

Meeting	Cabinet Resources Committee
Date	24 June 2013
Subject	The Sale of the Council’s freehold interest in the former Hendon Football Club Ground and adjoining land at Claremont Road, Hendon NW2 1AE
Report of	Cabinet Member for Resources and Performance
Summary	Approval to sell the Council’s freehold interest in the Hendon Football Club ground and land to Montclare Limited.

Officer Contributors	Lesley Meeks – Assistant Director Commercial Richard Malinowski – Principal Valuer
Status (public or exempt)	Public with separate exempt report
Wards affected	Golders Green Ward
Key decision	Yes
Enclosures	<ol style="list-style-type: none"> 1) Hendon & Finchley Times front page 2) Daily Mail article 3) Valuation Office Agency report (exempt) 4) Savills report (exempt)
For decision by	Committee
Function of	Executive
Reason for urgency / exemption from call-in (if appropriate)	n/a

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1. RECOMMENDATIONS

- 1.1 Cabinet Resources Committee takes into account the information contained in the public and the exempt reports and authorises the sale of the Council's freehold interest in this site to Montclare Limited on the terms set out in the exempt report**

2 RELEVANT PREVIOUS DECISIONS

- 2.1 Cabinet Resources Committee (CRC), 18th September 2003 – approved in principle the freehold sale of the Hendon Football Club site for residential development.
- 2.2 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.
- 2.3 On 18th October 2004 – Outline Planning Consent was granted for 162 two-bedroom flats and a care home.
- 2.4 CRC, 26th September 2005 – approved terms for the sale of the freehold of the site to Kings Oak North London, subject to extensive conditions safeguarding the Council's objectives and the future of Hendon Football Club.
- 2.5 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.
- 2.6 CRC 14th January 2008 – approval was given to the sale of this Council's freehold interest to the lessee, the Hendon Football Club Limited
- 2.7 CRC 28th July 2011 – approval was given to proceed with negotiations with Montclare Developments Limited and for the final terms to receive approval of the Commercial Director in consultation with the Chair of the Cabinet Resources Committee.
- 2.8 Delegated Powers Report DPR 1467 dated 25th 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.
- 2.9 Business Management, Overview and Scrutiny Committee (BMOSC), on 9th 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.
- 2.10 CRC 28th 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
- 2.11 CRC 17th July 2012 re-affirmed authority to sell the freehold interest in the site to Montclare Limited on the terms set out in the exempt part of the report

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 The Corporate Plan 2013 – 14 has a strategic priority to ‘promote responsible growth, development and success across the borough’. A priority outcome is to ‘maintain the right environment for a strong and diverse local economy’.
- 3.2 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. This proposal supports this, by producing a capital receipt for the Council in line with this objective.
- 3.3 These proposals align 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.

4. RISK MANAGEMENT ISSUES

- 4.1 When disposing of land, section 123 of the Local Government Act 1972 provides that local authorities shall not dispose of land for consideration less than the best that can be reasonably obtained. In order to confirm the Council’s decision under section 123, Property Services have commissioned two independent valuation reports to value the land and to conduct an appraisal on the two offers received. One report is from the DVS Valuation Office Agency and the other is from Savills, an established consultancy based in London. The Valuation Office Agency had involvement in previous reports and so had knowledge of the site but it was considered prudent to involve another firm who could consider the proposals objectively and afresh. Both reports have confirmed that the proposal put forward by Montclare Limited comprises the best consideration reasonably obtainable under section 123 on the basis that the estimated receipt from Montclare Limited (at a development density assumed appropriate) will be significantly higher than that proposed by the School.
- 4.2 As previously reported the site is subject to repeated squatting by East European Nationals. Since 2010 the Environmental Health Department have on two occasions taken enforcement action against the leaseholder to prohibit the occupation of the buildings. This action resulted in the eviction of the occupants and the demolition of a number of buildings and other structures at considerable cost to both the leaseholder and the Council. In 2011 the site was again squatted, the leaseholder took eviction action without the need for formal enforcement action by the Council. Again temporary structures were removed, remaining buildings raised to the ground and the car park area of the site was cleared at considerable cost. In March 2013 the site was reported to be reoccupied, this was confirmed by a visit by officers and the site was found to be heavily fly-tipped. Measures have been taken to prevent any further fly tipping. Clearly a redevelopment of the site will provide a permanent solution to this reoccurring costly problem.
- 4.3 The site is an eyesore causing concern among local residents and whilst all the buildings have been demolished the squatters are building shelters using the material that has been fly-tipped on site. The police and immigration authorities are attempting to persuade the squatters to return to their home country and although some have agreed to return, others are taking their place and the numbers are increasing.

