

**CABINET RESOURCES COMMITTEE – 28<sup>TH</sup> M ARCH 2011**

**ITEM 4 – PUBLIC QUESTION TIME**

**Questions asked of the Chairman of the Committee by Mr John Dix**

**ITEM 5 – DRS BUSINESS CASE**

- 1. What assumptions are councillors using for the anticipated level of investment that the private sector will make in the proposed outsourced services and why are these assumptions not detailed in the business case report?**

**Reply by the Chairman of the Cabinet Resources Committee**

Councillors are not making any assumptions about the anticipated level of investment by a partner. We do expect that in order to make the cost savings investment will be made by any future partner, for example in technology and equipment. The exception to this is the cremators where significant investment will be required; the delivery of this investment will be considered separately.

During the competitive dialogue process, the council will be specifying the outcomes it wishes to achieve. It will choose its partner based upon the most efficient and effective solutions put forward to meet those outcomes.

- 2. Are councillors concerned at the lack of benchmark data and evidence from other outsourced councils to support the assumptions set out on pages 41-43 of the report.**

**Reply by the Chairman of the Cabinet Resources Committee**

Benchmarking data for the services in scope is limited, and in many cases the services themselves believe it to be unreliable. Where possible, CIPFA data and national indicators were used to give an indication of potential cost reduction and income increases. Where it was not possible to use benchmarking data, these assumptions were based upon what the services believed was possible, and market research.

- 3. Do councillors believe that the rather simplistic +/-10% for the sensitivity analysis is adequate for such a complex project?**

**Reply by the Chairman of the Cabinet Resources Committee**

The +/- 10% confidence range is an indicator to demonstrate a logical range within which we would expect the new expenditure to operate. This range helps to determine whether a new provider could provide the same level of service for less cost, and specifically considers:

- The cumulative annual improvement to reach specified benchmarks, and;
- The effect on revised gross expenditure.

This is part of the financial model which underpins the Business Case, which at this stage is a description of the reasons for the project and the justification for undertaking it (based on the estimated costs of the project, the risks and the expected business benefits and savings). For DRS in particular, it provides the indicative evidence on which to progress the project to the next phase of activity, and further detailed modelling will occur once competitive dialogue is underway and we are clearer about what solutions the market has to offer. As a dynamic document, the Business Case will then be updated on the back of this data.

- 4. Do councillors believe that 4 key risks as set out on pages 52-53 of the report are an adequate assessment of the risk this project is likely to experience?**

**Reply by the Chairman of the Cabinet Resources Committee**

The risks set out within the business case are the key risks only and not a full risk assessment of the project. A full risk register will be maintained by the One Barnet Programme Office and managed according to the London Borough of Barnet corporate risk management strategy.

**ITEM 13 – COPTHALL ATHLETICS STADIUM**

- 5. Why are the council proposing to enter into a 99 year lease with Saracens when this appears to conflict with the advice provided by officers as set out at paragraph 4.6 of the report.**

**Reply by the Chairman of the Cabinet Resources Committee**

In order for an investor to secure sufficient funding to carry out a development of this scale, a 99 year lease would be required.

While Section 84 has been raised as a risk we have mitigated such a risk in the following ways;

**1) Restricted Use** - Residential or retail use above 15,000 sq ft is specifically prohibited, and the property must be used as a rugby, athletics and sports stadium with ancillary clubhouse, offices and parking.

**2) Section 84(1) of the Law of Property Act 1925**

Section 84(1) of the Law of Property Act 1925 provides a mechanism whereby an owner of land which is subject to a restrictive covenant which relates to the use of the land, or buildings on that land, can apply to the Lands Chamber of the Upper Tribunal for the covenant to be discharged or modified. This can be done only if one or more statutory grounds can be proved. Section 84(12) of the Act extends this principle to long leases, and provides that the Section 84 procedure can be invoked in relation to restrictions contained in a lease which was granted for more than 40 years, provided at least 25 years of the term has elapsed. The concern of the Council is that, at any time between years 26

and 99 of the lease, there is a risk that Section 84 procedure could be used by a tenant to sidestep restrictions which are written into the lease to ensure it is used as a community facility for the duration of the lease.

An important point to note is that the Section 84 procedure can **only** be used to discharge or modify covenants which are restrictive in nature. A further important point is that Section 84 only applies to covenants which restrict the use of premises, not covenants which do not relate to user.

In this instance, we have requested that Saracens are under a positive obligation in the Lease to provide 30 hours of community use for community groups wishing to operate in the Borough as set out in an on-going management agreement. We believe it would be very difficult to argue that this requirement is a restrictive covenant.

### **3) Local authority-specific considerations**

The general law under Section 84 is applied slightly differently when the owner of the land is a local authority. Case law has shown that where a public body such as a Council looks to enforce a covenant in order to discharge its obligations as a public body, the Lands Tribunal will be more easily satisfied that the ability to enforce the covenant provides the Council with a material benefit. The effect of this is that it should be easier for the Council to defeat an application under Section 84(1) than if the landlord under the lease was a private entity.

### **4) Exclusion of Section 84**

We have provided in the Lease for Saracens' rights under Section 84 to be excluded from the Lease. Case law confirms that on public policy grounds, Section 84 can not be excluded. However, case law does suggest that where an exclusion is inserted into a lease, then this may give rise to a claim for damages for breach by the tenant which in itself is a further incentive for Saracens' to comply.

In view of the above, risks have been sufficiently mitigated to support the grant of a 99 year lease, which will enable sufficient funding to be secured.