for the running of the facility and therefore they will not be able to interfere in the day to day running of the facility.
- ❖ Saracens have agreed to pay the Council 30% of their net profits for non-rugby use of the property. They can subtract their costs in providing the service from their gross profit and the exact deductions are currently under review.

- ❖ As regards potential disputes over the running of the service, the Council will be protected in several ways. The nominated representatives will meet regularly to discuss issues arising, so the Council will have input into the groups and areas which the service is to target. If the Council has a specific proposal which is not adopted in the plan, this could be discussed by the nominated representatives. If this is not successful, then as a last resort the Council could bring the matter to dispute resolution. However, as mentioned, because of the long term nature of the interest being granted, it is not intended to cover every eventuality which the Council may need to have over the service and Saracens will have to be allowed to run the facility as they see fit.

6.2.7 The proposal will involve the grant of a 99 year lease to Saracens and a subsequent loss of control of the area to be demised. This is compensated for by the commitment from Saracens to ensure the facility is used by sports clubs and the community, whilst limiting the Council's revenue liability for the site.

6.2.8 This opportunity came about because of a number of events coinciding with the termination of Saracens' Contact with Watford FC at Vicarage Road combined with their desire to return to NW London. This stadium has not been marketed as the proposals from Saracens including the social, sports and community benefits delivered through the Saracens Foundation represents a unique and rare opportunity. It would be highly unlikely for the Council to identify an alternative and willing partner of a similar stature during any reasonable marketing period who co-incidentally has a specific and urgent need. Given the significant benefits the proposal will deliver, investing the time required to market such an opportunity for which there is a very limited possibility of receiving a genuine alternative that equates both financially and in terms of the community facility to be delivered, is considered unrealistic, would likely result in a lost opportunity and does not represent a sensible approach.

### 6.3 Planning Issues

6.3.1 Any formal planning submission for the redevelopment and enhancement of the stadium must address a wide range of planning policy related matters. Key issues concern the location of the site within the green belt and transport implications arising from the proposals. Due to the green belt status of the land at Cophall the scheme put forward involving new build and temporary facilities represents inappropriate development in planning terms that is only acceptable if 'very special circumstances' sufficient to outweigh the conflict with green belt policy can be demonstrated. This will in part require a comprehensive site selection process to be undertaken to justify Cophall as the preferred location for such development over non green belt locations and sites where there would be a lower impact on the green belt. An application will also need to demonstrate that the transport impacts (for example on surrounding roads and the public transport network) can be adequately mitigated.

6.3.2 The planning application will be referable to the Mayor of London and Department for Communities and Local Government and could be 'called in' by either of these for their determination. Other bodies such as Sport England and the Environment Agency will also need to be consulted on the proposal and have the ability to recommend that the Secretary of State for Communities and Local Government 'call in' the application. Sport England has previously made it clear that the protection and continuation of the existing athletics use of the stadium will be a key matter. The safeguarding of existing uses and community access to the stadium and associated facilities more widely will be important considerations in the assessment of the schemes compliance with policy.

## 7. LEGAL ISSUES

External lawyers are acting for the council and have contributed to the following section;

