

<b>Meeting</b>	Cabinet Resources Committee
<b>Date</b>	17 July 2012
<b>Subject</b>	The Sale of the freehold interest in the former Hendon Football Club Ground and adjoining land Claremont Road, Hendon
<b>Report of</b>	Cabinet Member for Resources and Performance
<b>Summary</b>	Following the granting of an injunction and an application for judicial review the report reconsiders the decision to sell the freehold interest in the Hendon Football Club site and proposes a fresh decision.
<b>Officer Contributors</b>	Judith Ellis – Valuation Manager, Richard Malinowski – Principal Valuer
<b>Status (public or exempt)</b>	Public, with exempt report
<b>Wards affected</b>	Golders Green Ward
<b>Enclosures</b>	1) Copy of Injunction 2) Email from Chief Inspector Nigel Ward 3) DVS Addendum (Exempt only)
<b>For decision by</b>	Cabinet Resources Committee
<b>Function of</b>	Executive
<b>Reason for urgency/ exemption from call-in (if appropriate)</b>	
<b>Contacts for further information:</b>	Judith Ellis, 020 8359 7364 and Richard Malinowski, 020 8359 7359

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## **INTRODUCTION**

As members will be aware the decision of the Committee dated 28 February 2012 to sell the freehold of the Hendon Football club site to Montclare Limited is currently the subject of a judicial review, and an interim injunction has been granted by the Court to stop the sale going ahead. The Claimant for the judicial review is the London Jewish Girls High Limited, which is referred to below as "the School". In these circumstances the Council has been advised by leading counsel to reconsider the decision to sell, and to make a fresh decision.

Reference is made below to earlier reports, being the Delegated Powers Report of 25th November 2011 and the decision by Cabinet Resources Committee on 28th February 2012. The relevant facts and issues are set out in this and also the exempt report.

### **1. RECOMMENDATIONS**

**1.1 That the Cabinet Resources Committee takes into account the information contained in the public and the exempt reports to give the authority to complete the sale of the Council's freehold interest in this site to Montclare Limited on the terms authorised by the Director for Commercial Services in consultation as set out below.**

- a) For a consideration of £2.8 million**
- b) Overage payment as set out in the exempt report**
- c) The provision of £4.1 million worth of Affordable Housing in the borough**
- d) Community Infrastructure Levy and Section 106 contributions**
- e) Nomination rights on the Affordable Homes as valued in the exempt report**

### **2 FACTUAL HISTORY**

**2.1** The site is leased to Hendon Football Club Limited from 28 October 1997 for a term of 99 years. On 18 September 2003 the Council approved the principle of the sale of the freehold for residential development and appointed marketing agents. The Council had first worked with the Arbiter Group Limited and then Montclare Developments Limited, who took over the site from Arbiter in August 2008 as potential development partners. The Council granted itself outline planning permission on 18 October 2004 for 162 two bedroom flats and a care home, and it worked with Montclare Developments Limited to move the football activities from the site pending redevelopment. The playing of football at the site was discontinued at the end of the 2007/08 season.

**2.2** The Council negotiated with Montclare Developments Limited the terms of selling its freehold interest and in a delegated powers report dated 25 November 2011 approval was given for a sale at £2.8 million. An independent external valuation of the site was commissioned from the DVS Valuation Office Agency (DVS) which concluded that the terms agreed between the Council and Montclare Developments Limited were the best terms reasonably obtainable.

- 2.3 On 12 February 2012 the School made a bid for the freehold. Its offer was £3.5million.
- 2.4 On 28 February 2012 the Cabinet Resources Committee accepted the recommendation that the Council should complete the sale of the freehold of the site to Montclare Limited.
- 2.5 The School issued judicial review proceedings and on 31 May 2012 obtained a without notice injunction preventing disposal of the site pending determination of the litigation.

