

LONDON BOROUGH OF BRENT

Meeting of the Executive
17 January 2005

Report from the Director of Environment

For action.

Wards affected:

WILLESDEN GREEN

Report Title: GRANT OF NEW LEASE TO CAPITAL CITY ACADEMY

Forward Plan Ref: ES-04/05-282

1.0 Summary

- 1.1 This report seeks authority for the variation of the existing lease granted to the Capital City Academy (CCA) so as to incorporate approximately 184 square meters of the King Edward VII Recreation Ground into the CCA site and the acquisition of approximately 175 square meters of the CCA site for use by the Council as part of the King Edward VII Recreation Ground.

2.0 Recommendations

- 2.1 That Members consider the objections received to the disposal of open space.
- 2.2 Notwithstanding the objections the Council grants a lease of approximately 184 square meters of the King Edward VII Recreation Ground to CCA for use as part of the CCA site upon the same terms as the lease granted to the CCA by the Council on 30th September 2004, with an additional obligation to maintain the fence.
- 2.3 That the Council acquires part of the CCA site measuring approximately 175 square meters from the CCA and incorporates it into the King Edward VII Recreation Ground.
- 2.4 That the Director of Environment in consultation with the Manager, Corporate Property Services agree the detailed terms of the variation and acquisition detailed in 2.2 and 2.3 above and such other terms with the CAA as are in the best interest of the Council (i.e. the maintenance of the fence).

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3.0 Detail

- 3.1 On 10th October 2000 members of the Education Arts and Libraries Deciding Committee agreed to support the establishment of a City Academy and undertake all necessary actions to ensure that the Council plays a full and appropriate role in the establishment of the City Academy.
- 3.2 On 15th May 2001 Members of the Education Arts and Libraries General Purposes Sub Committee agreed to publish a statutory notice to close Willesden High School on 31 August 2003 so that a City Academy may be established in accordance with the Learning and Skills Act 2000 on the site on 1 September 2003.
- 3.3 On 29th January 2002 the Corporate Deciding Committee recommended that the Council enters into the agreement for lease and (on completion of the development) to grant a lease to the CCA in respect of the land previously occupied by Willesden High School (the site) to enable the establishment of a City Academy on the site.
- 3.4 The lease was granted on 30th September 2003 and the Site is now used as a City Academy. Officers are pleased to inform the Executive that the CCA is now a thriving school.
- 3.5 In the course of the development of the City Academy, the galvanised steel fence originally on the eastern boundary of the site was removed to allow the works to be undertaken and was not replaced in exactly the line of the previous boundary line.
- 3.6 There have been a number of changes to the boundary line and these are shown on the map in appendix 1. Colour versions of the map will be available at the Executive meeting on 17th January 2005.
- 3.7 Part of the adjoining King Edward VII Recreation was encroached upon by the CCA and used as part of the CCA site (see section marked 'A' on map in Appendix 1). This was done when the CCA replaced the galvanised steel fence with more traditional railings in keeping with other fences in the Park. Following agreement given by the Head of the Parks Service in addition CCA agreed to remove brambles and improve the landscaping along the new fence line. The total of this space is approximately 91 square metres. There are small areas at either end of this strip of land totalling 22.9 square metres which have been added back to the recreation ground.
- 3.8 There is also an area of land (that was omitted from the original planning application but is part of the CCA) which has been incorporated into the open space in the course of the boundary realignment (see section marked B on map in Appendix 1). There are also two additional strips of land (shown as 'C' on the map) which have been incorporated into the open space.

- 3.9 Finally, the CCA have included a gateway through the fence at the northern end of the boundary. This will allow pedestrian access between the sports facilities at the CCA and the sports facilities at the new Willesden Sports Centre once it has opened. This area is shown as 'D' on the map in appendix 1.