- 7.1 Current agreements are in the process of being re-negotiated with the occupiers. The Council believes there is a small risk that a negotiated solution to the current occupation may not be agreed and completed and if no early termination of the Property interest could be achieved then compensation may have to be paid. In respect of Shaftesbury Barnet Harriers (see paragraph 7.2 below) four months notice may have to be served on the occupiers and this would seriously jeopardize the timetable of all parties.
- 7.2 Shaftesbury Barnet Harriers ("SBH") lease two single storey buildings within the, proposed, demised area due to expire in 2012. Initial discussions with SBH indicate they are supportive of the proposal and will work in co-operation with the Council and Saracens. SBH have agreed that their lease will be surrendered on completion of the proposed works. Saracens will agree that following the grant of the lease to them there will be a lease granted by Saracens to SBH.
- 7.3 Terms of a management contract were agreed between the Council and Greenwich Leisure Limited ("GLL") with a co-terminus lease, the terms of which were, also, agreed. The documentation was not completed but the law of specific performance is likely to imply an agreement. Discussions are ongoing with GLL as the existing arrangement will need to be varied or terminated to restructure in line with current proposal. GLL are working in co-operation with the Council and the Saracens to achieve this.
- 7.4 An undocumented occupation exists that may be construed a tenancy. A Physiotherapist is in occupation of the ground floor of the finishing tower. The current proposals do not interfere with the Physiotherapist's occupation, and she will continue in occupation on completion of the works.
- 7.5 Possible contamination issues due to spoil from the original running track previously deposited on the site have been suggested. An investigation has taken place to establish whether the spoil could remain on site or requires removal. The results of the investigation have been passed to Saracens who are obliged to carry out their works on the site in line with the recommendations within the report at their cost.
- 7.6 Substation and wayleave agreements will be required to facilitate separation of services.
- 7.7 Extensive legal input has been required and is ongoing to document and agree the agreement for lease, lease, warranties, building contract, existing legal agreements, new substation lease and way leave and licence for works.
- 7.8 Where the council proposes to dispose of land in reliance on section 123 of the Local Government Act 1972, subsection 2 of that section prevents the council from disposing of the land (otherwise than by way of a short tenancy) for a consideration which is less than the best that can reasonably be obtained. The grant of a lease at a peppercorn on an asset with a current value of £1.8 million is a transaction for less than the best consideration that can reasonably be obtained. The Local Government Act 1972: General Disposal Consent (England) 2003 enables disposal of land at less than the best consideration that can reasonably be obtained and without the, specific, consent of the Secretary of State where the difference between the best consideration which is reasonably obtainable and the, actual, disposal price is no greater than £2 million and the disposal satisfies the well-being criteria set out in section 2 of the Local Government

Act 2000. It is the view of the Valuation Manager that, the disposal in accordance with the recommendation will achieve this.

- 7.9 Section 2 of the Local Government Act 2000 gives the council power to secure the promotion or improvement of the social-well being of the council's area. Subsection 4 provides that, in exercising its Section 2 power, a Local Authority may: (a) incur expenditure; (b) give financial assistance to any person; (c) enter into arrangements or agreements with any person; (d) co-operate with or facilitate or co-ordinate the activities of, any, person; (e) exercise on behalf of any person any functions of that person; and (f) provide staff, goods, services or accommodation to any person. Taking account of the council's Community Strategy, it is considered that the, proposed, arrangements will meet the requirements of section 2 in that the resulting sports facilities will be available for use by the residents of the borough. In addition, the saving in terms of the existing management costs, running costs, repair and maintenance, and any income share derived from lettings can also be regarded as financial benefits to the Council which will, in turn, assist the council in its promotion and/or improvement of the social well-being of its area
- 7.10 Realisation of any latent development potential has been protected with a series of robust legal documents to secure the existing use of the site for the term of the lease.
- 7.11 This proposal is considered to have significant financial benefit to the council, and will provide a landmark stadium for the community.
- 7.12 Section 123 (2A) of the Local Government Act 1972 (as amended) provides that a local authority may not dispose of any land consisting of or forming part of an open space unless, before disposing of the land, they cause notice of their intention to do so to be advertised in accordance with the provisions of that Section and consider any objections to the proposed disposal which may be made to them. In accordance with section 123(2A), the proposal to grant Saracens exclusive use of the car park on match days and for two days either side will require advertisement.

## **8. CONSTITUTIONAL POWERS**

- 8.1 The Council's constitution in Part 3, Responsibility for Functions, paragraph 3.6 states the functions delegated to 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 Barnet Copthall Stadium forms part of a larger sports complex and is located in the Mill Hill ward. The stadium is currently underutilised, in poor condition and would require significant investment to bring it up to standard.
- 9.2 GLL currently operate the site which permits hiring to sports clubs, schools and the general public.. The Council also has a lease with Shaftsbury Barnet Harriers (SBH), a local athletics club for the club house and extension, which expires in 2012. SBH also occupy a room in the main building with the approval of GLL and hire the stadium and track when required for both training and events.
- 9.3 The stadium currently includes a football pitch in the centre which is currently hired by Kentish Town Football Club on match days.