- 4.4 Last week the problem of the site made the front page of the Hendon & Finchley Times under the banner headline “We’re sick of it”. The Sunday Mail also carried an article over the weekend of 8/9 June 2013 with a headline “Shanty town off a suburban London street” and the BBC transmitted a report on their local news programme on Tuesday 11 June 2013. Thus there is some urgency for a decision in order to bring the problem of squatting to an end.

5. EQUALITIES AND DIVERSITY ISSUES

- 5.1 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
- 5.2 The possible equalities issues that may arise in relation to the proposed use of the site include the following:
- Educational benefits of the proposal and the protected characteristics that it serves
 - Benefits of Community facilities for those protected groups in the wider community
 - Affordable Housing for those with protected characteristics such as vulnerable, disabled, pregnant mothers, those with special needs etc
- 5.3 However, set against the identified impacts on groups with protected characteristics are the facts that:
- The Council’s duty to obtain best consideration under section 123 does not extend to considering socially desirable outcomes arising from a disposal to a particular party.
- 5.4 There is no statutory duty to have a formal equality impact assessment carried out. In making this recommendation, 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.

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

- 6.1 It is anticipated that a capital receipt will be receivable by this Council as a result of the sale of the Freehold and details of the estimated capital receipts have been summarised in the exempt part of this report. However the current rent of £5,623 per annum receivable from the Hendon Football Club Limited will cease.

7. LEGAL ISSUES

- 7.1 A previous decision to sell the freehold interest in the Site to Montclare Limited was challenged by the London Jewish Girls High School by way of judicial review. The High

Court dismissed this claim. The London Jewish Girls High Court has submitted an application for permission to appeal. This was refused on the papers although we have been informed by the School's solicitors that they will be making a request for permission to appeal at an oral hearing and this is fixed to be heard on 30 July. This appeal seeks to challenge the previous decision of the Council taken in 2012 and the costs order made at the first instance. It will not affect the fresh decision being taken by the Committee at this stage as to the disposal of the Site.

7.2 There are further comments on Legal Issues within the exempt part of the report.

8. CONSTITUTIONAL POWERS

8.1 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.

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

9 BACKGROUND INFORMATION

9.1 The Council owns the freehold interest in the site which is subject to a lease in favour of the Hendon Football Club Limited. This was granted in October 1997 for a term of 99 years expiring in 2096 and so has 83 years to run. Hendon Football Club Limited is a wholly owned subsidiary of Montclare Developments Ltd and the company is closely linked with the purchaser Montclare Limited with the directors holding shares in trust for each others mutual benefit.

9.2 The site area is approximately 1.72 hectares and originally comprised a football pitch, stands, banqueting hall and a club house. The playing of football at the site ended in the summer of 2008 and the majority of the buildings have since been demolished. Whilst much of the material from the former buildings had been removed, the site has been subject to fly tipping during the early part of 2013 and now a significant part of the site is covered in rubble and other waste material. This material is being used by squatters to build shelters.

9.3 The proposed sale of the Council's freehold interest in the Site has been the subject of previous Committee decisions as set out in section 2 above. Two parties have expressed interest in buying the Council's freehold interest. Firstly the Hendon Football Club Limited but more recently in the form of their holding company Montclare Developments Limited and an associated company Montclare Limited and secondly the London Jewish Girls High Limited. Both parties have submitted offers to the Council to purchase the Freehold and previous reports to the Committee contained recommendations to sell the freehold interest in the site to Montclare Limited. The process started in November 2011 and the last Cabinet Resources Committee that considered the matter had convened on the 17th July 2012, and re-affirmed the previous decisions to sell to Montclare Limited. However an injunction granted on the 31st May 2012 prevented the sale proceeding until the application for a Judicial Review hearing was considered by the High Court. This hearing took place on the 20th February 2013.

9.4 At the hearing in February Lord Justice Mitting determined on the facts presented that the decision to sell to Montclare Limited was not unlawful. Furthermore the judge

confirmed that as Montclare's offer was clearly the better of the two at that time and that Barnet Council would have been in breach of its duty had it decided not to sell to Montclare limited. Following the judgment in the judicial review claim the London Jewish Girls High Limited submitted a further offer to purchase the freehold in the site which represented an increase from the offer they had previously put forward. Because of the requirements pursuant to section 123 for best consideration to be achieved in relation to land disposals, officers sought advice from counsel and as a result both parties were invited to submit fresh bids and so the decision making process commenced afresh

