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DECISIONS OF THE CABINET RESOURCES COMMITTEE

28 MARCH 2011

COMMITTEE:

*Councillor Daniel Thomas (Chairman)

Councillors

* Brian Coleman
Andrew Harper
* Robert Rams

* Richard Cornelius
Lynne Hillan

*Denotes Member present

\$Denotes member absent on Council business

1. **MINUTES:**

The minutes of the meeting held on 2 March 2011 were approved as a correct record.

2. **ABSENCE OF MEMBERS:**

Apologies for absence were received from Councillor Lynne Hillan and Councillor Andrew Harper.

3. **DECLARATION OF MEMBERS' PERSONAL AND PREJUDICIAL INTERESTS:**

The were no interests declared.

4. **PUBLIC QUESTIONS:**

The following questions were received from Mr John Dix on Agenda Item 5 relating to Development and Regulatory Services Project: Business Case:

A. **What assumptions are Councillors using for the anticipated level of investment that the private sector will make in the proposed outsources 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.

- B. 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.

- C. 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.

- D. 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.

The following question was received from Mr John Dix on Agenda Item 13 relating to Athletics Stadium, Greenlands Avenue, Copthall, London NW7 4RL:

- E. 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.

Mr Dix asked supplementary questions on questions A – D, above.

- 5. DEVELOPMENT AND REGULATORY SERVICES PROJECT: BUSINESS CASE (Report of the Cabinet Member for Housing, Planning and Regeneration and the Cabinet Member for Customer Access and Partnerships – Agenda Item 5):**
The Committee noted the One Barnet Overview and Scrutiny Panel's recommendations tabled at the meeting. For the reasons set out in the Cabinet Members' report, the Committee
RESOLVED –
- (1) That the Committee approve the Development and Regulatory Services business case, in order for the Council to begin the competitive dialogue process, following the previously approved placing of the OJEU notice.
- 6. CORPORATE GRANTS, 2011-12 – (i) COMMUNITY ADVICE; (ii) LOCAL INFRASTRUCTURE SUPPORT FOR THE VOLUNTARY SECTOR / CIVIL SOCIETY & VOLUNTEERING; AND (iii) ARTS PREVENTIVE FUNDING (Report of the Cabinet Member For Customer Access and Partnerships – Agenda Item 6):**
For the reasons set out in the Cabinet Members' report as amended by the tabled addendum, the Committee
RESOLVED –
- (1) That, subject to the council's Standard Conditions of Grant Aid, the following grants from the corporate grants budget be approved:
 - (a) £239,000 from the 2011/12 budget to Barnet Citizens Advice Bureau Service and Barnet Law Service combined to subsidise provision of their services from 1 April to 30 September 2011;
 - (b) £130,275 to CommUNITY Barnet linked to two new service level agreements (i) for the provision of infrastructure support for the voluntary sector and civil society (£94,628 from the 2011/12 budget) and (ii) for a new Barnet volunteering programme (£35,647 from the 2010/11 budget);
 - (c) £83,300 from the 2011/12 budget (maximum) to Community Focus to subsidise their courses in 2011/12.
 - (2) That the Cabinet Member for Customer Access and Partnerships be authorised to extend grant (a) above for a short period up to a maximum of £20,000 if the start date for a contract for a new community advice service is for any reason delayed.
 - (3) That the Assistant Chief Executive be authorised to finalise terms and conditions in relation to each of the grants at (a), (b) and (c) in consultation with the Cabinet Member for Customer Access and Partnerships.
 - (4) That the previous authority to tender a new community advice service (CRC, 30 July 2009) be renewed in order that a procurement process may be carried out to identify a provider of advice services as set out in this report.
- 7. UPDATE ON GAF3 FUNDING (Report of the Cabinet Member for Housing, Planning and Regeneration and of the Cabinet Member for Resources and Performance – Agenda Item 7):**
For the reasons set out in the Cabinet Member's report, the Committee
RESOLVED –

(1) That the allocations to priority infrastructure projects, as updated following approval by the Cabinet Resources Committee on 8 December 2009, and subsequent progress on individual projects be confirmed.

8. INTERNAL AUDIT SERVICE – RE-EXTENSION OF A CONTRACT (Report of the Cabinet Member for Resources and Performance – Agenda Item 8):

For the reasons set out in the Cabinet Member's report, the Committee
RESOLVED –

(1) That requirements of paragraph 5.6.1.2 of the Contract Procedure Rules be waived as the initial contract had been extended before.