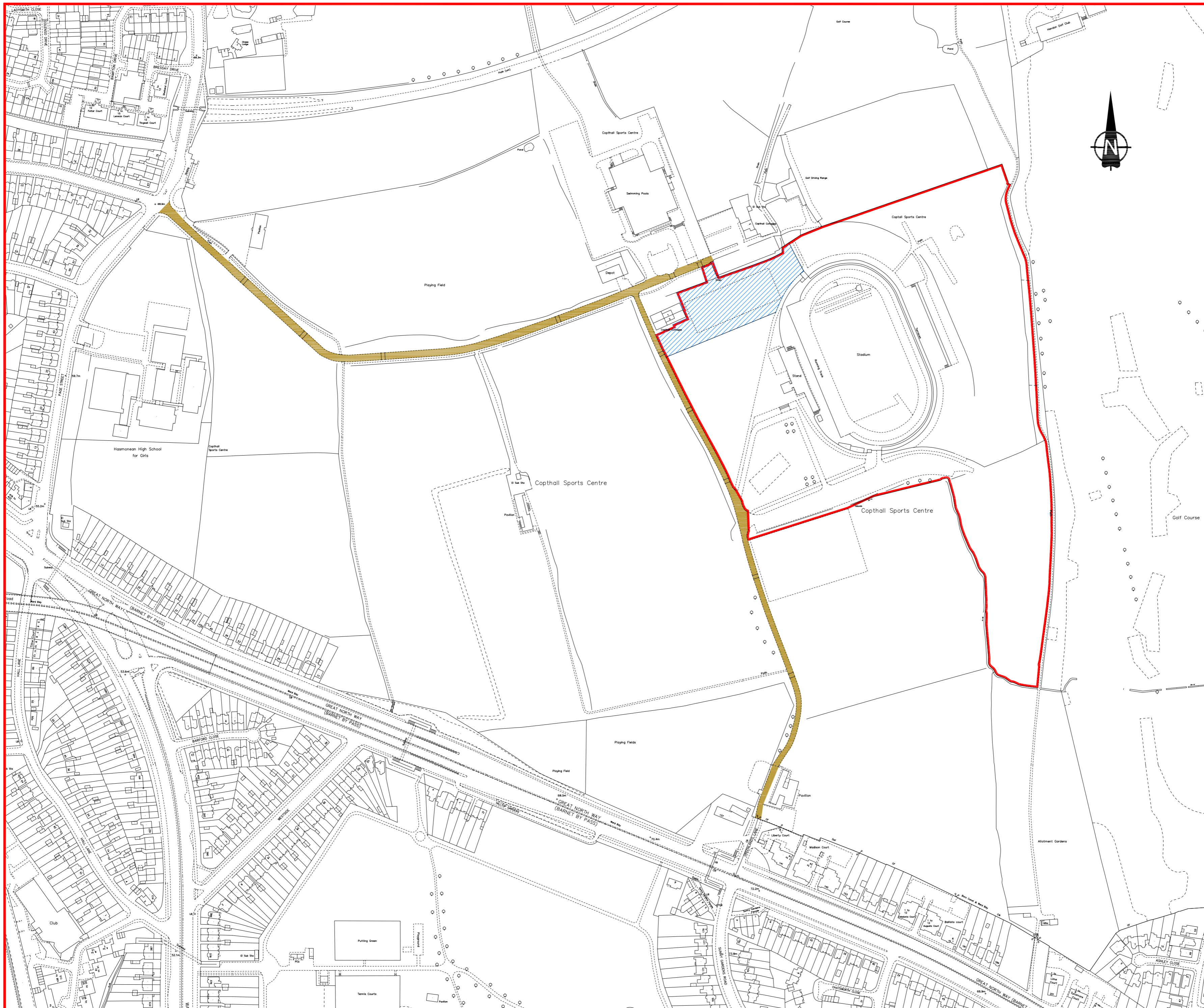
- 9.4 An approach was made to the council at the end of 2010 by representatives of Saracens Rugby FC who were investigating potential relocations for a stadium, as their exiting lease arrangement at Vicarage Road Watford had been terminated.
- 9.5 The proposals involve a comprehensive refurbishment of the existing main building to the west of the site and the creation a new permanent stand to the east which would be used by spectators of athletics meetings and rugby matches and also accommodate hospitality facilities and an indoor training facility. It is presently anticipated that these permanent structures would create a capacity of approximately 3,000 seats.
- 9.6 The Development is based on Saracens Rugby Football Club providing funding and carrying out a refurbishment of the existing West Stand, installation of an artificial turf pitch and construction of a new permanent East Stand.
- 9.7 Up to 16 rugby matches would be hosted at the ground each year on an all weather pitch within the existing athletics track, which would be available to the local community and other sports clubs when not in use by the Saracens. The capacity would be temporarily increased during the rugby season by using demountable seating that can be erected and dismantled over four days which will open up the running track for use as an athletics stadium. This would create a capacity of approximately 10,000 including seated and standing. The current average attendance for a Saracens match is approximately 7,000.
- 9.8 Copthall would also become a new hub for the Saracens Foundation, which has been working with young people in London for the past decade, improving lives by running various courses that link education and sport.
- 9.9 The athletics track will not be damaged by the temporary seating and 4 lanes of track will remain available for winter training.
- 9.10 The Saracens have held meetings, to allow consultation with the users of the stadium, local residents and local interested groups .to ensure that the continued use by these groups can be understood and considered in the proposals.
- 9.11 Provisional negotiations have been undertaken with Saracens to develop an agreement that will provide sufficient security for the Saracens to make their initial investment, but for the Council to retain use of the improved facility as a community asset. Approval is now being sought to conclude the legal agreements as detailed in this report to enable the completion of the proposed works subject to planning.

