

AGENDA ITEM: 5 Pages 1 - 8

Meeting	Cabinet Resources Committee
Date	27 September 2011
Subject	Grant of new leases for allotment sites
Report of	Cabinet Member for Resources and Performance and Cabinet Member for Environment
Summary	To enable, self management of allotment sites by the allotment plot holders, leases of allotment sites will be granted to organisations of allotment plot holders for terms of up to 38 years on the terms set out in this report.

Officer Contributors	Lynn Bishop, Assistant Director, Environment & Operations, George Church, Principal Valuer, Property Services
Status (public or exempt)	Public
Wards affected	All wards except Brunswick Park ward
Enclosures	Allotment Sites
For decision by	Cabinet Resources Committee
Function of	Executive
Reason for urgency / exemption from call-in (if appropriate)	Not applicable

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1. RECOMMENDATIONS

- 1.1 That leases be granted to organisations of allotment plot holders for terms of up to 38 years as set out in section 9 of this report. Officers will seek consent from the Department of Communities and Local Government for the grant of these leases should the value of the interests fail to comply with the Local Government Act 1972: General Disposal Consent (England) 2003.**

2. RELEVANT PREVIOUS DECISIONS

- 2.1 Cabinet 29 November 2010, agenda item 11, "The Future of Barnet's Allotments", is relevant to this committee paper because it decided that a new Big Society management model should be explored for the Borough's allotment sites, providing for allotment site management with the sites run by their users.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 The Corporate Plan 2011 – 2013 priority sharing opportunities, sharing responsibility, states that the Council will draw on the expertise of our diverse communities and seek to promote health and reduce crime and other inequalities.
- 3.2 The Corporate Plan 2011-2013 aims to encourage Barnet Residents to take a lead role in shaping the opportunities provided and to take responsibility for contributing to the borough and supporting their community. Granting leases of allotment sites to the allotment organisations who will operate each site and be responsible for the cost of doing so, on the terms set out in this report, will enable the organisations to fulfil this aim by enabling residents and community groups to operate their respective allotment sites with minimal levels of scrutiny by the Council.

4. RISK MANAGEMENT ISSUES

- 4.1 The terms of the leases will protect the use of the Council's land holdings which will be in accordance with the terms of the Allotment Acts.
- 4.2 In accordance with the terms of the Cabinet Report referred to in paragraph 2 above, meetings with the allotment organisations who volunteered to be the first to complete leases in the new form have taken place, followed by detailed negotiations concerning the terms of the lease. These are set out in brief form as the Heads of Terms in section 9 of this report, and meet the requirements of both the Council and the allotment organisations.
- 4.3 As proposed in the Cabinet paper on 29 November 2010, a contingency proposal and plan has been constructed to manage potential failure of the running of the allotments sites. In these circumstances, the Council may look to end the lease if possible, (under the forfeiture provisions) whereupon, if the leases are terminated, the management of the sites will be temporarily taken in hand by the Council whilst either suitable new managers are found, or arrangements are made for the management to be carried out by a successful neighbouring site.

- 4.4 The lettings will be at less than best consideration and while the Council's Estates Strategy commits the Council to maximising rental income, the concession concerning the rent will be more than offset by the transfer of financial responsibility for the sites to the allotment organisations. Proceeding as recommended in paragraph 1.1 of this report ensures that the Council will be acting appropriately.

5. EQUALITIES AND DIVERSITY ISSUES

- 5.1 The requirements of the Cabinet report referred to in paragraph 2 above concerning equalities and diversity issues, dealt with the following matters set out at a-d below:
- a. *That suitable safeguards would be incorporated into the agreement with the allotment organisations to ensure that all residents of the borough are treated equally.* This requirement has been agreed and will be incorporated within the leases of the site.
 - b. *The Council will need to be satisfied that the community organisations are capable of running the sites and understand the lease agreement; they will be encouraged to seek legal advice. Officers have been working closely with the Chairman of the Barnet Federation of Allotment Societies and the fast track group of sites who wish to be granted leases at the first opportunity.* This group which includes a local solicitor clearly understand the proposed lease terms as the negotiations have been long and detailed.
 - c. *The management of the Allotments by community groups will enable representation and use to reflect the nature and make up of the local community.* The community groups taking the leases are the plot holders of each allotment sites representatives and the management organisation of each site therefore represents the nature and make up of the plot holders.
 - d. *It is hoped that a greater sense of local management will have a positive effect on satisfaction and use levels, with more localised services tailored to each community's needs.* Although the proposal for the allotment organisations to take over the management of their sites is a significant change and will involve them taking greater responsibility for the sites, the fact that a very large number of allotment sites are keen to take the proposed leases is proof that the plot holders are looking forward to the change and they expect to make the allotment sites better places for allotment gardening, resulting in a higher satisfaction ratings of the users of the sites, the plot holders
- 5.2 It should also be noted that, the Council's Equalities Policy and Scheme take account of the statutory duty to eliminate discrimination and inequality amongst persons of different race, sex and disability and to promote equal opportunities. The, proposed, disposal has been evaluated against the principles in the Equalities Policy and Equalities Scheme and no adverse implications for any, specific, equalities group has been identified.
- 5.3 The allotment associations of each site who will be the Council's tenants will covenant with the Council to comply with the Council's equality policies in line with the relevant equality legislations.