(2) That the Deputy Chief Executive be authorised to extend the contract for Systems Based Internal Auditing with Deloitte & Touche Public Sector Internal Audit Ltd for a period of six months with an option for the Council to end the extended period after three months.

9. WRITE OFF OF DEBTS OVER £5000 (Report of the Cabinet Member for Resources and Performance – Agenda Item 9):

For the reasons set out in the Cabinet Members' report, the Committee
RESOLVED –

(1) That the income debts totalling £1,128,892.79 and detailed in the Appendix to the report be written off.

10. WATLING BOYS CLUB, DRYFIELD ROAD (Report of the Cabinet Member for Resources and Performance – Agenda Item 10):

For the reasons set out in the Cabinet Member's report, the Committee
RESOLVED –

(1) That the site of the Former Watling Boys Club in Dryfield Road shown edged red on the accompanying plan no.23846 be sold to Greencourt Property Group Ltd, the bidder making the highest unconditional offer.

(2) If the bid fails within the time frame set out in the report then the second highest unconditional offer.

11. LAND AT TROTT ROAD, FINCHLEY (Report of the Cabinet Member for Resources and Performance – Agenda Item 11):

For the reasons set out in the Cabinet Member's report, the Committee
RESOLVED – That the land shown hatched black on drawing number 22230/2 and marked former allotment land in the report be returned to allotment use by way of a management agreement.

12. LONDON EQUESTRIAN CENTRE (Report of the Cabinet Member for Resources and Performance – Agenda Item 12):

For the reasons set out in the Cabinet Member's report, the Committee
RESOLVED –

(1) That the Council accepts a surrender of the leased land edged red in plan no. 993-91 as contained within the report.

(2) That the Council's freehold interest in the land edged red on the plan no 993-91 as contained within the report be let under a new 50 year lease.

13. ATHLETICS STADIUM, GREENLANDS AVENUE, COPTHALL, LONDON NW7 4RL (Report of the Cabinet Member for Resources and Performance – Agenda Item 13):

Councillor Brian Coleman abstained from voting and took no part in the decision making process on this item, as he wished to reserve his judgment in respect of any planning

application on this matter. For the reasons set out in the Cabinet Member's report, the Committee

RESOLVED –

(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:

- complete an agreement for lease with Saracens Cophall LLP to enable completion of the refurbishment of the stadium at the cost to the Saracens Cophall LLP.
- grant a 99 year lease at a peppercorn rent, together with a management agreement (outlined in 1.1.3 below), to Saracens Cophall Limited Liability Partnership (LLP) on completion of the proposed refurbishments.
- enter into a management agreement with Saracens Cophall LLP, on completion of the proposed refurbishment works.
- 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.
- negotiate with Greenwich Leisure Ltd ("GLL") the termination of the, existing, arrangements between the council and GLL, in relation to Cophall Stadium.

14. MOTION TO EXCLUDE THE PRESS AND PUBLIC:

RESOLVED – That under Section 100A (4) of the Local Government Act 1972, the public be excluded from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in category 3 of Part 1 of Schedule 12A of the Act (as amended by the Local Government (Access to Information) (Variation) Order 2006):

**Agenda Subject
Item**

X1	Exempt information relating to item 10 in public session – Watling Boys Club, Dryfield Road
X2	Exempt information relating to item 12 in public session – London Equestrian Centre
X3	Exempt information relating to item 13 in public session – Athletics Stadium, Greenlands Avenue, Cophall, London NW7 4RL

15. EXEMPT INFORMATION RELATING TO ITEM 10 IN PUBLIC SESSION – WATLING BOYS CLUB, DRYFIELD ROAD (Report of the Cabinet Member for Resources and Performance – Agenda Item X1):

RESOLVED – That the exempt information be noted.

16. EXEMPT INFORMATION RELATING TO ITEM 12 IN PUBLIC SESSION – LONDON EQUESTRIAN CENTRE (Report of the Cabinet Member for Resources and Performance – Agenda Item X2):

RESOLVED – That the exempt information be noted.

17. EXEMPT INFORMATION RELATING TO ITEM 13 IN PUBLIC SESSION – ATHLETICS STADIUM, GREENLANDS AVENUE, COPHALL, LONDON NW7 4RL (Report of the Cabinet Member for Resources and Performance – Agenda Item X3):

RESOLVED – That the exempt information be noted.

The meeting finished at 7.23pm.