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

- 10.1 None

Legal – SS

CFO – JH/DM



NOTES:

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Revision and Date	Description	Initial

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SCHEME:  
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TITLE:  
LEASE PLAN

Scales: 1:2500	Date: 02/03/11
Initiated: R.M.	Drawn: K.E.B. Checked: R.M.

DRAWING NO:  
24225/3 A

## **Appendix B - Cophall Stadium Lease Principle Terms**

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The proposal is to grant Saracens a 99 year full repairing and insuring lease at a £1 rent p.a. and a minimum of 30 hours per week for community use as defined in a linked management agreement. The area to be demised is outlined in "Appendix A – Lease Plan". The club are to put and keep the current buildings on the property and any new buildings erected in a good state of repair and condition throughout the term of the lease. This includes the obligation to keep all landscaped areas and un-built areas clean and tidy and properly maintained. The authorised use will be as a rugby, athletics and sports stadium with ancillary clubhouse, office and parking facilities. The Council may use the car park but not on match days or on the two days either side of match days. In addition the use of the car park by the public would be limited whenever it is required for events related to the stadium. The Council will contribute a proportion towards the repair of the car park and access roads based on use.

Any concerns about future development which Saracens may carry-out at the property will be addressed as there will be a prohibition on the erection of any additional or new buildings at the property without the Council's consent. It is made clear that the Council's consent could be withheld if the use was to be altered or the management agreement affected.

The Council are also protected in respect of future development in relation to restrictions on the use of the property. Use for gambling is to be prohibited, other than incidental betting on match days, and this will be subject to Saracens obtaining the appropriate approvals. Residential use and use as retail premises of over 15,000 square feet in total will be prohibited and limited to being ancillary and relevant to the use of the site as a sports venue.

The Council will, also, be protected if Saracens decide to sell their leasehold interest to another party. The lease is to provide that Saracens can only assign their interest in the property where they obtain the Council's consent and the proposed assignee is capable (in the Council's opinion) of complying with the management agreement. The same will apply to an under-letting in whole or part. The external lawyers have also requested that Section 84 in respect of uses is excluded, but this is not yet agreed.