

<p style="text-align: center;"><u>COMMITTEE</u></p> <p style="text-align: center;">CABINET RESOURCES</p>
<p style="text-align: center;">DATE AND TIME</p> <p style="text-align: center;">THURSDAY, 16 DECEMBER 2004</p> <p style="text-align: center;">AT 7.00 PM</p>
<p style="text-align: center;"><u>VENUE</u></p> <p style="text-align: center;">THE TOWN HALL, THE BURROUGHS,</p> <p style="text-align: center;">HENDON, NW4 4BG</p>
<p style="text-align: center;"><u>PLEASE NOTE</u></p> <p>Agenda items 4 and 11 – Dollis Valley Estate Regeneration (public and exempt): these items were deferred from the meetings on 4 and 25 November). Will Members please bring to this meeting the previously-circulated reports.</p>

TO: MEMBERS OF THE CABINET RESOURCES COMMITTEE (Quorum 3)

Chairman: Councillor Anthony Finn

Councillors:

Melvin Cohen

Mike Freer

Matthew Offord

Victor Lyon

Roy Goddard
Head of Committee

Democratic Services contact:
Nick Musgrove, tel. 020 8359 2024

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Town Hall
Hendon, NW4 4BG

ORDER OF BUSINESS

Item No.	Title of Report	Page Nos.
1.	MINUTES	–
2.	ABSENCE OF MEMBERS	–
3.	DECLARATION OF MEMBERS' PERSONAL AND PREJUDICIAL INTERESTS	–
	Report of the Cabinet Member for Housing, Neighbourhoods and Community Safety	
4.	Dollis Valley Estate regeneration – underwriting agreement with Warden Housing Association	Previously circulated
	Reports of the Cabinet Members for	
	o Resources	
	o Performance Partnerships & Best Value	
	o Housing, Neighbourhoods and Community Safety	
5.	Open Space at the junction of Deansbrook Road and Crispin Road Burnt Oak – Construction of temporary works compound	1 – 11
6.	Sale of Council's Freeholds of 106/108/110 and 118 Burnt Oak Broadway and 15, 30 and 32 Watling Avenue	12 – 15
	Reports of the Cabinet Member for Education & Lifelong Learning	
7.	Maintained Nursery Classes at Primary Schools	16 – 21
8.	Redevelopment of Parkfield Primary School and construction of a new Children's Centre	22 – 26
9.	ANY OTHER ITEMS THAT THE CHAIRMAN DECIDES ARE URGENT	-
10.	MOTION TO EXCLUDE THE PRESS AND PUBLIC:- 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 the paragraphs of Part 1 of Schedule 12A of the Act shown in respect of each item: <div style="text-align: right; margin-right: 100px;">Exemption category</div>	-
	Report of the Cabinet Member for Housing, Neighbourhoods and Community Safety	
11.	Exempt Information relating to item considered in public session: Dollis Valley Estate Regeneration – Underwriting Agreement with Warden Housing Association.	7,9 Previously circulated

Item No.	Title of Report	Page Nos.
	<p>Reports of the Cabinet Members for</p> <ul style="list-style-type: none"> ○ Resources ○ Performance Partnerships & Best Value ○ Housing, Neighbourhoods and Community Safety 	
12.	Exempt Information relating to item considered in public session: Open Space at the junction of Deansbrook Road and Crispin Road Burnt Oak – Construction of temporary works compound	9 27 – 28
13.	Exempt Information relating to item considered in public session: Sale of Council's Freeholds of 106/108/110 and 118 Burnt Oak Broadway and 15, 30 and 32 Watling Avenue	9 29 – 31
	<p>Report of the Cabinet Member for Education & Lifelong Learning</p>	
14.	Exempt Information relating to item considered in public session: Redevelopment of Parkfield JMI School and construction of a new Children's Centre	9 32 – 34
15.	ANY OTHER EXEMPT ITEMS THAT THE CHAIRMAN DECIDES ARE URGENT	-

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AGENDA ITEM: 6

Page nos. 1 – 5

Meeting	Cabinet Resources Committee
Date	4 th November 2004
Subject	Dollis Valley estate regeneration – Underwriting agreement with the Home Group Ltd (Warden Housing Association)
Report of	Cabinet Member for Housing, Neighbourhoods & Community Safety
Summary	The report details the underwriting agreement between the Council and Warden HA for the Dollis Valley estate

Officer Contributors	Regeneration Manager, Borough Treasurer.
Status (public or exempt)	Public (with a separate exempt section)
Wards affected	Underhill
Enclosures	None
For decision by	Cabinet Resources Committee
Function of	Executive
Reason for urgency / exemption from call-in (if appropriate)	Not Applicable

Contact for further information: Jon Lloyd-Owen x7126

1 RECOMMENDATIONS

1.1 That approval be given to enter into the proposed underwriting agreement with Warden Housing Association

2. RELEVANT PREVIOUS DECISIONS

2.1 At its meeting on 1 December 2003 the Cabinet resolved the following:

“That the Council enter into further negotiations with Warden Housing Association for the regeneration of the Dollis Valley estate in order to consider possible amendments to the two schemes under consideration.”

2.2 It was noted that underwriting provisions were anticipated in relation to Warden HA master planning and related costs . It was also clearly noted that these would be on the basis of risk-sharing between the Council and Warden Housing Association.

2.3 On 27th September 2004 the Cabinet agreed to endorse Warden Housing Association as its preferred partner to take forward the regeneration of the Dollis Valley estate.

3 CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

3.1 The proposed regeneration will help towards meeting the Council’s obligations to achieve decent homes standards by 2010.

3.1 The proposal supports the corporate policy of “Putting the Community First”, and contributes to the five key Priorities for our Community in the Corporate Plan:

3.2 A First Class Education Service: Each of the bidders proposed radical changes to Barnet Hill Primary and proposed working with further education providers and contractors to provide a first class education service and good quality opportunities to learn and strengthen business success and the health and quality of life of the residents.

3.3 Tackling Crime: The bids promoted community safety through “Secure by Design” principles

3.4 Supporting the Vulnerable in our Community:Regeneration of priority estates is one of the keys for helping the diverse members of the community to participate in shaping their future and accessing wider opportunities.

3.5 A Cleaner Greener Barnet: The bidders were encouraged to use the adjacent green belt to improve the vista for residents and incorporate access to the green belt from the regenerated estate

- 3.6 Repairing Roads and Pavements: The proposals allow for the renewal and replacement of the existing highway infrastructure and for improvement to public transport services.

4 RISK MANAGEMENT ISSUES

- 4.1 Similar agreements in respect of projects at Grahame Park and Stonegrove have been underwritten against the value of surplus land on those estates. As with West Hendon, this is not available and it is proposed that these costs be underwritten against the Housing Revenue Account (HRA) working balance.
- 4.2 The budget estimate and capped amount to be underwritten is £1,300,000 inclusive of VAT.
- 4.3 Should this be called upon, it will impact on the proposed investment towards meeting Decent Homes standards in the Council's housing stock and generally supporting the HRA for financial years 2004/05 to 2006/07.

5 FINANCIAL, STAFFING, ICT AND PROPERTY IMPLICATIONS

- 5.1 Details of the amounts involved are included in the report containing exempt information
- 5.2 This agreement will commit the Council to underwriting up to a maximum of £1.3m. Comparable underwriting provisions have been agreed for the Grahame Park, Stonegrove & Spur Rd and West Hendon regeneration projects.
- 5.3 The maximum total value of the underwriting agreements to date is £4.49m. If the Dollis valley agreement is entered into, this takes the maximum commitment to some £5.79m. However, the agreements for Stonegrove & Spur Road and Grahame Park contain the opportunity to meet those underwritten sums from the value of land released by the relevant regeneration schemes. This could fund up to £3.19m of the overall commitment.
- 5.4 The ultimate source of any remaining funds necessary to meet the residual sums required for the overall underwriting provision would be the Housing Revenue Account (HRA) working balance. The forecast of the HRA balance position at the end of 2004-05 currently stands at £5.4m and current good practice means we assume a minimum requirement of £2m. However a full monitoring exercise is currently underway on the HRA and this will update the balances position. Alternative funding can also be considered around opportunities presented by the new housing capital financing regulations.
- 5.5 Regular risk assessment appraisals for the existing underwriting commitments are carried out and these have been used to establish the context for this final underwriting agreement.

6 COMMENTS, IF ANY, OF THE COUNCIL'S STATUTORY OFFICERS (Head of Paid Service, Chief Finance Officer, Monitoring Officer)

6.1 Comments have been incorporated within the main body of the report

7 BACKGROUND INFORMATION

- 7.1 Following the decision of Cabinet on 1st December 2003, the Council entered into further negotiations with Warden Housing Association. These negotiations have now reached a stage where more detailed work and extensive consultation needs to take place. On 1st July 2004 Warden Housing Association became a division of the Home Group Ltd, therefore the underwriting agreement will be made directly with the parent company.
- 7.2 Over the next period the masterplan will be developed in consultation with residents to the point of submission of an Outline Planning Application by June 2005.
- 7.3 Warden Housing Association has incurred substantial expense to date and the next stage in the project's development will involve the expenditure of considerable resources, including a large proportion of costs on external consultants. Warden Housing Association currently has no contractual relationship with the Council and has been proceeding entirely at risk.
- 7.4 Over the next period it is intended to negotiate a detailed Principal Development Agreement that will establish a contractual relationship between the Council and the consortium which will be reported to Members for agreement in 2005/06.
- 7.5 In the interim, it is proposed to enter into an underwriting agreement. This will commit to a sharing of risk between the Council and its selected partner and provide for certain costs to be underwritten in specific circumstances that are substantially outside of Warden Housing Association's control.
- 7.6 The Underwriting Agreement will exclude costs relating to Warden HA's own personnel and services, with the exception of dedicated project staff. The primary costs eligible to be underwritten will relate to third party consultants, their fees and disbursements.
- 7.7 Warden HA has provided a breakdown of its own projected costs, its budgeted costs for third party consultants and cost incurred to date and this is provided in the Exempt Report. The Council has engaged construction cost consultants Davis Langdon to carry out an initial review of the projected costs.
- 7.8 It is envisaged that the circumstances under which payments may become due under the Agreement would be the following:
- Outline Planning Consent – Provided the consortium has used its reasonable endeavours, the Council would commit to underwrite a proportion of eligible costs in the event that outline planning consent was not obtained.

- Compulsory Purchase Order (CPO) – In the event that the Council decides to use a CPO to purchase certain leasehold and freehold interests to enable the scheme the Council will be responsible for the CPO's promotion and for setting out the case for its approval. The decision on whether to approve a CPO is reserved to the Secretary of State. If the CPO was required for the scheme to proceed and was not confirmed the Council would commit to underwrite a proportion of eligible costs.
- Council withdrawal from the project – Until a Principal Development Agreement is in place the Council will agree to underwrite eligible costs in the event that it withdraws from the project and its partnership with Warden HA .
- Failure to gain resident support for the regeneration proposals. Following development of the masterplan, management and associated proposals a survey to establish residents support will be held. If residents do not support the proposals a proportion of the costs will be underwritten

7.9 Warden HA also indicated their willingness to underwrite a certain proportion of the Council's costs relating to third-party consultants (e.g. external legal advisers), in the event that they unreasonably withdraw from the project.