### **3 RELEVANT PREVIOUS DECISIONS**

- 3.1 Cabinet Resources Committee (CRC), 18th September 2003 – approved in principle the freehold sale of the Hendon Football Club site for residential development.
- 3.2 CRC, 8th July 2004 – approved terms, (amongst other matters) to the ultimate transfer of the freehold interest in part of the site to Ealing Family Housing Association for the building of an elderly persons care home and day centre.
- 3.3 On 18th October 2004 – Outline Planning Consent was granted for 162 two-bedroom flats and a care home.
- 3.4 CRC, 26th September 2005 – approved terms for the sale of the freehold of the site to the developer Kings Oak North London, subject to extensive conditions safeguarding the Council's objectives and the future of Hendon Football Club.
- 3.5 CRC 6th December 2006 – agreed to proceed with conditional contracts to Oracle Homes Ltd and City and Docklands Property Group on their offers for the sale of part of the Hendon Football Club site, subject to various conditions.
- 3.6 CRC 14th January 2008 – approval was given to the sale of this Council's freehold interest to the lessee, the Hendon Football Club Ltd
- 3.7 CRC 28<sup>th</sup> July 2011 – approval was given to proceed with negotiations with Montclare Developments Ltd and for the final terms to receive approval of the Commercial Director in consultation with the Chair of the Cabinet Resources Committee.
- 3.8 Delegated Powers Report DPR 1467 dated 25<sup>th</sup> November 2011 – gave authority to proceed with the sale on the terms agreed to Montclare Developments Limited and noted in the exempt part of the report.
- 3.9 Business Management, Overview and Scrutiny Committee (BMOSC), on 9<sup>th</sup> January 2012 – referred the decision back to the decision maker (Commercial Director (in consultation with the Cabinet Member for Resources & Performance)), for reconsideration to investigate different uses for the land, taking into account the demand for local community use and retention of open space.
- 3.10 CRC 28<sup>th</sup> February 2012 confirmed authority to sell the freehold interest in the site to Montclare Limited on the terms authorised by the Director for Commercial

Services in consultation with the Chairman of the CRC as set out in the DPR of 25 November 2011.

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

- 4.1 Under the Corporate priority 'Better Services with Less Money', the Council has committed to 'Better use Council assets'.
- 4.2 The Council's Estates Strategy 2011-2015 sets out our commitment to continually review the use of council assets so as to reduce the cost of accommodation year on year and to obtain best consideration for any surplus assets to maximise funds for capital investment and/or the repayment of capital debt. The recommendation supports this, by producing a capital receipt for the Council in line with this objective.
- 4.3 The recommendation aligns with the Council's objectives for regeneration in the Borough as set out in the Council's Local Development Framework. The Regeneration Service has been consulted and their observations are included below.

#### **5. RISK MANAGEMENT ISSUES**

- 5.1 When disposing of land, Section 123 of the Local Government Act 1972 requires local authorities to achieve the best consideration reasonably obtainable. The proposed sale arose out of on-going negotiations with Montclare Developments Ltd who are the holding company of the lessee company, the Hendon Football Club Limited. A valuation has been undertaken by an independent third party, the DVS Valuation Office Agency and the report has confirmed that the agreed price and terms are the best consideration reasonably obtainable. The DVS report contains commercially confidential information, and is attached to the Exempt Report.
- 5.2 The site has been subject to long-standing problems with squatting, largely by East European Nationals. Indeed we have informed that people are being transported to the site immediately after arrival to the United Kingdom. Furthermore the site is an eyesore causing concern among local residents. Although the majority of the buildings have been demolished by the leaseholder and the council the squatters are rebuilding shelters using the materials on site. Instructions have been given to a contractor to demolish the remaining structures and remove any materials that can be used in re-construction. There are concerns that these structures could collapse and seriously injure the people living inside. The police have also raised concerns (email from police attached) that this location and occupants are crime generators and most recently there was an incident of Grievous Bodily Harm resulting from a fight between the squatters. Police are monitoring and had obtained a warrant to carry out searches.
- 5.3 The fact of the judicial review also creates risks for the Council, and the issues that arise from the judicial review are referred to in this report and the Exempt Report.

#### **6. EQUALITIES AND DIVERSITY ISSUES**

- 6.1 Under the Equality Act 2010, the Council must have due regard to the need to: a) eliminate discrimination, harassment, victimisation and any other conduct that is

prohibited by or under the Act; b) advance equality of opportunity between those with a protected characteristic and those without; c) promote good relations between those with a protected characteristic and those without. The 'protected characteristics' referred to are: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation. It also covers marriage and civil partnership with regards to eliminating discrimination

6.2 The proposals have been considered and will not give rise to any issues under the Council's Equalities Policy and do not compromise the Council in meeting its statutory equalities duties.