Consultation

- 3.10 Subsequent to agreement to the realigning of the boundary by the Head of the Parks Service it has been recognised that this should not have been approved without an advertisement for disposal under section 123(2A) of the local Government Act 1972. As a consequence, the advertisement for the proposed disposal (by way of a lease to the CCA) of the King Edward VII Recreation Ground of approximately 190 square metres was published in the Wembley/Willesden Observers on Thursday 18th November 2004 and Thursday 25th November 2004 pursuant to section 123 of the Local Government Act 1972.
- 3.11 Prior to the publication of the notice in the Wembley/Willesden Observers in accordance with Section 123(2A) of the Local Government Act 1972 an objection was received from a Mr Hogan of 'Save King Edward Park Campaign' who claimed that 1300 square meters of the King Edward VII Recreation Ground (the open space) had been appropriated by the CCA without any consultation with the public.
- 3.12 Officers informed Mr Hogan that an advert would be placed in the Wembley/Willesden Observers and that he could submit an objection if he so wished. This would then be treated as an objection in accordance with Section 123(2A) of the Local Government Act. No individual objection from Mr Hogan has been received in response to the advert but Officers recommend that his original objection is taken into consideration by Members when making their decision.
- 3.13 The deadline for submitting objections to the newspaper notices was 18th December 2004. No replies were received by that period but a petition has subsequently been submitted which Members are advised to take into account when making a decision.
- 3.14 The petition has been signed by 233 people and is set out in full at the front of the Executives agenda.
- 3.15 The petitioners object to the disposal of the land as the petition is headed "SAVE KING EDWARD'S PARK CAMPAIGN – STOP BRENT COUNCIL GIVING AWAY A LARGE PART OF OUR PARK".
- 3.16 The reasons given for objecting are covered by nine bullet points. Points 1 and 2 relate to a fence and building in relation to the Planning Acts (Planning Acts). Points 3 to 5 relate to land measurements, boundary lines, title and proof, (Measurements and Title). Points 6 and 7 relate to public open space protection afforded by the Unitary Development Plan and restrictive covenants of 1909 and 1911 (Protection). Each of the three groups of issues are dealt with in turn.

Planning Acts

- 3.17 As a part of the original planning application 01/2600 for the demolition of the main school building and construction of a new school with car-parking and playing fields (subject to a Section 106 legal agreement) on the Willesden High School site, a standard condition was imposed on the approval relating to fencing. To date, no details of fencing, walls, gateways and means of enclosure have been submitted to and approved by the Planning Service to comply with this condition.
- 3.18 In order to remedy the existing situation, the applicants (Contact: Andres Fiore of CCA) were advised to make two applications concurrently. Applications are required both for the removal of Condition 4 (Fencing) on the application 01/2600 and for a retrospective permission for retention of the existing boundary fencing. It is no longer possible to deal with the boundary fencing through Condition 4 as the boundaries shown on the original site plan for application 01/2600 do not match with the boundaries demarcated by the existing fencing, thus it is necessary to submit a full planning application for retention of fencing.
- 3.19 It is open to the Council to take enforcement action under the Planning Acts over the current situation. However, from information currently available, officers do not believe there are sound planning reasons for taking such action. Officers are continuing to chase CAA and if any application is received Mr Hogan will be consulted.
- 3.20 In addition, Members should be aware that the CCA also submitted a planning application earlier this year for the development of a single-storey storage building 3.75m in height marked as 'X' on the map in Appendix 1. No individual external consultation took place as it is a relatively small development although a site notice was put up on March 9th 2004 requesting comments by 30th March 2004. In addition, all three ward members were consulted. This consultation was in line with normal procedures as there are no residential dwellings close to the development. No objections/comments were received and the application was agreed on 19th May 2004 under delegated powers. Planning did have concerns with the appearance of the building, not the siting of the building, and this was included within a planning condition requiring landscaping to the site. It should be made clear that the building is single storey and not three-storey as stated in the petition.

Measurements and Title

- 3.21 The letter from Mr Hogan and the petition both refer to 1300 square metres being lost. Your officers believe that the area lost is approximately 184 square metres which needs to be off-set by a gain of 175 square metres elsewhere along the boundary. The net loss of open space is 8.8 square metres.
- 3.22 An officer from Corporate Property has measured the recent boundary changes on site using evidence of the previous and current boundary

lines. It is this change that Members are being asked to consider in relation to Section 123(2A) of the Local Government Act 1972.

- 3.23 The petition refers to the Land Registry entry for Willesden Sports Centre Title: NGL 819332. This land was acquired by Willesden UDC in 1909. The original boundary line has altered over the years resulting in the metal galvanized fence which existed prior to 2004 when it was replaced by CCA. From aerial photos it is likely that either Willesden County Grammar School or Willesden High School benefited from a change in the boundary line some time before June 1972.

Protection

- 3.24 The current Unitary Development Plan does designate King Edward VII Recreation Ground as Public Open Space. Any planning decision on the fence line will need to consider this. The single storey building is sited outside the Public Open Space designation.
- 3.25 It is acknowledged that the land is subject to a covenant imposing an obligation on the Council to use the property as an open space. This is however a matter between the Council and the owner of the land with the benefit of the covenant.
- 3.26 The covenant does not prevent disposal it only allows the owner of the land with the benefit of the covenant to sue the Council for damages for breach of covenant.
- 3.27 It is not uncommon for land subject to covenant to be used for other purposes where expedient and the common practice for the party breaching the covenant to obtain restrictive indemnity insurance policy.
- 3.28 It must be stated that the Council is in the process of obtaining an insurance against this covenant in connection with the PFI redevelopment of the Sports Centre.