8 LIST OF BACKGROUND PAPERS

None

MO: POJ
BT: JO

DATED

2004

HOME GROUP LIMITED

and

THE MAYOR AND BURGESSES OF THE
LONDON BOROUGH OF BARNET

UNDERWRITING AGREEMENT
DOLLIS VALLEY ESTATE

Nabarro Nathanson
Lacon House
Theobald's Road
London WC1X 8RW

Tel: 020 7524 6000

AGREEMENT

DATE

2004

PARTIES

- (1) HOME GROUP LIMITED (an Industrial and Provident Society registered under number IP22981R) whose registered office is at Ridley House, Regent Centre, Gosforth, Newcastle-upon-Tyne NE3 3JE (the “**Association**”); and
- (2) THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BARNET of Town Hall, The Burroughs, London NW4 (the “**Council**”).

WHEREAS:

- (A) The Council has selected the Association to be their preferred bidder following the submission by the Association of a tender on 5 September 2003 in respect of the regeneration of the Estate at Dollis Valley.
- (B) The Council is negotiating with the Association with regard to the details of the arrangements which will conclude with the entry by the Council into an agreement with the Association.
- (C) The Parties shall use all reasonable endeavours to agree the terms of and complete the Principal Development Agreement for the Redevelopment by the Association by 1 April 2006.
- (D) The Parties will negotiate in good faith for the inclusion of reasonable provisions on Overage and an indemnity for the costs of the CPO process and to agree to the disposal of Council owned land in the Principal Development Agreement.

IT IS AGREED AS FOLLOWS:

1. In this Agreement the following expressions shall where the context so admits be deemed to have the following meanings:

“Allowable Costs”

means those costs (which are not Internal Costs except where expressly provided for) properly and reasonably incurred by the Association in connection with undertaking those activities for the Redevelopment which are set out in Column A of **Schedule 1** together with any activities ancillary thereto and which in the case of each activity payment (if any) shall be made under the provisions of this Agreement;

“Category”

means an element or subgroup of the Services each of which are set out in Column A of **Schedule 1**;

“Category Costs”

means subject to the provisions of this Agreement the maximum sum which is payable by the Council as Allowable Costs for each Category which are more particularly set out in Column B of **Schedule 1**;

“Consultant” or “Consultants”

shall mean any body, partnership or legal person who undertakes or provides Services commissioned or ordered by the Association for the Redevelopment and whose costs are or may be Allowable Costs;

“CPO”

means a compulsory purchase order to be made by the Council to acquire any outstanding Third Party Interests and Third Party Rights;

“Estate”

means the Council’s property outlined in red on the attached plan;

“Financial Non-Viability”

means that with reference to the currently available financial information it is not economically feasible for the Association to undertake or complete the Redevelopment;

“Financial Review”

means a review of the financial viability of the Redevelopment, with reference to the currently available financial information, which is undertaken by the Association in consultation with the Council;

“Internal Costs”

means costs whether incurred by members of the Association or their parent or subsidiary undertakings or a subsidiary of their parent undertakings (and “parent undertaking” and “subsidiary undertaking” shall have the meanings attributed thereto in sections 258 and 259 of the Companies Act 1985) in the operation of their business including (but not limited to) the payment of employees;

“Master Plan”

means an outline plan for the Estate and adjacent land which shall set out sufficient detail for the Redevelopment including design information, road utility

and communications plans together with milestones for delivery of the Redevelopment;

“Overage”

means the excess surplus or excess profit generated by the sale of any dwelling constructed during the Redevelopment after allowing for the reasonable and properly incurred costs of the Redevelopment;

“Parties”

means the parties to this Agreement;

“Planning Permission”

means all outline planning permissions and planning agreements ancillary thereto including but not limited to agreements under section 106 of the Town and Country Planning Act 1990 (and if necessary listed buildings consents, buildings regulations consents, fire officer approvals and other permissions, approvals, licences and similar consents (including any modifications from time to time)) which are necessary for the Redevelopment to proceed without breach of any statute or lawful requirement of any competent authority and which is to the satisfaction of the Association acting reasonably;

“Principal Development Agreement”

means a contractual agreement to record the requirements, benefits and obligations of the Parties in connection with the Redevelopment and which at the date of this Agreement the Parties intend to enter into;

“Redevelopment”

means the construction of newly built dwellings, community facilities, infrastructure and other works at the Estate or on adjacent land substantially in accordance with the Association’s Tender in response to the Council’s Tendering Instructions or such varied scheme as shall be agreed between the Association and the Council;

“Services”

means the work and provision of services by any Consultant to the Association in connection with the Redevelopment to the extent that the same is such that Allowable Costs may be payable under the provisions of this Agreement;

“Tender”

means the tender submitted by the Association to the Council on 5 September 2003;

“Tendering Instructions”

means the invitation to negotiate made by the Council on 18 February 2003;

“Third Party Interests”

means the interests of leaseholders or other interests of third parties on the Estate (but excluding any interests of statutory undertakers, periodic tenants or licensees);

“Third Party Rights”

means any third party rights or interests over land adjoining the Estate and which land is required for the Redevelopment.

2. FORM OF AGREEMENT

- 2.1 The provisions of this Agreement are subject to the statutory rights, duties and powers of the Council and nothing contained herein shall fetter or otherwise interfere with the exercise of the same by the Council.
- 2.2 This Agreement does not create, and shall not in any circumstances create, or be deemed to create, a legal partnership or joint venture between the Parties.
- 2.3 None of the provisions of this Agreement bind either the Council’s or the Association’s successors in title or those deriving title from them.
- 2.4 This Agreement will be governed by and construed in accordance with English law.

3. ASSOCIATION OBLIGATIONS

The Association agrees that it shall:

- 3.1 without undue delay, use all reasonable endeavours to proceed with the development of a Master Plan and all appropriate work pursuant to the terms of the Master Plan suitable for the submission of an outline planning application for the Redevelopment, to include resident consultation, and proceed diligently with negotiations in good faith for the agreement and execution of the Principal Development Agreement with the Council for the Redevelopment by the Association;
- 3.2 without undue delay, after agreement of the terms of the Master Plan by the Parties, use its reasonable endeavours to obtain Planning Permission for the Redevelopment;
- 3.3 without undue delay, regularly inform, consult, report to and liaise with the Council with regard to the Redevelopment, Planning Permission connected to it, the Estate, the Services, Consultants and any other matters in respect of which the Association has obligations to the Council in connection with the Redevelopment;
- 3.4 without undue delay grant to the Council an irrevocable non-exclusive royalty free licence at the Council’s expense (to the extent that such cost is reasonable and properly incurred and in any one instance does not exceed £1,000) to copy and use all documents and information (excluding financial information) prepared by the Association in connection with the Redevelopment and to reproduce their contents for any purpose;

- 3.5 upon reasonable request expeditiously provide the Council with copies of all relevant material presented to the Association by Consultants which relates to the provision of the Services including any plans and building designs which may be procured from the Consultants;
- 3.6 use all reasonable endeavours to procure for the Council from any Consultant engaged after 5 September 2003 an irrevocable non-exclusive royalty free licence at the Council's expense (to the extent that such cost is reasonable and properly incurred and in any one instance does not exceed £1,000) to copy and use all documents and information prepared by the Consultants in connection with the Redevelopment and to reproduce their contents for any purpose including without limitation the construction completion maintenance letting advertisement reinstatement and repair thereof and following formal appointment of any such Consultant a collateral warranty in favour of the Council substantially in the form set out in **Schedule 2**;
- 3.7 in undertaking or causing to be undertaken any activities set out in **clause 4.1**, comply with and ensure its agents comply with any relevant statutory requirements and good practice in connection with the health and safety of any person in or near the locality of the Estate; and
- 3.8 fully indemnify and hold the Council harmless against any third party claim which may arise directly or substantially from the activities set out in **clause 4.1** undertaken by it or its agents or sub-contractors.

4. COUNCIL'S OBLIGATIONS

The Council agrees with the Association that:

- 4.1 upon receipt of reasonable prior written notice the Council shall permit the Association, its advisers and Consultants access to the Estate (subject to the rights of residents and any third parties and such reasonable practical arrangements as the Council shall require acting reasonably) for the purpose of inspecting, carrying out surveys, valuations, site and ground tests and environmental audits, designing the Redevelopment and other matters as may be approved by the Council acting reasonably in writing provided that the Association, its advisers and Consultants shall cause no damage and shall make good without delay and at their own cost any damage which may be caused, such damage to be made good to the reasonable satisfaction of the Council;
- 4.2 it shall use all reasonable endeavours to obtain if necessary the consent of the First Secretary of State of the Office of the Deputy Prime Minister pursuant to section 25 of the Local Government Act 1988 in respect of the payment contemplated by **clause 5.2** and **5.3**; and
- 4.3 subject to **clause 2.1**, it shall use all reasonable endeavours to assist the Association in circumstances where the Association's obligations under this Agreement require the involvement of the Council and including but not limited to the expedition of any decisions in connection with consents or permissions required from the Council and the provision of information and documentation.

5. FINANCIAL MATTERS

5.1 The Association shall be solely responsible for paying the Consultants for the Allowable Costs.

5.2 If:

5.2.1 Planning Permission is not granted within 12 (twelve) calendar months of the date of submission of such application by the Association and the cause of such failure is not due to the unreasonable behaviour of the Association or a breach of their obligations set out in **clause 3.2 (“Planning Failure”)**; or

5.2.2 the Council has not within nine months of the date of resolution to grant planning applied to the ODPM for confirmation of the CPO (**“Application Failure”**);

5.2.3 a CPO is not confirmed on a date which is no later than that which falls 24 months after the date on which the Association are granted Planning Permission and the cause of such failure is not due to the unreasonable behaviour of the Association (**“CPO Failure”**); or

5.2.4 the Council resolves to abandon or cancel the Redevelopment (**“Council Failure”**); or

5.2.5 the residents of the Estate reject the Redevelopment by a numerical majority in the formal consultation and the Redevelopment is abandoned (**“Resident Failure”**),

then subject to **clauses 5.3 and 5.4** the Council will in accordance with **clause 5.5** reimburse the Association for Allowable Costs.

5.3 The Council shall reimburse the Association for Allowable Costs:

5.3.1 in any event to a sum which shall not exceed the sum of one million three hundred thousand pounds (£1,300,000) (inclusive of VAT) (**“Maximum Allowable Costs”**);

5.3.2 in each Category to a sum which does not exceed the larger of that Category’s Category Costs plus £5,000 or 120% of that Category’s Category Costs except where, subsequent to this Agreement, the relevant Category Costs have been increased on application by the Association and with the written agreement of the Council; and

5.3.3 in the event of Planning Failure the Council shall be liable to make payment of a sum which shall not exceed 50% of the Allowable Costs and shall never exceed 50% of the Maximum Allowable Costs;

5.3.4 in the event of CPO Failure the Council shall be liable to make payment of a sum which shall not exceed 50% of the Allowable Costs and shall never exceed 50% of the Maximum Allowable Costs;

5.3.5 in the event of either Application Failure or Council Failure the Council shall be liable to make payment of a sum which shall not exceed 100% of the Allowable Costs and shall never exceed 100% of the Maximum Allowable Costs; or

5.3.6 in the event of Resident Failure shall be liable to make payment of a sum which shall not exceed 50% of the Allowable Costs and shall never exceed 50% of the Maximum Allowable Costs.