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

7.1 It is anticipated that a capital receipt will be receivable by this Council although the current rent receivable will cease. Details of the estimated capital receipt are referred to in the exempt report and the DVS report addendum.

## **8. LEGAL ISSUES**

8.1 The School on 31 May 2012 obtained an Injunction Order from the High Court that the Council be restrained from disposing of its freehold interest in the site to Montclare Limited until the determination of the Claimant's application for Judicial Review that was lodged on 20 May 2012. In light of the judicial review advice from Leading Counsel the decision as to whether to sell to Montclare Limited should be made afresh.

## **9. CONSTITUTIONAL POWERS**

9.1 Constitution, Part 3, Responsibility for Functions - paragraph 3.6 states the functions of the Cabinet Resources Committee which includes all matters relating to land and buildings owned, rented or proposed to be acquired or disposed of by the Council.

9.2 Constitution, Overview and Scrutiny Procedure Rules – section 15 details the call-in procedure

## **10 BACKGROUND INFORMATION**

10.1 The background that follows deals with the situation that has developed since approval was given to proceed with the sale. To assist Councillors a copy of the 28 February 2012 report is attached.

10.2 Following the 28 February 2012 decision the appropriate Delegated Powers and Cabinet Resources Committee reports were forwarded to the Council's legal department with Instructions to proceed with the preparation of the sale documents. A draft contract was prepared and submitted to the purchaser's solicitors on 29 March 2012. However the sale has now been put on hold due to the grant of an injunction.

10.3 The process that led to the injunction started a month after the Cabinet Resources Committee approved the sale to Montclare Limited. On 30 March a letter was sent

by Fladgate a firm of solicitors acting on behalf of the School alleging that the decision to sell to Montclare Limited was unlawful. The reasons for the alleged unlawfulness have varied but the essential point was that the offer from the School was not properly considered, and that the offer from Montclare was not the best financial bid.

10.4 The School's arguments can be summarised as follows;

- The leaseholder, namely the Hendon Football Club Limited, are in default of a loan from their Bank and as such the lease will be sold on the open market, and the School could buy it. The School would then be in a position to buy the freehold from the Council and redevelop the site.
- The School's bid is higher consideration than the value of Montclare Limited's bid.

10.5 Since receiving the various correspondence from the School's solicitors, and the judicial review claim form, the Council has made strenuous efforts to establish the factual position, and to ensure that the advice on best consideration remains sound.

10.6 Clearly the opportunity to develop the site requires the acquisition of both the leasehold and freehold interests. During the past year the Council has given the School every opportunity to meet and convince the leaseholders (in effect Montclare Developments Limited as owners of Hendon Football Club Limited) to sell their interest. Nevertheless the Council were informed by the leaseholder that they would not sell their interest to the School and leaseholders had informed the School of their position on several occasions. Accordingly one of the reasons officers stated in the earlier reports for selling to Montclare was that the leasehold was not available for the School to buy.

10.7 The position is somewhat complicated because the leaseholder has an outstanding loan which is now being dealt with by Irish Bank Resolution Corporation (IBRC), the combined entity of the Anglo Irish Bank Corporation and the Irish Nationwide Building Society and the School had suggested that that loan was in default. When the school submitted their offer on the 6 February 2012 they attached an email dated 20 December 2011 from Michael Monteith of the IBRC. The email stated *"It is intended that the leasehold interest will be put on the market in the new year once the selling agent is appointed"*. A copy of an article headed *"NAMA says rules prevent buy-back from defaulters"* was also submitted, with the inference that the tenant had defaulted, that the bank were about to call in the loan that the leasehold would be put on the market. As a result officers have attempted to establish the factual position.

10.8 The Council's legal department responded to Fladgate on 23 April stating the claim had no merit and set out the salient facts to explain the reasoning. During negotiations with Montclare Developments Limited officers discussed with the School the possibility of a transaction involving both the freehold and leasehold and stressed it was essential for the School to acquire the leasehold interest. Officers had also carried out enquiries into the background of the Hendon Football Club Limited and Montclare Developments Limited.