Summary

- 3.29 In summary following the renewal of the boundary fence approximately 184 square metres of open space has been incorporated into the CCA site and 175 square metres of the CCA site has been incorporated into the open space. The overall effect of these changes is that the net loss of open space as a result of the boundary alignment is approximately 8.8 square metres (11 square yards). This amounts to 0.00009% of the total open space (excluding the Tree Top Nursery Site) measuring 124,362 square yards.
- 3.30 Officers have considered all the matters raised in the letter of objection and in the petition and recommend that given the small area of land involved the Council should proceed with a new lease.
- 3.31 In consideration of the transfer to the CCA, the CCA will transfer part of their site measuring approximately 175 square metres from the CCA

and this will be incorporated into the King Edward VII Recreation Ground. The Manager of Corporate Property Services considers that the land held by the CCA being transferred to the Council is sufficient to meet the best consideration requirement in Section 123 of the Local Government Act 1972.

4.0 Financial Implications

- 4.1 There are no direct costs to the Council arising from the lease other than the one-off costs in formulating the lease which will be contained within existing Park budgets.
- 4.2 There is an overall loss of 8.8 square metres to the Council but this is compensated by the improvements the CCA have made to the landscaping and fencing. The CCA will be responsible for the maintenance of the fence and any associated costs.

5.0 Legal Implications

- 5.1 Local Authorities are authorised to transfer land to be used a City Academy to concerned person under the Learning and Skills Act 2000.
- 5.2 The 2000 Act provides that it is unnecessary to comply with the provision of Section 123(2) and Section 123(2A) in respect of disposal for use as a City Academy.
- 5.3 The disposal of the site of the former Willesden High School was made pursuant to the 2000 so it was unnecessary to advertise any open space (if any) transferred with it.
- 5.4 As the Council is receiving a consideration (i.e. the CCA land) for the land transfer to the CCA, the disposal of the land to the CCA cannot be made under the 2000 Act. However it the Council has power under Sections 111 and 123 Local Government Act 1972 to grant the proposed lease.
- 5.5 Section 123 of the Local Government Act 1972 permits a local authority to dispose of land it owns in any manner it so wishes provided that in the case of a freehold disposal or the grant of a lease for 7 years or more it obtains the best consideration reasonably obtainable. This is usually demonstrated by extensive marketing of the property and acceptance of the best price or by disposal at auction.
- 5.6 Where best consideration is not being obtained it is necessary to obtain the specific Consent of the Secretary of State if reliance cannot be placed on the General Consent issued by the Secretary of State in 2003. The 2003 General Consent allows Local Authorities to dispose of surplus property without obtaining the specific consent of the Secretary of State if the Local Authority is of the opinion that the disposal will help it to secure the promotion or improvement of the economic, social or environmental well being of their areas and the difference between the unrestricted value of the land to be disposed of and the

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consideration being received for the disposal does not exceed £2,000,000 (two million pounds).

5.7 It is noted that the Manager of Corporate Property Services is of the view that the Council is obtaining best consideration as such it is unnecessary to rely on the general consent.

5.8 As the land forms part of an open space, the Council must also comply with the provisions of Section 123(2A) of the Local Government Act 1972 which imposes an obligation on the Council to advertise the proposed disposal for two consecutive weeks in a newspaper circulating in the area and consider any objections received before disposing the property.

5.9 The Council has the power to acquire the part of the CCA site under section 120 of the Local Government Act 1972

6.0 Diversity Implications

6.1 None specific.

7.0 Staffing/Accommodation Implications (if appropriate)

7.1 There are no staffing implications

8.0 Environmental Implications

8.1 The re-alignment of the boundary fence and the condition attached to the planning permission have resulted in landscaping improvements adding to the overall improvement of the recreation ground.

Background Papers

Education Arts and Libraries Deciding Committee – 10th October 2000
Corporate Deciding Committee – 29th January 2002

Contact Officers

Any person wishing to inspect the above papers should contact: Sue Harper, Assistant Director, Environmental Services (Sports & Leisure), Brent House, 349-347 High Road, Wembley, Middlesex, HA9 6BZ, 020 8937 5192.

Richard Saunders Director of Environment	Sue Harper Assistant Director, Environment
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