- 5.4 Notwithstanding any other provision of this Agreement, the Council shall be under no obligation to make any payment to the Association under this Agreement in relation to the Allowable Costs unless and until:
- 5.4.1 the Association provide evidence to the Council of payments made to the Consultants including a receipted invoice or invoices which shall set out the correct amount of VAT paid thereon; and
- 5.4.2 the Association complies with its obligations under **clauses** 3.4, 3.5 and 3.6 of this Agreement.
- 5.5 In the event the Council is required to make a payment to the Association in accordance with the provisions of **clause** 5.2 then subject to the provisions of **clause** 5.4 the Council shall make such payment forthwith (the “**Reimbursement**”). In the event that the Council does not make the Reimbursement within 56 days of **clause** 5.4 being satisfied then the Council shall pay interest to the Association (both before and after any relevant judgment) at the rate of two per cent above the base lending rate of Barclays Bank PLC applicable at the relevant times for the period from the later of either the date **clause** 5.4 is satisfied or the date the Reimbursement is due until the date upon which the Association receives payment.
- 5.6 Notwithstanding any other provision of this Agreement, in the event the Association completes the necessary documentation with the Council so as to enable the Redevelopment or a similar project to proceed, then the Association shall repay to the Council any sums paid under the provisions of this Agreement within 56 days of such completion (the “**Repayment**”). In the event the Association fails to make the Repayment then the Association shall pay interest to the Council (both before and after any relevant judgment) at the rate of two per cent above the base lending rate of Barclays Bank PLC applicable at the relevant times for the period from the date the Repayment was due to be paid to the Council until the date upon which the Council receives payment.
- 5.7 In the event the Association abandons or otherwise than as specified in **clauses** 5.2.1, 5.2.2, 5.2.3, 5.2.4 and 5.2.5 fails to commence the Redevelopment then it shall within 56 days of such an event make payment to the Council of a sum which shall not exceed three hundred and fifty thousand pounds (£350,000) (inclusive of VAT) such payment being conditional upon:
- 5.7.1 the Council having properly incurred costs for external legal services or other external professional services in connection with the Redevelopment; and
- 5.7.2 the Council providing evidence satisfactory to the Association (acting reasonably) of it incurring such costs including any receipted invoice or invoices.
- 5.8 In the event that the Association does not make the payment due in accordance with **clause** 5.7 within 56 days then the Association shall pay interest to the Council (both before and after any relevant judgment) at the rate of two per cent above the base lending rate of Barclays Bank PLC applicable at the relevant times for the period from the date the payment is due until the date upon which the Council receives payment.

6. TERMINATION OF THE REDEVELOPMENT

- 6.1 Without prejudice to the obligations in **clauses** 3 and 4, the Parties may agree to terminate the negotiations for the proposed Redevelopment (the “**Negotiations**”), prior to signing the Principal Development Agreement, having acted in good faith.
- 6.2 Where, in accordance with **clause** 6.1 above, the Negotiations have been terminated, the provisions in **clauses** 5.2 to 5.7 shall not apply and each party shall be responsible for meeting its own costs incurred in relation to the Redevelopment.
- 6.3 In the event that the Parties agree to terminate Negotiations in accordance with **clause** 6.1 above then both Parties shall sign a written statement to that effect.
- 6.4 In the event that the Parties agree to terminate Negotiations then **clause** 9.5 shall not apply and this Agreement shall terminate on a date agreed by the Parties, without prejudice to any rights and/or remedies in respect of any pre-existing breaches of this Agreement.

7. FINANCIAL REVIEW

- 7.1 The Association in consultation with the Council shall conduct a Financial Review on or about [date] and every 6 months thereafter.
- 7.2 Within 30 days of a Financial Review the Association shall provide written notice (the “**Financial Review Notice**”) to the Council stating whether the Redevelopment is in a state of Financial Non-Viability or not.
- 7.3 Where the Financial Review Notice states that the Redevelopment is financially viable and the Council notifies the Association in writing of its acceptance of the contents of the Financial Review Notice then the Financial Review shall be deemed to have been completed and the remainder of the clause shall not apply.
- 7.4 Where the Financial Review Notice states that the Redevelopment is Financially Non-Viable and the Council notifies the Association in writing of its acceptance of the contents of the Financial Review Notice the Redevelopment shall under the provisions of this Agreement be in a state of Financial Non-Viability and **clause** 7.7 will apply.
- 7.5 Where the Council notifies the Association that it does not accept (acting reasonably) the contents of the Financial Review Notice, then the Association and the Council shall use all reasonable endeavours to reach a consensus as to the financial viability of the Redevelopment.
- 7.6 If the Association and the Council fail to agree as to the financial viability of the Redevelopment within 10 weeks of the Council receiving a Financial Review Notice then either Party may refer the matter to dispute resolution (pursuant to the terms of **clause** 8) as to whether the Redevelopment is in a state of Financial Non-Viability.
- 7.7 Where either:

- 7.7.1 the Parties agree that the development is in a state of Financial Non-Viability;
- 7.7.2 or where a dispute has been referred to an Expert in accordance with **clause 7.6** and the Expert has determined that the Redevelopment is Financially Non-Viable
- then the Association and the Council shall use all reasonable endeavours to vary the Redevelopment to the extent that it would be financially viable.
- 7.8 Where, having used all reasonable endeavours, the Parties agree that the Redevelopment cannot be varied so that it becomes financially viable, then the Parties will terminate the Negotiations and the provisions of **clause 6** will apply.

8. DISPUTE RESOLUTION

- 8.1 All disputes and differences arising out of or in connection with this Agreement (a “**Dispute**”) shall be resolved pursuant to the terms of this **clause 8**.
- 8.2 The Parties shall use reasonable endeavours to resolve any Dispute between them arising out of or in connection with this Agreement without delay by way of negotiations which shall be conducted between senior representatives of the Council and of the Association in good faith in an effort to resolve the Dispute without the necessity of any formal proceedings.
- 8.3 The following provisions of this **clause 8** shall apply to any matter or Dispute which is expressly stated to be subject to expert determination related to:
- 8.3.1 disputes in relation to payment of Allowable Costs pursuant to **clause 5**;
- 8.3.2 disputes in relation to the Repayment pursuant to **clause 5**; and
- 8.3.3 disputes in relation to whether an amount or item of expenditure is an Allowable Cost.
- 8.4 Any matter or Dispute to which **clause 8.3** refers shall be referred to and settled by an expert (the “**Expert**”) who shall be an independent person agreed between the Parties or, failing agreement within five working days after either party shall have given to the other a written request to concur in the appointment of such person, to be appointed on the request of either party by the President for the time being of the Chartered Institute of Arbitrators.
- 8.5 The Expert shall be:
- 8.5.1 a suitably qualified solicitor or barrister in relation to any Dispute concerning the meaning or construction of any part of this Agreement; or
- 8.5.2 a suitably qualified member of the Consultative Committee of Accounting Bodies in relation to any Dispute concerning a calculation of costs.
- 8.6 The Expert shall:
- 8.6.1 act as an expert and not as an arbitrator, and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Expert or his determination or the procedure by which he reaches his determination;

- 8.6.2 have the power to determine the procedures to be complied with by the Parties in resolving the Dispute and to request either party to provide him with such written or other statements, documents or information as he may require in order to determine the respective rights of the Parties and the Parties shall comply fully and promptly with any such request; and
- 8.6.3 exercise his powers under this **clause 8** with fairness and impartiality.
- 8.7 In determining a Dispute, other than a Dispute which is expressly stated to be subject to the provisions of this **clause 8**, the Expert shall:
- 8.7.1 give each party a reasonable opportunity, in the light of any agreed timetable, of putting its case and dealing with that of the other party;
- 8.7.2 use his best endeavours to reach a conclusion on any Dispute referred to him within 30 days of first receiving notification of it, and shall in any event make his determination as soon as practicable after receipt of all statements, documents and information requested pursuant to **clause 8.6.2** and the conclusion of such further work as the Expert may consider necessary; and
- 8.7.3 give written notice of his decision to the Parties as soon as practicable after reaching a conclusion, which notice shall include a concise statement by the Expert of the reasons for his decision and shall be supported by a schedule summarising the documentation, investigations and other evidence considered by the Expert in arriving at his decision.
- 8.8 The liability for the Expert's fees shall be dealt with as follows:
- 8.8.1 the fees and expenses of the Expert shall be as the Expert shall award but in the absence of an award shall be borne equally between the Parties unless they otherwise agree; and
- 8.8.2 the Expert shall be entitled to order that the costs incurred by the Parties in preparing and submitting their case to the Expert (including the costs of obtaining any legal or technical advice) shall be paid by the Parties in whatever proportions he thinks fit, and in the absence of any such order the Parties shall bear their own such costs.
- 8.9 Where any matter (whether it is a Dispute or otherwise) has been referred to an Expert for determination, the Parties shall forthwith give full effect to the decision of the Expert, which shall be final and binding on them save where the Expert has made a manifest error.
- 8.10 No reference of any Dispute to an Expert pursuant to this clause shall relieve either party from any liability for the due and punctual performance of its obligations under this Agreement.
- 8.11 If and to the extent that the Parties do not resolve any Dispute or any issue therein following the application of **clause 8.1** (save where such matter or Dispute is subject to Expert determination under **clause 8.3**) then either party shall be at liberty to serve a claim form in respect of that Dispute.

9. GENERAL PROVISIONS

The Parties mutually agree that:

- 9.1 they owe each other a duty of confidentiality with regard to this Agreement and its contents except for any disclosure as may be required by law;
- 9.2 this Agreement does not form an agreement for the sale and purchase of the Estate and does not impose an obligation on any party to proceed to exchange of contracts for the sale and purchase of the Estate;
- 9.3 they are acting in reliance upon the terms of this Agreement and that they are bound by its terms;
- 9.4 in the event that any part of this Agreement is unenforceable for any reason, the remaining parts of this Agreement shall remain in full force and be binding upon the Parties;
- 9.5 this Agreement shall terminate and cease to have effect on the later of the date that the Principal Development Agreement is entered into or of any Repayment being made to the Council in accordance with clause 5.6;
- 9.6 sums payable under this Agreement for the supply of goods and services are inclusive of VAT chargeable on the payment;
- 9.7 this Agreement is personal to the Council and the Association and neither party may part with or assign this Agreement without the prior consent of the other;
- 9.8 unless the right of enforcement is expressly granted, it is not intended that a third party should have a right to enforce a provision of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999; and
- 9.9 the Parties may rescind or vary this Agreement without the consent of a third party to whom an express right to enforce any of its terms has been provided.

10. VIRES

The Council hereby represents and warrants that it has the power and authority to enter into and to observe and perform the terms and obligations on its part to be observed and performed by it under this Agreement and has taken all necessary action to authorise the execution and delivery of this Agreement and the performance of its obligations thereunder in accordance with its respective terms.

11. AMALGAMATION AND TRANSFER OF ENGAGEMENTS

- 11.1 Where there is an amalgamation or reorganisation involving the Association or a transfer of the engagements of the Association (a “**Transaction**”), then:
 - 11.1.1 the Association shall give written notice to the Council at least 30 days prior to the Transaction taking place; and

11.1.2 within 30 days of the Transaction, the Association shall procure that the Association's successor enters into a direct covenant, in an enforceable form, to perform the Association's obligations under this Agreement and provide a certified copy of the covenant to the Council.

11.2 All of the Council's obligations under this Agreement shall cease, unless **clause** 11.1 is complied with and/or the Association can demonstrate to the Council's satisfaction that the Association's successor assumes all of the Association's obligations under this Agreement.

IN WITNESS whereof the Parties executed this Agreement as a deed the day and year first before written.