10.9 Following correspondence between the Council's legal department and Fladgate, officers carried out further checks on the Hendon Football Club Limited, Montclare Developments Limited and Montclare Limited. The director of Hendon Football Club Limited submitted an email he received from the IBRC in April 2012. This stated *"Please note that IBRC / NAMA have not enforced their security against Hendon Football Club Ltd at this time and both parties continue to work together in a co-operative manner towards the likely disposal of Hendon Football Club Ltd's long-leasehold title over land & property at Hendon Football Club, Claremont Road, London"*. A comprehensive check has also been carried out on the National Asset Management Agency (NAMA) web site which publishes lists of receiverships, bankruptcies and companies in administration and a list of properties subject to enforcement action. Neither the Hendon Football Club Limited nor Montclare Developments Limited nor Montclare Limited have appeared on NAMA's list of receiverships, bankruptcies nor are they in administration. Furthermore the leasehold interest of the site is not on NAMA's list of properties for enforced sale.

The position between IBRC, the leaseholder and Montclare is not completely clear. However, it seems unlikely that IBRC will force a sale as long as there is a realistic possibility of development coming forward.

10.10 Officers were informed on the 22 June 2012 by the Commercial Banking Manager at the IBRC that *"it is not the Bank's policy to comment on Borrower's accounts. I would point out that the proposed purchaser of the Freehold is not in default with NAMA and they are not a Borrower."*

10.11 In these circumstances it appears to be the case that Montclare can continue to refuse to sell the leasehold to the School and there can be no certainty that the School would be able to proceed with any redevelopment.

10.12 However, given the considerable uncertainty over this issue, the Council decided to seek further advice from the DVS on the question of best consideration and whether the terms offered by Montclare Limited have complied with section 123 of the Local Government Act 1972. The DVS were also provided with the details of the offer from the School and an addendum to the original valuation report has been obtained. The addendum provides information on both offers and is attached to the exempt report.

10.13 In essence the DVS has confirmed that package offer received from Montclare Limited was still the best proposal under section 123. This advice is in terms of the capital receipt, the higher level of certainty in proceeding with Montclare rather than the School, and the wider community benefits through likely CIL and section 106 contributions. In addition to the cash offer and overage being offered by Montclare Limited, their proposal will provide Community Infrastructure payments and section 106 contributions and an affordable homes development valued at £4.1 million. Furthermore the Council will be in a position to secure nomination rights over the affordable housing.

10.14 It is the conclusion of Council officers that best consideration under section 123 continues to be met with a sale to Montclare Limited for the following reasons.

1. The DVS's advice set out above on the financial value and the wider benefits of the Montclare Limited bid.
2. Uncertainty over whether the School's bid will be maintained at its current level.

3. Uncertainty over whether the planning permission would be forthcoming for the School proposals.
4. The inevitable, and considerable delay, inherent in the School's bid and the consequences for the management of the site.

10.15 It should be noted that on 28 February 2012, the CRC reconsidered the decision to sell the Council's freehold interest to a company referred to as Montclare Limited. The name of the company was not correctly reported as negotiations had taken place with Montclare Developments Limited and Montclare Limited was not incorporated until 30 March 2012. Thus the 28<sup>th</sup> February 2012 decision should have confirmed the sale to Montclare Developments Limited and not Montclare Limited.

10.16 Council officers requested additional information on the connection between the companies. The purchasers solicitors informed the Council in correspondence stating:

*"I confirm that the ultimate beneficial shareholders in Montclare Developments Limited are Nicholas Fisher and Andrew Landesberg..." and "the ultimate beneficial shareholders in Montclare Limited at the time of exchange with the Council will be Nicholas Fisher and Andrew Landesberg ..."*

In accordance with the above, the shareholders of Montclare Developments Limited and Montclare Limited namely Mr Nicholas Fisher and Mr Andrew Landesberg are the beneficiaries of all the shares in both companies, Montclare Developments Limited being the holding company of Hendon Football Club Limited. Companies House checks were carried out by the Council's legal department on the three companies which confirmed the following –