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

Finance

6.1 The Cabinet paper dated 29 November 2010 decided that all responsibility for running Barnet's allotments should pass to allotment associations and that the associations should retain all income from the plot holders. The resulting transfer of the allotments will, as reported in the previous Cabinet paper, result in a benefit to the overall Council budget. Whilst this transfer takes place, expenditure will be from the existing Green Spaces budget, assisted by an increase in fees and charges for sites which do not enter into new form leases.

6.2 Procurement, Performance & Value for Money, Staffing , IT and sustainability

There are no procurement, performance, value for money, staffing or sustainability issues arising out of this committee paper.

6.3 Property

No changes to the use of the Council's property resources of allotments is envisaged. In exchange for peppercorn rents for the sites, responsibility for the control of the sites will pass to the tenants. Furthermore, it will be noted from the Heads of Terms of the proposed allotment lease set out in section 9 Background Information, that provisions are (so far as the law permits) to be built into the leases concerning allotment land which may become surplus in the future.

7. LEGAL ISSUES

7.1 In response to a Parliamentary question on 16th March 2011 raised in the House of Commons on behalf of the Department for Communities and Local Government, Local Authorities have the power to, *"lease land to allotment societies or co-operatives on long leases using their general power to dispose of land under Section 123 or 127 of the Local Government Act 1972. The Secretary of State must consent to statutory land being leased for other purposes and to disposals for a tenancy of more than seven years for less than the best consideration that could reasonably be obtained"*.

7.2 Under the Local Government Act 1972, S123, Local Authorities have power to dispose of land in any manner they wish. The only constraint is that the disposal must be made for the best consideration reasonably obtainable unless consent is obtained from the Secretary of State. An exception to obtaining consent is a short tenancy which is granted for 7 years or less. The Council is seeking to grant allotment leases at a peppercorn rent for more than 7 years.

- 7.3 However, the Local Government Act 1972: General Disposal Consent (England) 2003 removed the requirement for Local Authorities to seek specific approval from the Secretary of State for a wide range of disposals made for less than best consideration. It provides the Local Authorities with general consent in circumstances where the authority considers that the disposal of any interest in the land will help secure the promotion or improvement of economic well being; social well being; and the promotion or environmental well being; in respect of the whole or any part of the Local Authority's area or of all persons resident or present in the area, and the difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2,000,000 (two million pounds).
- 7.4 In view of the same, the Valuation Office Agency (An Executive Agency of HM Revenue and Customs) have been instructed to state whether or not the difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed two million pounds. Legal Services will then advise on whether the lease falls within the terms of the General Consent.

8. CONSTITUTIONAL POWERS

- 8.1 The Council's Constitution in part 3, Responsibility for Functions, states in paragraph 3.6 "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".
- 8.2 Pursuant to the paragraph Responsibilities for Functions, Chief Officers can take decisions without consultation if it involves the implementation of an earlier decision of the committee.

9. BACKGROUND INFORMATION

- 9.1 The Council has a statutory duty under section 23 of the Small Holdings and Allotments Act 1908 to provide a sufficient number of allotments in their area if there is demand for them. The report to Cabinet, The Future of Barnet's Allotments dated 29 November 2010 recommended that as far as possible, the management of allotment sites should be vested in the users of the sites. All responsibility for running the allotment sites should pass to allotment organisations formed from the plot holders using the site and the organisations should retain all income from the plot holders.
- 9.2 There have been three public meetings to decide on the preferred documentation of the basis upon which the allotment organisations hold their sites from the Council. Users of the Borough's allotment sites were invited and the preferred form of documentation is that of a lease. A "fast track" group of eight sites has come forward and a lease incorporating the following Heads of Terms has been agreed.
- 9.3 A list of Barnet's allotment sites is set out in appendix 1 to this report. There are 43 allotment sites, with two allotment organisations each managing 2 sites. There is therefore a potential for 41 leases to be granted. The leases will have terms up to 38 years dependant on the wish of each allotment organisation.
- 9.4 The provisions of the Management of Real Estate Property and Land in the Council's Constitution have been considered and complied with by the Council Officers in so far as they relate to the leases.