Executed as a Deed by)
HOME GROUP LIMITED)
by affixing its Common Seal hereto in the)
presence of:)

The Common Seal of)
THE MAYOR AND BURGESSES OF THE)
LONDON BOROUGH OF BARNET)
was hereunto affixed in the presence of:)

Mayor

Borough Solicitor

SCHEDULE 1

Allowable Costs

COLUMN A

Category

COLUMN B

Category Costs

Internal Costs	£132,000
Site presence	£32,000
Architects fees	£585,000
Solicitors fees	£70,000
Engineer fees	£100,000
Quantity surveyor fees	£40,000
Landscape consultants fees	£50,000
Traffic consultants fees	£30,000
Environmental consultants fees	£25,000
Neighbourhood Plan	£30,000
Communication	£120,000
Community Development	£27,000
	£1,241,000

SCHEDULE 2

Form of Collateral Warranty

Date _____

[] (1)

-and-

**THE MAYOR AND BURGESSES OF THE
LONDON BOROUGH OF BARNET (2)**

-and-

HOME GROUP LIMITED (3)

WARRANTY

Relating to works/a development at Dollis Valley

THIS WARRANTY is made the [] day of []

BETWEEN:-

(1) **[EITHER]**

[] LIMITED (Company Number) whose registered office is situate at [] (the “Consultant”)

[OR]

[] of [] and [] of [] (the “Partners”) carrying on business together in partnership as [] (the “Consultant”)

(2) THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BARNET of Town Hall, The Burroughs, London NW4 (the “Council” which expression shall include its successors in title and assigns); and

(3) HOME GROUP LIMITED (an Industrial and Provident Society registered under number IP22981R) whose registered office is at Ridley House, Regent Centre, Gosforth, Newcastle-upon-Tyne NE3 3JE (the “Developer”).

WHEREAS:-

(A) The Developer has procured or proposes to procure the carrying out of [], (the “Development”) at [] (the “Property”)

(B) The Consultant has been appointed by the Developer to act for the Developer in the capacity of [] in connection with the Development upon the terms and conditions contained in an agreement dated [] (the “Appointment”)

(C) The Developer and the Council have entered into an underwriting agreement dated [] in connection with the Development and it is intended that the Developer and the Council may subsequently enter into a development agreement in connection with the Development (together and severally referred to as the “Development Agreement”).

(D) The Consultant has agreed to enter into this warranty in favour of the Council.

NOW IN CONSIDERATION OF THE SUM OF £10 (TEN POUNDS) RECEIPT OF WHICH THE CONSULTANT HEREBY ACKNOWLEDGES IT IS NOW AGREED AS FOLLOWS:-

1. WARRANTY

1.1 The Consultant hereby warrants and undertakes to the Council:-

- (a) that in respect of all matters which lie within the scope of its professional responsibilities in relation to the Development:
- (i) it has exercised and will continue to exercise all reasonable skill and care to be expected of a properly qualified and competent firm of [] experienced in carrying out services in relation to projects of a similar size scope and complexity to the Development;
 - (ii) it shall owe a duty of care to the Council in respect of such matters provided that the Consultant shall owe no greater duty of care to the Council under this Warranty than it would have done if the Council has been named in place of the Developer in the Appointment; and
 - (iii) it has exercised and will continue to exercise the standard of skill and care set out in sub-clause (i) above not to specify any substances generally known in the United Kingdom to be deleterious including but not limited to substances not in accordance with British Standards and Codes of Practice or which are published in the Building Research Establishment Digests as being deleterious at the time of specification for the Development and otherwise to only specify materials for use in the Development in accordance with the guidance set out in the publication by the British Property Federation Council of Offices current at the date of specification of any such materials and/or substances, prepared by Ove Arup & Partners, entitled “Good Practice in the Selection of Construction Materials” and it shall use all reasonable skill and care to see that this sub-clause is adhered to in the use of materials and/or substances in connection with the Development.
- and the Council shall be deemed to have relied upon the Consultant’s professional skill and judgement in respect of such matters; and
- (b) that it has performed and shall continue to perform all of its duties and obligations under the Appointment.

2. LICENCE

The Consultant as beneficial owner hereby grants to the Council an irrevocable royalty-free non-exclusive licence to copy and use all documents and information prepared by the Consultant or on its behalf in connection with the Development (the “**Documents**”) and to reproduce their contents for any purpose including but without limitation the construction, completion, maintenance, letting, advertisement, reinstatement and repair thereof. Such licence shall carry the right to grant two further sub-licences and shall be transferable to a maximum of two further third parties.

3. ASSIGNMENT

The Council shall be entitled to assign charge and/or transfer all or any of its rights and/or obligations under this Warranty to two (2) further parties without the consent of the Consultant. No further assignments shall be permitted.

4. **STEP IN RIGHTS**

- 4.1 The Consultant agrees that if an event of default occurs under the Development Agreement and/or if the Development Agreement is terminated, the Consultant shall, if so required by notice in writing given by the Council in accordance with clause 4.5, accept the instructions of the Council or its appointee to the exclusion of the Developer upon the terms and conditions of the Appointment. The Developer acknowledges that the Consultant will be entitled to rely on a notice given to the Consultant under clause 4.1 as conclusive evidence for the purposes of this Warranty of the occurrence of an event of default or termination under the Development Agreement.
- 4.2 The Consultant further agrees that it will not exercise any right it may have to terminate its appointment under the Appointment or to treat the Appointment as having been repudiated by the Developer or (subject to clause 4.7) to discontinue the performance of its obligations under the Appointment without first giving the Council not less than 21 days' notice specifying the grounds for such termination, repudiation or discontinuance and including a statement of any sums due or to become due to the Consultant.
- 4.3 Any period stipulated in the Appointment for the exercise by the Consultant of a right of termination will nevertheless be extended as may be necessary to take account of the period of notice required under clause 4.2, and compliance by the Consultant with the provisions of clause 4.2 will not be treated as a waiver of any breach on the part of the Developer giving rise to the right of termination or otherwise prevent the Consultant from exercising its rights after the expiry of the notice, unless the right of termination has ceased under the provisions of clause 4.4.
- 4.4 The right of the Consultant to terminate its appointment under the Appointment or to treat the Appointment as having been repudiated by the Developer or (subject to clause 4.7) to discontinue the performance of any of its obligations under the Appointment will cease if within the period of 21 days referred to in clause 4.2 the Council gives notice to the Consultant requiring the Consultant to accept the instructions of the Council or its appointee to the exclusion of the Developer upon the terms and conditions of the Appointment.
- 4.5 Notice given by the Council under clause 4.1 or 4.4 will be deemed to:
- 4.5.1 acknowledge that the Council assumes all the obligations of the Developer under the Appointment;
 - 4.5.2 require the Consultant to continue with the performance of its duties and obligations under the Appointment;
 - 4.5.3 undertake unconditionally to the Consultant to discharge all payments which may subsequently become properly due to the Consultant under the terms of the Appointment; and
 - 4.5.4 undertake unconditionally to the Consultant to pay within 21 days of receipt of a valid VAT invoice from the Consultant, any such sums which have become due to the Consultant under the Appointment and, where clause 4.2 applies, were included in the Consultant's notice, but which are at the date of the Council's notice unpaid and remain unpaid.

- 4.6 Upon compliance by the Council with the requirements of clause 4.5 the Appointment will continue in full force and effect as if the right of termination on the part of the Consultant had not arisen and in all respects as if the Appointment had been made between the Council and the Consultant to the exclusion of the Developer. The Consultant, the Developer and the Council will enter into an agreement for the novation of the Appointment in such form as may be reasonably required by the Council to give effect to this transfer, if required by the Council.
- 4.7 Where the Consultant exercises its right to suspend performance under section 112 of the Housing Grants, Construction and Regeneration Act 1996 or any provision of the Appointment giving effect to that section, the periods referred to in clauses 4.2 and 4.4 shall be reduced to seven days.
- 4.8 The Developer acknowledges that the Consultant will not be in breach of the terms of the Appointment by complying with the terms of clause 4.

5. NOTICES

- 5.1 Any notice to be given hereunder shall be deemed to be duly given if it is delivered by hand at or sent by registered post or recorded delivery to the parties' registered office and any notice given by the Council hereunder shall be deemed to be duly given if it is addressed to The Managing Director/Senior Partner and delivered by hand at or sent by registered post or recorded delivery to the above-mentioned address of the Consultant or to the principal business address of the Consultant for the time being and, in the case of any such notices the same shall if sent by registered post or recorded delivery be deemed to have been received forty eight hours after being posted.

6. INSURANCE

- 6.1 The Consultant warrants to the Council that the Consultant will maintain in full force and effect from the date of the Consultant's commencement of its services under the Appointment until the expiry of a period of 12 years from the later of the completion of the services under the Appointment or the completion of the Development a policy of professional indemnity insurance in an amount of not less than ten million pounds (£10,000,000) for each and every claim provided that such insurance is available to practices/organisations of equivalent size and type as the practice/organisation of the Consultant at commercially reasonable rates and on commercially reasonable terms.
- 6.2 The Consultant shall upon each reasonable request by the Council produce for inspection documentary evidence to show that its professional indemnity insurance is being maintained in accordance with this Warranty.

7. JOINT AND SEVERAL LIABILITY

[Applicable for Partnership only]

7.1 Where the Consultant consists of more than one person the covenants warranties and undertakings on the part of the Consultant herein contained shall be deemed to be made by each and every such person jointly and severally.

8. LAW

8.1 This Warranty shall be governed by and construed in accordance with the laws of England and Wales and all differences or disputes of whatever nature arising under this Warranty and such dispute or difference shall be resolved in accordance with the dispute resolution provisions of the Appointment.

9. LIMITATION

9.1 Save for any successor in title and/or assigns the parties hereby agree that notwithstanding any other provision of this Warranty nothing in this Warranty confers or purports to confer any right to enforce any of its terms on any person who is not a party to it.

9.2 Notwithstanding the completion of the Development or any part thereof this Warranty shall continue to have effect for a period expiring no earlier than 12 years from completion of the services under the Appointment.

EXECUTED AS A DEED by the parties on the date which first appears

Executed as a Deed by)
[])
)

)
)

[Authorised signatory]

[Authorised signatory]

Executed as a Deed by)
HOME GROUP LIMITED)
by affixing its Common Seal hereto in the)
presence of:)

The Common Seal of)
THE MAYOR AND BURGESSES OF THE)
LONDON BOROUGH OF BARNET)
was hereunto affixed in the presence of:)

Mayor

Borough Solicitor

AGENDA ITEM: 5 Page nos. 1 – 11

Meeting	Cabinet Resources Committee
Date	16 December 2004
Subject	Open space at the junction of Deansbrook Road and Crispin Road, Burnt Oak, HA8 – construction of a temporary works compound
Report of	Cabinet Members for <ul style="list-style-type: none"> ○ Resources ○ Performance, Partnerships & Best Value ○ Housing, Neighbourhoods & Community Safety
Summary	To consider public representations to the proposed grant of a short-term lease of a parcel of open space land

Officer Contributors	Dave Stephens, Chief Valuer and Development Manager Robert Colville, Valuer, Economic and Community Development
Status (public or exempt)	Public
Wards affected	Hale
Enclosures	Plan of compound site. Appendix A – Schedule of representations received
For decision by	Committee
Function of	Executive
Reason for urgency / exemption from call-in (if appropriate)	Not applicable

Contact for further information: Robert Colville, Valuer, Property Services & Valuation, 0208 359 7363

1. RECOMMENDATIONS

- 1.1 That, having given proper consideration to the representations received, it be agreed that the grant of a lease of part of the public open space at the junction of Crispin Road and Deansbrook Road should proceed for the purpose of constructing a temporary works compound upon the basis set out in the report and that the Borough Solicitor be instructed to complete the matter in a form to his approval.**

2. RELEVANT PREVIOUS DECISIONS

- 2.1 Cabinet Resources report dated 1 May 2003 which granted the Watling Estate Improvement Works Programme contract to Kier London Ltd.
- 2.2 Delegated Powers report dated 20 August 2004 which reported on the grant of a lease of the open space at the junction of Deansbrook Road and Crispin Road, Burnt Oak as a contractor's works compound.
- 2.3 Environment Sub Committee 30th November 2004 which reported the advertising pursuant to Section 123 (2A) of the Local Government Act 1972, of the Council's intention to grant a lease of the open space at the junction of Deansbrook Road and Crispin Road to facilitate the provision of a contractor's works compound.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 The Corporate Plan commits the Council to "plan and manage land use and development in Barnet to enhance quality of life and provide tangible benefits for the community". The proposal in this report does this by facilitating the Watling Estate Phase 2 Improvement Works Programme, thus aiding the regeneration of the borough's housing stock.