(a) **Name and Registered office:**

Montclare Limited, 35 Peter Street Manchester M2 5BG

**Company No:** 08013673,

**Date of Incorporation:** 30.03.2012

**Status:** Active

**Director:** Mr Nicholas Fisher

(b) **Name and Registered office:**

Montclare Developments Limited, 30 City Road London EC1Y 2AB

**Company No:** 06657091

**Date of Incorporation:** 28.07.2008

**Status:** Active

**Director:** Mr Andrew Landesberg

(c) **Name and Registered office:**

Hendon Football Club Limited, 4 Rowan Walk London N2 0QJ

**Company No:** 02944496

**Date of Incorporation:** 01.07.1994

**Status:** Active

**Directors:** Mr Andrew Landesberg and Joanne Rachel Landesberg

10.17 All past negotiations have involved both Mr Fisher and Mr Landesberg and the connection between the companies is explained above. Thus authority is sought for the sale to Montclare Limited.

## **11. LIST OF BACKGROUND PAPERS**

11.1 Copy of the Injunction

11.2 Email from Chief Inspector Nigel Wray to Steve Murrant dated 21 June 2012

CFO: JH

Legal: CH/JK

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**In the High Court of Justice**

CO/5607/2012

**Queens Bench Division  
Administrative Court**

In the matter of an application for Judicial Review

The Queen on the application of

London Jewish Girls High Limited v London Borough of Barnet

versus

London Borough of Barnet

**On the application for permission to apply for interim relief**

Following consideration of the documents lodged by the parties

***Order by the His Honour Judge Thornton, Q.C.*****Order****Application for interim relief allowed with permission to apply**

1. The defendant be restrained from disposing of its freehold interest in the land known as "The Hendon Football Club site" at Claremont Road, London, NW2 until the determination of the claimant's application for permission to apply for judicial review or further order.
2. Claimant has permission to register this order as a pending action or any other appropriate registration in the Land Registry as accepted by the Registrar.
3. The defendant is to serve an acknowledgement of service and grounds and, if it wishes to contest the interim injunction, to set out its grounds and all facts and matters relied on to seek a discharge or variation of the interim injunction. These documents are to be served within 21 days of the service of this order on the defendant.
4. Claimant to serve a reply document within 14 days of the service of this order.
5. Papers to be put before a judge of the Administrative Court to consider the claimant's application for permission and, if permission is granted, to consider whether and, if so, with what terms if any, to vary or discharge the interim injunction.
6. If permission is refused, the judge is to consider whether to extend the interim injunction further until the claim is dismissed or withdrawn or any renewed application has been determined.

**Reasons**

It is appropriate to preserve the land from disposal pending the consideration of the claimant's permission application and to consider that issue and any extension of the injunction at the same time as the permission application. The claimant has permission to

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**From:** Nigel.R.Ward@met.pnn.police.uk [mailto:Nigel.R.Ward@met.pnn.police.uk]  
**Sent:** 21 June 2012 18:14  
**To:** Murrant, Steve  
**Cc:** Adrian.Needley@met.police.uk; Pete.J.Hewitt@met.police.uk; Mark.Strugnell@met.police.uk  
**Subject:** Hendon Football Club

Steve

As you are already aware this situation is not new and has already taken up a significant time of the Local authority, LFB, Environmental health and Police both from Safer Neighbourhoods and investigation wing. The venue has been visited by all concerned on many occasions spanning at least 12 months and subjects have been moved off however as the site is unprotected a new group seems to always migrate back there, mainly made up of Eastern Europeans.

There is direct intelligence that this location and occupants are a crime generators and sitting in the centre of the boroughs Burglary hot spot is a serious concern for police and risk to the residents of Barnet. Most recently there was a GBH at the location the result of a fight between squatters. The structures being lived have been erected by the squatters and are completely unsafe, recently there was in fact a fire at the location caused by people cooking on site. There are facilities at the location leading to a significant health risk to the public and the residents. I have a real concern that if prompt action to clear this site is not taken someone could be seriously injured or potentially there could even be a loss of life.

The Safer Neighbourhood team has re-opened the problem solving strategy 302 for the location again and will begin the coordinating of partnership efforts. In the short term however it is essential the Local Authority takes immediate action to clear this site and level the structures as owners to manage and prevent the risks highlighted.

Regards

Nigel

**T/ Chief Inspector Nigel Ward**

**Partnership, Crime and Disorder Reduction SX BOCU  
Colindale Police Station  
Grahame Park Way  
Colindale  
NW9 5TW**

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