- 9.5 Instructions have been given to the Valuation Office Agency to carry out valuations to ascertain that the grant of leases at peppercorn rents and on the terms set out in this report comply with the Local Government Act 1972 General Disposal Consent (England) 2003, disposal of land for less than best consideration that can be reasonably obtained. If the conclusion from the valuations is that the grant of the leases fails to comply with the General Disposal Consent, an application to the Department for Communities and Local Government referred to in section 1.1 of the recommendations section of this report will be made.
- 9.6 It should be noted whilst the Council Officers will expect the Heads of Terms to form a part of the leases, nevertheless, they are not 'set in stone' and individual leases for the various allotments may vary to take into account negotiations and agreement with the different allotment organisations. However, the fundamental principle of a lease of each site being agreed at a peppercorn rent with the tenant taking responsibility for the repair and maintenance of the site will, be respected

Heads of Terms

Covenant / Party	Outline terms
Landlord	London Borough of Barnet
Tenant	The xyz allotment association
Term	These heads of terms will apply to whatever length of lease is agreed with allotment associations. Leases will not exceed a term of 38 years.
Rent	One peppercorn if demanded
Insurance	To have appropriate public liability insurance in place with a minimum level of cover of £2 million or such other sum as the Corporation may consider necessary from time to time.
Alienation	Assignment of the whole site to new Trustees, the site may be sublet to plot holders
Repairs	To keep the Property tidy and clear of weeds and rubbish and well and properly cultivated and maintained, including hedges, pipes, ditches, watercourses, roads, gates and trees.
User	Not to use the property other than as allotment gardens.
Alterations	Not to erect any buildings structures notices, advertisements or advertisement hoardings, otherwise than as provided for in the detailed lease terms
Indemnification of the Council	To indemnify the Corporation against all claims etc and expenses that may be made against them arising out of the use by the Association
Equalities and preference for Barnet residents for lettings of plots	To exercise preference in letting allotment plots to members of the Association in favour of Members who are residents of the London Borough of Barnet

Governance	The allotment association must be a body operating within a set of rules. The association must provide the Council with a properly audited annual return.
Encroachments	To take steps to prevent encroachments on the allotment site
Break Clause	A break clause has been agreed exercisable by either the Council or the allotment association tenant at the end of the 38 year term.
Recovery of disused parts of the allotment site	If more than an agreed percentage of the cultivatable area of the allotment site becomes unused, both parties shall agree an action plan to reduce the proportion of such area of the property to an agreed percentage. Failing this, the Council shall be entitled to recover from the Association such area of the property which continues to be unused, subject so far as the law will permit.
Legal Costs	The Corporation and the Association each to bear their own legal costs.
Generally	Such other terms and conditions as the Council may require and be agreed with the organisations.

10. LIST OF BACKGROUND PAPERS

10.1 None.

Legal – PD
Finance – JF

Allotment Site	Ward
Abbots Road	Burnt Oak
Archfields	Mill Hill
Barfield	Oakleigh
Bells Hill	Underhill
Booth Road	Colindale
Brent Way	Colindale
Brook Farm (North & South)	Totteridge
Byng Road	High Barnet
Cat Hill	East Barnet
Cherry Tree	Garden Suburb
Childs Hill	Childs Hill
Clifford Road	High Barnet
Cool Oak Lane	West Hendon
Coppetts Road	Coppetts
Daws Lane/ Mill Hill Park	Mill Hill
Deans Lane	Hale
Dollis Valley	Underhill
East Finchley	East Finchley
Finchley Manor	Garden Suburb
Frith Manor	Mill Hill
Fursby Avenue	West Finchley
Glebeland	Woodhouse
Gordon Road	West Finchley
Hatley Close	Coppetts
Hendon Grove	Hendon
Hospital Fields (West & East)	Golders Green
Pointalls	West Finchley
Lawrence Street	Mill Hill
Montrose Avenue	Burnt Oak
Needham Terrace	Childs Hill
Nethercourt Avenue	West Finchley
Rathbone	Coppetts
Sanders Lane	Mill Hill
Simmons Way	Oakleigh
Stanhope Road	Underhill
The Crescent	Coppetts
Thornfield Avenue	Finchley Church End
Tretawn Gardens	Mill Hill
Tudor Road	High Barnet
Vale Farm	East Finchley
Whetstone Stray	Totteridge
Wise Lane	Mill Hill
Woodhouse	Woodhouse
Total: 43	Total: 20 (all bar Brunswick Park)

Please note that most allotment sites are not regularly in receipt of post and therefore have not been allocated an address by Royal Mail.

There are 43 allotment sites in the borough, located in all but one of Barnet's 21 wards, the exception being Brunswick Park ward. There are also currently 2 allotment societies that each manages 2 allotment sites (e.g. Gordon Road - Nethercourt Avenue and Clifford Road - Tudor Road