4. RISK MANAGEMENT ISSUES

- 4.1 If the grant of the lease of the Crispin Road compound site does not proceed, the Council's Watling Estate Phase 2 Improvement Works Programme will be delayed whilst an alternative site is found, thus having budgetary implications upon the project delivery and reducing the number of properties that are capable of being considered for improvement works.
- 4.2 The lessee must reinstate the land to the Council's satisfaction at the end of the term or upon the earlier determination of the lease, as set out in the proposed terms of the works compound lease.

5. FINANCIAL, STAFFING, ICT AND PROPERTY IMPLICATIONS

- 5.1 The receipt of a rent as set out in the exempt report.
- 5.2 There are no staffing or ICT issues. The property implications are as set out below in section 8.

6. LEGAL ISSUES

- 6.1 The grant of a lease or disposal of land acquired or held for public open space purposes is permissible subject to the proposed disposal first being advertised in accordance with the provisions of Section 123 (2A) of the Local Government Act 1972.

7. CONSTITUTIONAL POWER

- 7.1 Constitution – Part 3 Responsibility for Functions – Section 3.6 Functions delegated to the Cabinet Resources Committee – All matters relating to land and buildings owned, rented or proposed to be acquired or disposed of by the council.

8. BACKGROUND INFORMATION

- 8.1 Barnet Homes have appointed Kier London Ltd as the contractor for the undertaking of the Watling Estate Improvement Works Programme. The works programme will improve the Council's housing stock on the Watling Estate. In order to deliver the agreed programme of works it is necessary for the contractor to establish a works compound from which to operate for the duration of the contract. Whilst works will be undertaken in the numerous houses on the Watling Estate, the site will be used for the storage of equipment, works vehicles and other materials connected with the undertaking.
- 8.2 In the absence of any suitable established works compound site in the vicinity of the Watling Estate, the green space land at the junction of Deansbrook Road and Crispin Road (as shown shaded on the attached plan) has been identified as a suitable alternative.
- 8.3 The Environment Agency has been consulted on the use of the site because of its proximity to the nearby Deans Brook. It has raised no objections to the placement of the works compound as reported, but has asked that all reasonable measures are taken to prevent contaminants from entering the water course.
- 8.4 In accordance with S123 (2A) of the Local Government Act 1972, as a lease of part of a piece of public open space is to be granted to enable installation of the equipment, the proposals were advertised in the local press for a four week period commencing 9th September 2004. This follows a previous period of advertising, commencing 3rd June, which due to a misunderstanding between the Property Services & Valuation Group and Cavendish Media, the appointed advertising contractor, was not carried out so as to meet the requirements of the legislation.
- 8.5 In response to the advertising, 4 letters of objection were received. The objectors, the issues raised and the officers' responses thereto are set out in the attached appendix A.
- 8.6 Having investigated the issues raised by the objectors it is considered that none of the grounds of objection warrant the need to find an alternative site for the construction of a works compound. The site will be fully re-instated at the end of the term or at the earlier determination of the lease, and any disturbance to neighbouring residents has been designed to be minimised. Consequently, it is recommended that the grant of the lease proceeds upon the basis of the following principal terms:
- i. The lease will be for a term of 50 weeks.
 - ii. The lease will commence from the date of the agreement, and will be contracted out of sections 24-28 of the Landlord & Tenant Act 1954.

- iii. The site may be used to store a maximum of 3 office units, 1 residents refuge, 1 mess/changing room unit, 1 toilet block and 6 storage containers. The lease shall also include the provision of up to 4 parking spaces. The provisions of the lease may be altered subject to the Council's reasonable prior consent.
- iv. The rental figure (as outlined in the exempt report) will remain the same throughout the term, and will not be reviewed.
- v. The rental figure is exclusive of all outgoings. The lessee will be billed separately for the connection of all services to the compound. The lessee shall also be responsible for all subsequent periodic utility payments.
- vi. The lessee has an obligation not to do damage to any aspect of the site other than the agreed works and fair wear and tear. A photographic schedule of condition will be carried out prior to the granting of the lease and kept on record by the lessor. The lessee will be responsible for the re-instatement of the green space to the reasonable discretion of the lessor within 4 weeks of the termination of the agreement. Failure to leave the site within 4 weeks of the termination date having fully re-instated the site will incur a penalty payment of £50 per week or part week until the lessor is fully satisfied with the re-instatement works. The lessor may also require the lessee to undertake remedial works during the term if, in the lessor's reasonable opinion, a significant risk is posed to either the site, to those using the site or to adjoining occupiers.
- vii. The lessee must not use or permit the demised land to be used other than as a works compound, subject to the specifications contained within clause iii. The office space will be for office use only.
- viii. The lessee must not assign, underlet, charge, part with possession or otherwise dispose of the premises or any part of the premises.
- ix. The lessee may not make any alterations or additions whatsoever to the site other than those agreed in accordance with the schedule (to be supplied by Kier London Ltd and agreed by both parties).
- x. The lessee to insure any temporary structures erected on the site if they choose to do so. Public liability cover must be held at all times whilst cover for accidental damage, fire and theft of contents will be left to the discretion of the lessee.
- xi. The lessee to indemnify the lessor and to keep the lessor indemnified against all reasonably and properly incurred losses, claims, demands, actions, proceedings, damages, costs or expenses or other liabilities arising in any way from this agreement or any breach of any of the lessee's obligations in this agreement.
- xii. The lessee will deliver up vacant possession on the expiration or the sooner determination of the term.
- xiii. The lessor may terminate the lease in the event of a breach of the terms of the lease or of the termination of the Watling Estate Phase 2 Improvement Works Programme.
- xiv. The lessee will pay the Council's reasonable fees and legal costs.

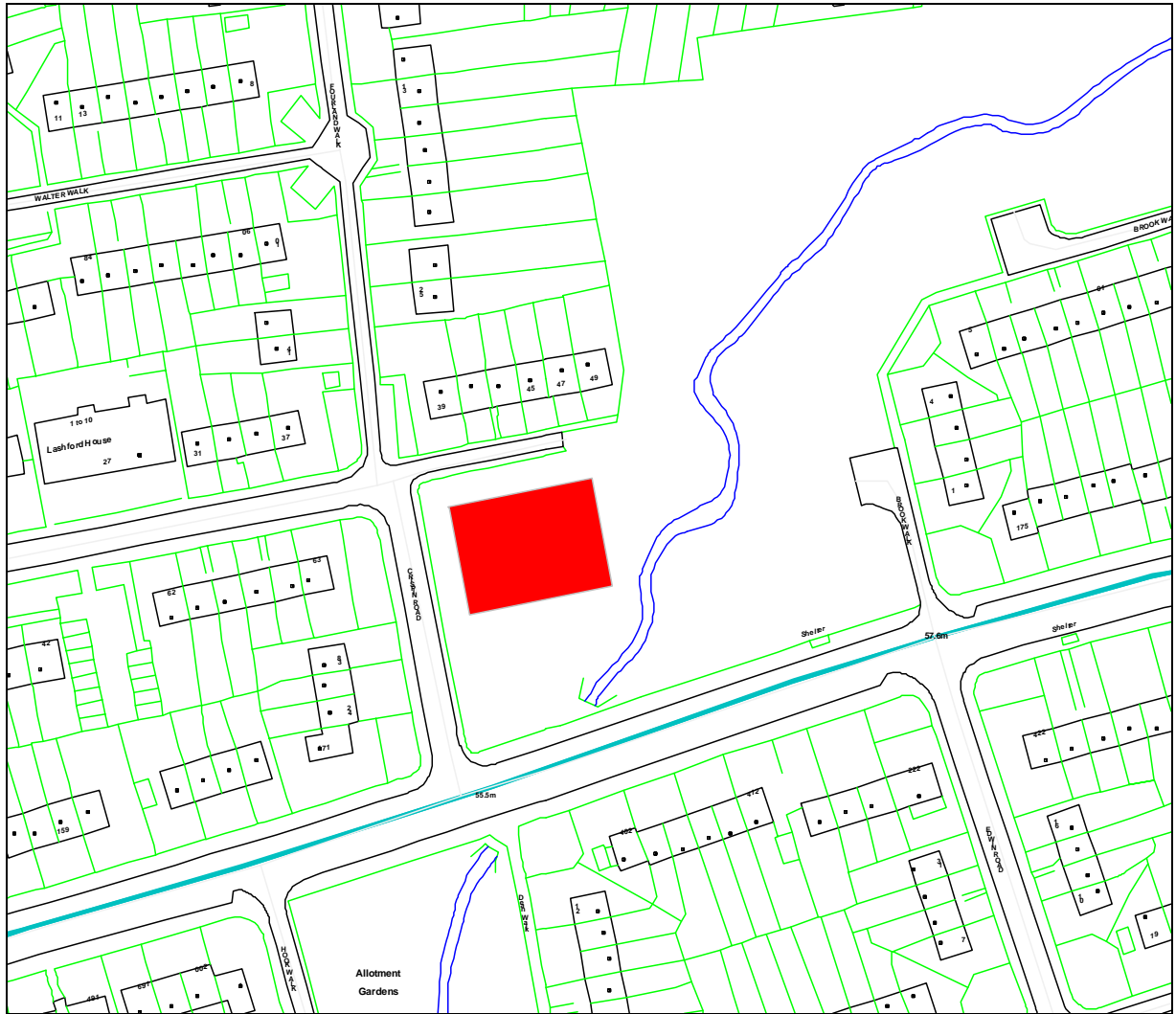
- xv. The lessee may construct the site compound and construct/install any building and structures within it between the hours of 8 a.m. and 6 p.m. Monday to Friday inclusive and between the hours of 8 a.m. and 1 p.m. on a Saturday using the best practicable means to ensure that impact upon surrounding occupiers (noise, dust, vibration, etc) is minimized.
- xvi. The lessee may use the compound and office upon establishment (after the construction period), and for the remainder of the duration of the term, between the core hours of 8 a.m. and 6 p.m. Monday to Friday inclusive, and between the hours of 8 a.m. and 1 p.m. on a Saturday using the best practicable means to ensure that impact upon surrounding occupiers is minimized. Delivery vehicles may under no circumstances access the site outside of these core hours. The lessee may additionally allow the arrival of personnel onto the compound between the hours of 7 a.m. and 8 a.m. Monday to Saturday inclusive, and between the hours of 1 p.m. and 6 p.m. on a Saturday in order to use office/welfare/canteen facilities provided that they take all reasonable measures to ensure that impact upon surrounding occupiers is minimized. Furthermore the lessee may access the compound between the hours of 6 p.m. and 9 p.m. Monday to Friday inclusive so as to conduct tenant consultations and administrative duties provided that they take all reasonable measures to ensure that impact upon surrounding occupiers is minimized.
- xvii. Neither the lessee nor the representatives of the lessee may use the site during either the construction period or the remainder of the term on a Sunday or a bank holiday.
- xviii. The lessee may access the compound at any time in the event of an emergency.
- xix. The lessee must at all times comply with all lawful Environmental Health requirements.
- xx. The lessee may not cause any nuisance or annoyance to the lessor or to any adjoining owners or occupiers.
- xxi. The compound must be fenced at all times after establishment. The lessee will take all reasonable measures to ensure that the site is kept secure at all times.
- xxii. In the event that the lease has not been concluded within the necessary time frame the Borough Solicitor may issue the contractor with a Tenancy at Will which will terminate upon the completion of the lease.
- xxiii. The Borough Solicitor may add such other terms as he feels appropriate.