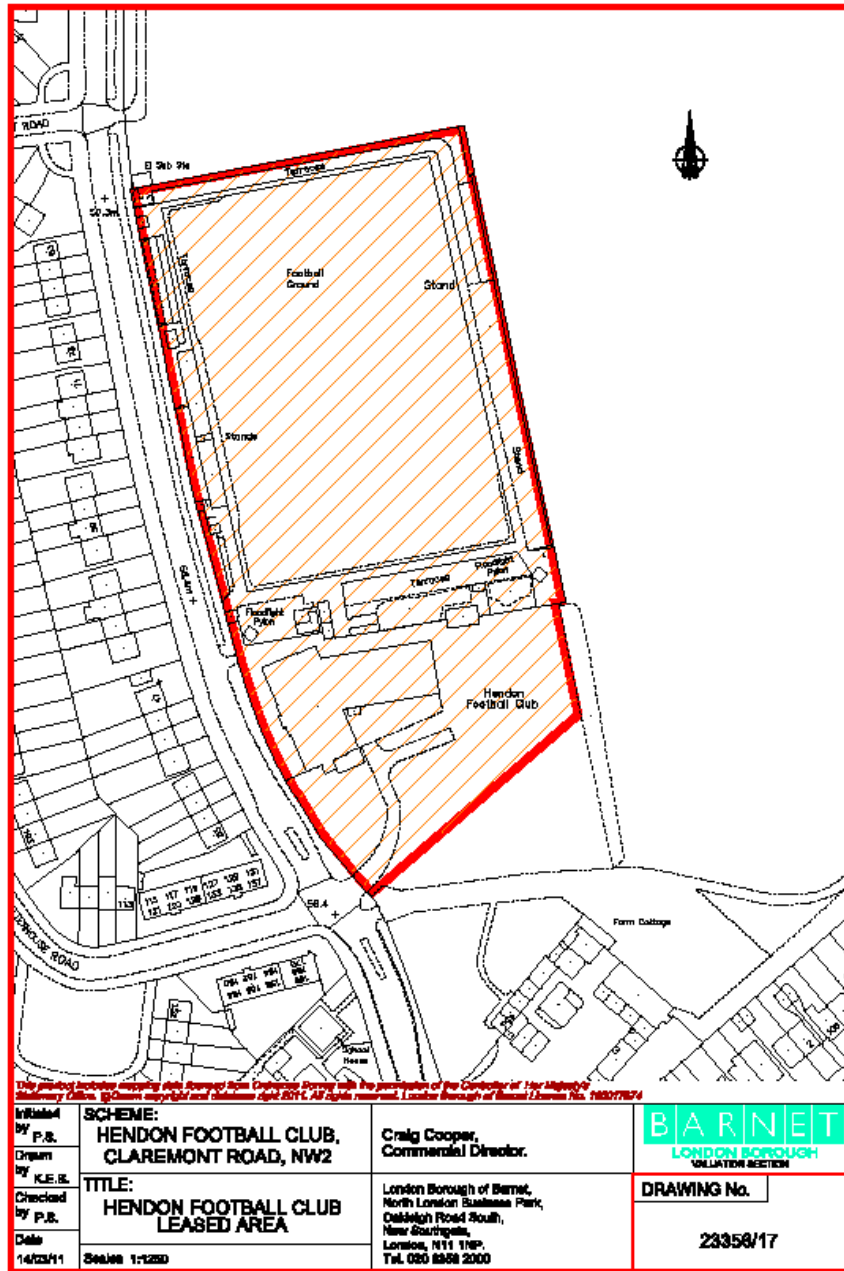
- 9.5 On 26 February 2013 the Council informed both parties that a fresh process would commence. Both parties were invited to submit best and final offers to purchase the freehold interest in the Site. Officers have sought legal advice from counsel and this report has been prepared in light of this advice. The offers were duly submitted on 1st March 2013 and the two proposals are summarised in the exempt part of the report. Both offers contain a base cash offer with additional overage payments.
- 9.6 Both parties appear to have adequate financial resources to conclude a purchase, Montclare Limited has the backing of a national house developer and the London Jewish Girls High Limited have the backing of a number of companies and individuals.
- 9.7 The council sought independent advice on the proposals and instructed the Valuation Office Agency and subsequently Savills to evaluate the bids. Their conclusions are summarised in the exempt part of this report and copies of the actual reports are also attached. Both the independent valuers have concluded that the Montclare Limited proposals comprise the best consideration and so satisfy the requirements of section 123.

10. LIST OF BACKGROUND PAPERS

- 10.1 None

Cleared by Finance (Officer's initials)	Approved
Cleared by Legal (Officer's initials)	Approved

Plan



Initialed by P.S. Drawn by K.E.R. Checked by P.S. Date 14/03/11	SCHEME: HENDON FOOTBALL CLUB, CLAREMONT ROAD, NW2	Craig Cooper, Commercial Director.	BARNET LONDON BOROUGH REGULATION SECTION
	TITLE: HENDON FOOTBALL CLUB LEASED AREA	London Borough of Barnet, North London Business Park, Delisle Road South, New Barnet, London, N11 1NP, Tel. 020 8996 2000	DRAWING No. 23358/17
	Scale 1:1250		