9. LIST OF BACKGROUND PAPERS

- 9.1 The four letters of objection received.
- 9.2 Any person wishing to inspect the background papers listed above should telephone 0208 359 7363.

BS: VW-R
BT: CM

CRISPIN ROAD COMPOUND SITE (approximate area only - not to scale)



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Schedule of Representations Received concerning the proposed leasing of land at Crispin Road

Name of person making representation and grounds of representation	Officer's comments
1. Mrs E Constantinous, undated letter 2004	
<p>1.1 The Council ought to have informed Mrs Constantinous as to the intended use of the open space.</p> <p>1.2 Mrs Constantinous was considering selling the premises in 2005. Mrs Constantinous does not give further details, but the implication is that the placement of the works compound in the vicinity of her residence will affect the sale.</p>	<p>1.1 The proposal to grant a lease of the open space land was advertised in the local press in accordance with Section 123 (2A) of the Local Government Act 1972.</p> <p>1.2 The positioning of the works compound on the open space at Crispin Road will not cause any loss of value to the neighbouring residences because of the temporary nature of the use.</p>
2. Susan Ferguson, undated letter 2004	
<p>2.1 The Council ought to have informed Ms Ferguson as to the intended use of the open space.</p> <p>2.2 The placement of a works compound on the public open space will result in a loss of green space.</p> <p>2.3 The safety of the children who use the public open space is at risk as a result of the placement of the works compound.</p>	<p>2.1 The proposal to grant a lease of the open space land was advertised in the local press in accordance with Section 123 (2A) of the Local Government Act 1972.</p> <p>2.2 The total area of green space available between Dryfield Road and Deansbrook Road amounts to approximately 2.9 acres. The area required for the works compound amounts to less than 0.2 acres, thus leaving an area of approximately 2.7 acres that may be used for recreation. There will be no permanent loss of open space.</p> <p>2.3 The lease will specify that the compound must be fenced at all times and that the lessee will take all reasonable measures to ensure that the site is kept secure at all times.</p>

<p>2.4 The safety of elderly people resident within the vicinity will be put at risk because of the broken pavement and mud in the road.</p> <p>2.5 Waste on the site will encourage vermin into the area.</p> <p>2.6 Under the provisions of the Watling Estate Phase 2 Improvement Works Programme the houses on Crispin Road have been timetabled for refurbishment works in 2009. Ms Ferguson feels that if the residents of Crispin Road must tolerate the disturbance of having the works compound placed outside their properties that the refurbishment of their premises ought to be given a higher priority.</p>	<p>2.4 The contractor “must at all times comply with all lawful Environmental Health requirements”. The Council may thus enforce this clause should any problems arise. The pavement fronting the entrance to the compound has recently been resurfaced to accommodate a dropped kerb and vehicular cross-over.</p> <p>2.5 It is not envisaged that the use of the compound will increase the presence of vermin in the area as food waste will be minimal and will be disposed of in the proper manner. Under the terms of the lease the lessee “must at all times comply with all lawful Environmental Health requirements”. The Council may thus enforce this clause should any problems arise.</p> <p>2.6 A Housing Stock Condition Survey was completed in 2002 in conjunction with the government’s Decent Homes Strategy. In order to comply with the requisite legislation the Council’s total housing stock was placed in order of condition, with those in most need of attention given highest priority. Barnet Homes do not feel that the order in which the delivery of refurbishment works is completed may be amended.</p>
<p>3. Ms K O’Grady, letter dated 15th September 2004</p>	
<p>3.1 Crispin Road is a quiet, happy neighbourhood, “full of children and families”, and as such is not suitable for the construction of a works compound.</p>	<p>3.1 The viability of using a variety of sites was considered prior to the preliminary decision to proceed with the site at the junction of Crispin Road and Deansbrook Road. This decision was based upon the nature of the site and the reasonable requirements of the contractor (site size, proximity to the Watling Estate, accessibility and turning circle for heavy goods vehicles). The level of disturbance to local residences was designed to be minimised in</p>

<p>3.2 The Council ought to have informed Ms O'Grady as to the intended use of the open space.</p> <p>3.3 The placement of a works compound on the public open space will result in a loss of green space.</p> <p>3.4 The safety of the children who use the public open space is at risk as a result of the works compound.</p> <p>3.5 Works traffic will cause noise pollution and environmental damage.</p> <p>3.6 Waste on the site will encourage vermin into the area.</p>	<p>consultation with the Environmental Health Department. The public open space was considered to be large enough to cater for the requirements of the contractor whilst retaining enough open space for continuous public use.</p> <p>3.2 The proposal to grant a lease of the open space land was advertised in the local press in accordance with Section 123 (2A) of the Local Government Act 1972.</p> <p>3.3 The total area of green space available between Dryfield Road and Deansbrook Road amounts to approximately 2.9 acres. The area required for the works compound amounts to less than 0.2 acres, thus leaving an area of approximately 2.7 acres that may be used for recreation. There will be no permanent loss of open space.</p> <p>3.4 The lease will specify that the compound must be fenced at all times and that the lessee will take all reasonable measures to ensure that the site is kept secure at all times.</p> <p>3.5 The hours of use of the site have been established in consultation with the Environmental Health Department, and meet the requirements of the existing legislation.</p> <p>A photographic schedule of condition has been produced in order that full and proper reinstatement works may be carried out at the end of the term or upon the sooner determination of the lease.</p> <p>3.6 It is not envisaged that the use of the compound will increase the presence of vermin in the area as food waste will be minimal and will be disposed of in the proper manner. Under the terms of the lease the</p>
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<p>3.7 Works traffic will be parked in Crispin Road causing inconvenience and stress to the residents, and will make the area unsightly.</p> <p>3.8 The public open space is a on a flood plain. The placement of the compound on the public open space may detrimentally effect flood water dispersal, causing damage to neighbouring properties.</p> <p>3.9 Ms O’Grady had planned to sell her property in 2005, and feels that the positioning of the works compound in the vicinity of her residence will cause her financial loss.</p>	<p>lessee “must at all times comply with all lawful Environmental Health requirements”. The Council may thus enforce this clause should any problems arise.</p> <p>3.7 The site will be used as a base for works equipment, and it is envisaged that staff will visit the site primarily at the start and end of the work day. Throughout the day vehicles will be parked outside the houses that are being worked upon, so parking will be maintained at manageable levels. There is also provision for up to 4 car parking spaces within the compound.</p> <p>Crispin Road is part of the public highway and is wide enough to accommodate parked cars without significantly hindering traffic flow.</p> <p>3.8 The brook that runs through the public open space does not fall within the jurisdiction of the Environment Agency. Consequently the site of the works compound does not fall within a designated zone on the Environment Agency Flood Map, and is not considered to be at significant risk to flooding.</p> <p>The brook is at a significantly lower level than the surrounding properties, so damage to residences is unlikely.</p> <p>3.9 The positioning of the works compound on the public open space at Crispin Road will not cause any loss of value to the neighbouring residences because of the temporary nature of the structure.</p>
<p>4 Mr & Mrs Thomas, letter dated 23rd September 2004</p>	
<p>4.1 The placement of the works compound on the proposed site will make “the whole area look ugly”.</p>	<p>4.1 The viability of using a variety of sites was considered prior to the preliminary decision to proceed with the site at the junction of Crispin</p>

<p>4.2 The positioning of the compound on the public open space has resulted in “a lot of youths hanging around that area”.</p> <p>4.3 The question is raised as to why the compound could not have been positioned on the public open space, but further away from the residences of Crispin Road.</p>	<p>Road and Deansbrook Road. This decision was based upon the nature of the site and the physical requirements of the contractor (size, proximity to the Watling Estate, accessibility and turning circle for heavy goods vehicles). The level of disturbance to local residences was designed to be minimised in consultation with the Environmental Health Department. The public open space was considered to be large enough to cater for the requirements of the contractor whilst retaining enough open space for continuous public use.</p> <p>The compound is being constructed as a temporary structure. A photographic schedule of condition has been produced in order that full and proper re-instatement works may be carried out at the end of the term or upon the sooner determination of the lease.</p> <p>4.2 The site security of the compound has been substantially increased since works commenced on site to create the compound. Heras fencing has been replaced with palisade fencing, and someone is now on-site 24 hours a day. The contractor has re-affirmed their wish to continue to use the Crispin Road compound in spite of the early problems at establishment.</p> <p>4.3 Access was a key issue to the contractor, and the specific site on which the works compound was placed was chosen because of the proximity of the site to the highway. The re-positioning of the compound to a less “visible” portion of the public open space would have incurred greater temporary environmental damage.</p>
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AGENDA ITEM: 6 Page nos. 12 – 15

Meeting	Cabinet Resources Committee
Date	16 December 2004
Subject	Sale of Council's Freeholds of 106/108/110 and 118 Burnt Oak Broadway, 15, 30 and 32 Watling Avenue.
Report of	Cabinet Members for <ul style="list-style-type: none">○ Resources○ Performance, Partnerships and Best Value○ Housing, Neighbourhoods and Community Safety
Summary	This report seeks approval for the sale of the Council's freehold interest to the head-leaseholders.

Officer Contributors	Nick Elsley, Principal Valuer, Property Services & Valuation.
Status (public or exempt)	Public (with a separate exempt section)
Wards affected	Burnt Oak
Enclosures	Appendix A: explanation of "marriage value"
For decision by	Committee
Function of	Executive
Reason for urgency / exemption from call-in (if appropriate)	Not applicable

Contact for further information: Nick Elsley, Property Services & Valuation: nick.elsley@barnet.gov.uk

1. RECOMMENDATIONS

- 1.1 That the negotiated offers from the head lessees of the five properties as set out in the exempt report for the purchase of the freehold interests of properties in Burnt Oak Broadway and Watling Avenue be accepted and that the Borough Solicitor be instructed to complete the sales in forms to his approval.

2. RELEVANT PREVIOUS DECISIONS

- 2.1 None

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 The Corporate Plan commits the Council to “plan and manage land use and development in Barnet to enhance the quality of life and provide tangible benefits for the community”. The proposals in this report achieve these aims by producing a capital receipt from the sales which will be credited to the Housing Revenue Account.

4. RISK MANAGEMENT ISSUES

- 4.1 The legislation relating to leaseholder rights to enfranchise and acquire the freehold interests of their leased properties is complex and has been the subject of various legislative changes in recent years. If these negotiated offers are not accepted it may be that the opportunity to sell the freeholds and realise the shares of the marriage value set out in the exempt report to the benefit of the lessees and the Council would be lost.

5. FINANCIAL, STAFFING, ICT AND PROPERTY IMPLICATIONS

- 5.1 Receipt of capital sums as set out in the exempt report which will be credited to the Housing Revenue Account. The Council will additionally save the cost of collecting the ground rents.
- 5.2 There are no staffing or ICT issues. The property issues are as set out in section 7 below.

6. LEGAL ISSUES

- 6.1 None

7. CONSTITUTIONAL POWERS

- 7.1 Constitution – Part 3 Responsibility for Functions – Section 3.6 Functions delegated to the Cabinet Resources Committee – All matters relating to land and buildings owned, rented or proposed to be acquired or disposed of by the council.

8. BACKGROUND INFORMATION

- 8.1 The five properties (106/108/110 and 118 Burnt Oak Broadway, and 15, 30 & 32 Watling Avenue) comprise ground floor shops with residential accommodation on upper floors and form part of the Burnt Oak housing estate transferred to the Council by the former

Greater London Council (GLC) in 1974. This estate was developed between the wars as a model local authority housing estate. The sites of the commercial/residential units were originally sold on long leases with building agreements in the 1920's.

- 8.2 Consequent upon the transfer from the GLC, the Council owns the freehold interests in the five subject properties – each is subject to the original building lease details of which are set out in the exempt report.

HISTORY

- 8.3 Over the past 20 years various of the leaseholders of shops in Burnt Oak Broadway, Watling Avenue and Deansbrook Road have sought to acquire the Council's freehold interest. The Council's approach has always been that it should not only achieve the value of its reversionary interest but also a proper share of the marriage value. Not all leaseholders were prepared or had the financial resources to purchase the freehold interest for its correct price. The consequence of this has been a scattering of freehold sales in the three roads but with the Council still owning the freehold of many of the properties.

CURRENT SITUATION

- 8.4 There have been considerable changes to the legislation relating to leasehold enfranchisement over the past 20 years. The consequence of this has been that in many instances leaseholders have been given greater rights to acquire the freehold interest in their properties at prices calculated by reference to formula set out in the enabling Act. This has resulted, in some instances, in freeholds not achieving the level of value they had anticipated prior to the introduction of the legislation.
- 8.5 In light of the changing position in respect of leaseholder enfranchisement rights, officers have been in contact with some of the lessees in Burnt Oak Broadway and Watling Avenue enquiring whether they would be interested in acquiring the freeholds of their properties. It was made clear that they would be expected to pay a price which properly reflected the value of the Council's freehold interest, including a proper share of the marriage value. An explanation of marriage value is set out in appendix A.
- 8.6 Consequent upon negotiations the lessees of the three subject properties have made the offers set out in the exempt report to acquire the freehold interest in each property. It is considered that the sums offered, in each case, includes a proper share of the marriage value for the Council and therefore the negotiated offers represent best consideration and will therefore satisfy the requirements of Section 123 of the Local Government Act 1972. If the sales proceed, the purchasers will each pay a contribution towards the Council's valuation and legal costs.

9. LIST OF BACKGROUND PAPERS

- 9.1 None

BS: RAB
BT: JO

MARRIAGE VALUE

'Marriage value' is the extra value in a property which can be realised if two interest are merged.

By way of simple example – assume a shop is let on a 60 year lease at a ground rent. The value of freeholder's interest is the value of the annual ground rent plus the long term right to receive a full rental value when the current lease expires (for this example say £10,000). The leaseholder's interest value is the right to the market rent each year, less the ground rent, for 60 years (for this example say £100,000).

If the freehold of the property was owned without the encumbrance of the long lease then its value would be greater than the sum of the other two values. Thus, if, in this example the unencumbered freehold was worth £160,000, then the marriage value would be as follows:

Unencumbered freehold value as above		£160,000	
LESS			
Freehold value subject to long lease as above	£ 10,000		
Long leasehold value as above	<u>£100,000</u>		
	£110,000	<u>£110,000</u>	
Marriage value			<u>£ 50,000</u>

The marriage value is shared between the freeholder and the lessee with the actual shares being the subject of negotiation. So, for this example, if it is assumed the marriage value was to be shared 40% to the freeholder and 60% to the lessee, the sum the lessee would pay for the freehold subject to his long lease would be:

Current value of freehold	£10,000
ADD 40% of marriage value	<u>£20,000</u>
Price to pay	<u>£30,000</u>

AGENDA ITEM: 7 Page nos. 16 – 21

Meeting Cabinet Resources Committee

Date 16 December 2004

Subject Maintained Nursery Classes at Primary Schools

Report of Cabinet Member for Education & Lifelong Learning

Summary This report seeks approval to increase the number of maintained nursery classes at primary schools in the borough. It is proposed that four private nursery schools attached to Jewish primary schools become maintained with effect from 1st September 2005. The proposals have no capital implications and revenue costs have been identified in the Education Forward Plan 2005/06.

Officer Contributors Valerie Dalsou (Deputy Chief Education Officer)
Glyn Parry (Senior School Organisation and Regeneration Officer)

Status (public or exempt) Public

Wards affected Hendon, West Hendon, Burnt Oak, Edgware

Enclosures None

For decision by Cabinet Resources Committee

Function of Executive

Reason for urgency / exemption from call-in (if appropriate) N/A

Contact for further information: Contact for further information: Valerie Dalsou (Deputy Chief Education Officer) 020 83597629 / Valerie.dalsou@barnet.gov.uk

1. RECOMMENDATIONS

- 1.1 That the private nursery schools attached to Hasmonian, Independent Jewish Day, Menorah Foundation and Rosh Pinah be re-established as maintained nursery provision with effect from 1st September 2005.
- 1.2 That the estimated revenue cost of incorporating these nurseries into the maintained sector (£101,300) be financed from the budget identified for new nursery classes in the Education Forward Plan 2005/06 (which equates to £312,000); being part of the overall Schools Block Budget.
- 1.3 That subject to governors' successful capital bid from the LCVAP (LEA Controlled Voluntary-Aided Schools Programme) nursery provision be agreed at one Church of England School with effect from 1st April 2006.
- 1.4 That, subject to 1.1, the relevant consultation process with all interested parties (including the School Organisation Committee) be fulfilled.

2. RELEVANT PREVIOUS DECISIONS

- 2.1 Cabinet Meeting – 29th September 2003 - Draft School Organisation Plan 2003-2008 and related school places planning matters.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 Ensuring a high quality and meaningful service is offered to young people, especially those at risk of social exclusion (Education Service Objective: Corporate Plan 2004/05 – 2007/08 p. 36).
- 3.2 To increase the number of primary schools with nursery classes and ensure that this reflects the diversity of the main school provision to provide equality of choice to the community (LEA Priority: School Organisation Plan 2003 – 08 p. 38).
- 3.3 Review the maintained school nursery provision to ensure that the supply of places is located in the areas of need and demand (LEA Priority: School Organisation Plan 2003 – 08 p. 38).

4. RISK MANAGEMENT ISSUES

- 4.1 The proposals detailed above are subject to a consultation process during which any interested party is able to make an objection to the proposals. There have been site visits to Hasmonian, Independent Jewish Day, Menorah Foundation and Rosh Pinah primary schools to discuss the possibility of their private nursery classes becoming maintained nurseries and the response from the respective head teachers, governors and nursery staff has been positive.

5. FINANCIAL, STAFFING, ICT AND PROPERTY IMPLICATIONS

- 5.1 There would be no capital costs associated with these proposals since the buildings for the proposed maintained nurseries are already in existence, and conform with DfES requirements and standards.
- 5.2 All four kindergartens currently receive nursery education funding from the LEA. The current rate per pupil is £1,278 for a full year. Should these

nurseries become maintained then the rate that would be received as part of the school budget share is £2,397 per nursery place (there is also a small addition for premises and energy costs which is dependent on the floor area of the nursery). Rosh Pinah would also be eligible to an additional allowance of £31,672 for being split-site under the formula used.

- 5.3 Table 1 (below) shows the estimated recurrent costs for incorporating these nurseries into the maintained sector:-

Table 1

School	Proposed no of nursery places	Current Nursery Education Funding for places £ (full year)	Estimated Maintained nursery school budget share £ (full year)	Extra costs £
Hasmonean	26	33,228	65,000	31,772
Independent Jewish Day	26	33,228	65,000	31,772
Menorah Foundation	26	33,228	65,000	31,772
Rosh Pinah	39	49,842	128,500	78,658
Total		149,526	323,500	173,629

- 5.4 Since nursery funding is part of the same Schools Block funding then the actual costs of establishing these nurseries as maintained provision is significantly reduced – see table 1 (there are higher costs associated with maintained than non-maintained provision as the former has a requirement for qualified teachers and nursery nurses).
- 5.5 As it is proposed that the four nurseries become maintained with effect from 1st September 2005, then the estimated additional cost in 2005/06 would be approximately £101,300. The Education Forward Plan 2005/06 has identified £312,000 for new nursery classes. From 2006-07 onwards, the full year additional cost would be £173, 629 as shown in table 1 (above).
- 5.6 These proposals are being put forward in order to be in line with the School Organisation Plan priorities of increasing the number of nursery classes based at primary schools. Furthermore, any proposals should promote choice and reflect the diversity of Barnet's school system. Thus, it is also proposed that nursery provision is agreed at one Church of England School with effect from 1st April 2006. Since new facilities will be required there are capital cost implications. The governors will be required to make a bid for this scheme from the LCVAP fund (LEA controlled Voluntary-Aided Schools Programme). Assuming the provision would equate to a 26 fte place nursery the revenue cost would be £65,000.

6. LEGAL ISSUES

- 6.1 The proposals would constitute a change in the lower age range of the schools in question. Pursuant to the Education Act 1998 (as amended by the Education Act 2002) and relevant guidance, the LEA will be required to follow the statutory proposal process, namely, consultation, publication, representations, decision and implementation.

7. CONSTITUTIONAL POWERS

- 7.1 Constitution: Part 3, Responsibility for functions, section 3.6 – responsibilities of Cabinet Resources Committee: “Capital and Revenue finance” & “all matters relating to land and buildings owned by the Council”

8 BACKGROUND INFORMATION

- 8.1 As table 2 (below) demonstrates, there are currently 30 out of a possible 45 (67%) Community and Foundation schools with nursery provision. Nursery classes at Underhill Infants and Frith Manor are currently being implemented (Underhill is due to open September 2005 and Frith Manor in September 2006). Once these new nursery classes are completed, and assuming no new nursery provision is made at VA schools, the weight of maintained nursery provision in the Community and Foundation sectors would further increase to 71%.
- 8.2 In terms of the Jewish and Church of England sectors there is significantly less maintained provision. There are currently seven out of a possible 14 (50%) Church of England primary schools with nursery provision, and three out of eight (38%) Jewish primary schools with nursery provision.

Table 2

Summary of Current Nursery Provision in the Primary Sector					
School Type	Total No. Schools	No. Schools with Nursery	%	Total No. of Nursery Places	%
Community & Foundation	45	30	67%	1026	68%
Roman Catholic	9	6	67%	163	11%
Church of England	14	7	50%	208	14%
Jewish	8	3	38%	101	7%

- 8.3 In order to equalise maintained nursery class provision across the whole primary sector, and to address the need to increase provision in the Jewish

sector (as identified in the School Organisation Plan 2003 – 2008), it is proposed that the private nursery schools attached to the following Jewish Primary Schools be established as maintained nursery provision with effect from 1st September 2005:-

- **Hasmonean Primary School:** 26 fte places
- **Independent Jewish Day School:** 26 fte places
- **Menorah Foundation School:** 26 fte places
- **Rosh Pinah School:** 39 fte places

8.4 All four of these Jewish primary schools have very close links with an independent nursery/kindergarten and the nursery advisory teacher has judged the quality of education provision at them as being of a very high standard.

8.5 It is also proposed that nursery provision is agreed at one Church of England School with effect from 1st April 2006.

8.6 Table 3 demonstrates the impact of the proposals to equalise maintained nursery provision should they be implemented. It should be noted that Pardes House had an earlier approval to establish their private nursery as maintained, but implementation has been deferred until such time that the school has the staffing structure standards required:-

Table 3

Summary of Proposed Nursery Provision in the Primary Sector					
School Type	Total No. Schools	No. Schools with Nursery	%	Total No. of Nursery Places	%
Community & Foundation	45	32	71%	1130	64%
Roman Catholic	9	6	67%	163	9%
Church of England	14	8	57%	234	13%
Jewish	8	8	100%	244	14%

8.7 There is a requirement to consult all interested parties on new nursery provision. If the proposals were to go ahead, they would require the publication of statutory notices and be subject to any interested party making an objection. Since these schools are all VA then the proposals have to be considered by the School Organisation Committee for determination.

9 LIST OF BACKGROUND PAPERS

9.1 School Organisation Plan 2003 -2008.

BS: JEL/HP

BT: AD

AGENDA ITEM: 8	Page nos. 22 – 26
Meeting	Cabinet Resources Committee
Date	16 December 2004
Subject	Redevelopment of Parkfield Primary School and construction of a new Children's Centre
Report of	Cabinet Member for Education and Lifelong Learning
Summary	The report seeks approval for the redevelopment of the existing school premises and the construction of a new integrated Children's Centre on the existing school site.

Officer Contributors	Head of Asset Management – Education Service
Status (public or exempt)	Public, with separate exempt section
Wards affected	West Hendon
Enclosures	None
For decision by	Cabinet Resources Committee
Function of	Executive
Reason for urgency / exemption from call-in (if appropriate)	N/A

Contact for further information: Head of Asset Management, Education Service

1. RECOMMENDATIONS

- 1.1 That the Chief Education Officer be instructed to implement the required statutory consultation for the expansion of Parkfield Primary School to two forms of entry.**
- 1.2 That, subject to 1.1,**
 - (a) the proposals set out in the report to replace the existing Parkfield School premises with new purpose-designed accommodation to current DfES standards, for two Forms of Entry, be approved.**
 - (b) the construction of a new purpose-designed Children's Centre, to contemporary DfES standards, be approved, as an integral part of the above redevelopment.**
- 1.3 That the Chief Education Officer be instructed to start the procurement process for the project.**

2. RELEVANT PREVIOUS DECISIONS

- 2.1 Approved Council Budget 2004-5 and Capital Programme, Items 107a+b and 108**

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1** Providing a first class education service is a Council priority. This is implemented through the education service Performance Management Plan objective of improving the learning environment for all children. This project is intended to replace existing accommodation at the school which is deemed less than suitable for teaching the primary curriculum. The project includes the construction of a new Children's Centre, integrated into the school, as part of the West Hendon Sure Start programme. The project will help the school to improve the quality of education offered to pupils and to raise standards of achievement.

4. RISK MANAGEMENT ISSUES

- 4.1** Sure Start funding allocation requires the Children's Centre to be substantially complete in March 2006, requiring a detailed planning application to be submitted in December 2004. Any delay in committing this project which would slip the completion beyond that date would result in this funding being withdrawn and DfES have confirmed that no extension of this funding deadline is possible, thus the importance of the December planning submission to maintain the agreed programme set out at item 8.6 of this report. It is, however, understood that once the project is on site, unforeseen construction delay resulting in slippage would not affect the allocation.
- 4.2** The time necessary for the design development of the primary school rebuild and expansion works means that submission of a detailed planning application for this component of the project cannot be submitted until June 2005. It is therefore intended to make a submission for outline planning approval for the latter as part of the December 2004 submission to reduce any risk arising from the planning process.
- 4.3** The estimated re-build cost of Parkfield School contained in this report is, at this stage, a notional preliminary estimate, based upon gross floor area and current DfES guidance. An allowance has been made for phased construction and for cost inflation based upon current forecasts. There is, as always, a risk that as the scheme is developed into an actual project and procured, increases in cost could occur. This situation will be monitored closely throughout the project's development and, if necessary, the specification will be reviewed in the light of the allowances made for project contingencies, as set out in the exempt section of this report. There will also be an opportunity to review the budgetary position and report back to Members on receipt of each of the Stage 1 and Stage 2 tenders.

- 4.4 The following specific risks have been identified for this project :
- Ground contaminations - assessed as medium risk
 - Underground obstructions – assessed as low/medium risk
 - Need for piling – assessed as low risk
 - Need for temporary classroom accommodation – assessed as low/medium risk
 - Additional building cost inflation over current estimate – assessed as medium risk
- 4.5 The potential cost implications of these risks is included in the financial information set out in the exempt section of this report. However, barring risks of this kind, the project is to be completed to the price with no enhancement of specification during the design process which could lead to additional costs.
- 4.6 In addition, VAT might be payable on the Children’s centre of the project. Guidance is being sought from the DfES.
- 4.6 All above recommendations are subject to statutory consultations and approvals. Should there be any opposition to these proposals resulting from that process, this will be reported back to Committee before proceeding further with this project.

5. FINANCIAL, STAFFING, ICT AND PROPERTY IMPLICATIONS

- 5.1 It is intended that the cost of this redevelopment can be met in full from existing and already notified DfES allocations, as set out in item 2.2 of the exempt section of this report.
- 5.2 It is also intended that the new Children’s’ Centre will become a Borough capital asset on the windup of the West Hendon Sure Start programme in 2012-3, at which time the Borough will take up responsibility for its planned and responsive maintenance.
- 5.3 The model for the services to be offered, and the management of the proposed centre has yet to be agreed with Sure Start. It is envisaged that the final structure will not involve any additional revenue cost to the Council. Officers will report back to members for approval if any proposal would involve additional cost.

6. LEGAL ISSUES

- 6.1 The Council owns the land freehold and there is nothing in the title to prevent the proposed development. There is, however, a requirement attaching to part of the land to the effect that plans of any new building proposals should first be submitted to the previous owner, Sir Audley Neeld for his approval. It is not known at this time whether Sir Audley Neeld is still surviving, or whether the benefit has passed to his successors. Initial desktop analysis suggests that the preferred location for the new school buildings will not intrude into this area.

7. CONSTITUTIONAL ISSUES

- 7.1 None

8 BACKGROUND INFORMATION

- 8.1 The creation of a new Children’s Centre as part of the Barnet Sure Start programme is a condition of the DfES funding allocations for this programme. In Barnet the programme is unusual in being delivered in two areas, West Hendon and Underhill. Following extensive consultation with the local communities and possible capital partners, the Barnet Sure Start Board made a decision to locate the proposed new Children’s Centre in the West Hendon area of the programme. With the assistance of the Sure Start Capital Sub-Group, which included LEA and other Council officers, a number of possible sites within the West Hendon area were identified and appraised, resulting in the selection of the Parkfield Primary School site as the preferred location for the new

Centre.

- 8.2 During this period, the LEA was also in the process of identifying those primary schools likely to require replacement within the next ten years to inform the preparation of its proposed Primary School Capital Strategy. Based upon Asset Management Plan Condition and Suitability Assessments, Parkfield Primary School was identified as a high priority within this group of schools. The school currently occupies premises on three stories, which were originally designed for Secondary School use, and which are now considered unsuitable by contemporary standards for primary school use. In addition the school buildings, which are concrete framed, have exhibited signs of structural movement in the past which require continuous monitoring.
- 8.3 In light of all the above, there are seen to be clear advantages in taking an integrated approach to these issues which would encourage greater community involvement in the use of the school whilst at the same time facilitating the creation of a centre of excellence in early years provision.
- 8.4 In light of the time constraints imposed upon completion of the Children's Centre by the DfES it is anticipated that the project would be delivered in two stages, each of which would comprise a separate contract, procured competitively. The first stage would consist primarily of the construction of the new Children's Centre, with some temporary enabling works to allow it to be used safely in the period between its completion and completion of the second stage of the project. It is anticipated that the value of this contract would be well below the trigger for the OJEU procurement process. The design of the Centre would be based upon DfES guidelines as set out in their recent Sure Start Children's Centre Design Guide. A breakdown of the estimated cost for this stage has been prepared by Highways and Design Service Quantity surveyors and this is set out in item 2.1 of the exempt section of this report. As per item 8.6 below it is anticipated that Stage 1 will be completed in **March 2006**.
- 8.5 The second stage of the project would be the redevelopment of Parkfield Primary School, and its expansion from 1.5 F.E. to 2 F.E. It is anticipated that this would have to be carried out in phases, within a single contract, to allow the school to continue in use throughout the redevelopment period. This would entail a process of building new accommodation, decanting pupils out of the existing into the new, demolition of the existing and completion of the newbuild. It is anticipated that this contract would be procured via the OJEU process. The design of the new primary school would follow the 2 Forms of Entry, Community School, model set out in the recent DfES Building Bulletin 99 "Design of Primary Schools". A preliminary indication of cost for this stage has been prepared by the Council's Highways and Design Service Quantity Surveyors and a breakdown is set out at item 2.1 of the exempt section of this report. As per item 8.6 below it is anticipated that the full project will be complete in **August 2008**.
- 8.6 This project does not include the replacement of the existing school Caretaker's House which will be dealt with separately as part of the LEA's Asset Management Plan process.

8.7 The anticipated timescale for the works comprising this project are as follows :

	<u>Stage 1 (Children's Centre)</u>	<u>Stage 2 (Primary School)</u>
Member Approval	Dec 04	Dec 04
Sure Start Board Approval	Dec 04	-
Stage 1 Consultation (School Expansion)	-	Jan 05
Publication of Statutory Notices (School)	-	Mar 05
LEA/Schools Organisation Committee determination (School)	-	Jun 05
Sir Audley Neeld Consultation	-	Mar 05
Planning Submission	Dec 04 (Detail)	Dec 04 (Outline)
	-	Jun 05 (Detail)
Tender Out	Feb 05	Jan 06
Tender Return	Mar 05	Feb 06
Planning approval	Mar 05	Sept 05
Award of contract	May 05	May 06
Construction Start	Jun 05	Jun 06 (Ph 1) Sept 07 (Ph 2)
Construction Complete	Mar 06	Aug 07 (Ph 1) Aug 08 (Ph 2)

8.8 The anticipated project cost profile, based upon the above programme, is at item 2.3 of the exempt section of this report.

8.9 There will be a requirement to consult formally on these proposals since the school will be significantly enlarged by these proposals, to admit 60 pupils as opposed to 45 each year.

9. LIST OF BACKGROUND PAPERS

9.1 None

BS: SAS
BT: AD