

LONDON BOROUGH OF BRENT

Executive - 14 February 2005

Report from Director of Social Services

Wards affected:

Harlesden and Willesden Green

Report Title: The Freeman Family Centre

Forward Plan Ref: SS-04/05-30

1.0 Summary

- 1.1 This report seeks agreement to the Council entering into a partnership with Barnardo's and the Freeman Trust to build a family centre on the vacant site at Longstone Avenue NW10. It explains how the project will be funded, describes the proposed agreement between the parties and outlines the benefits to children and families in Brent.

2.0 Recommendations

- 2.1 That members agree to Brent Council officers working with the Freeman Trust and Barnardo's in order to enable the establishment of a family centre in the vacant site at Longstone Avenue.

- 2.2 That members agree;

- that a 100-year Lease be granted to Barnardo's for the purposes of the centre, the exact terms of which to be determined by the Head of Property Services on the advice of the Borough Solicitor and with the agreement of the Director of Finance and to note that the establishment of the centre will involve the entering of a works contract and a refurbishment contract with contractors and that these contracts would not be with the Council, but rather with either Barnardo's or the Trust.
- that the Council enter into a 20-year Service Contract (with breaks at 5 year intervals) with Barnardo's once the works have been completed and the centre is ready to open subject to the revenue funding being available from 2006/7. The exact terms of this Service Contract to be determined by the Director of Social Services on the advice of the Borough Solicitor and with

the agreement of the Director of Finance. that, as provided for by Standing Order 85(a), there are good financial and/or operational reasons not to comply with the requirements of Standing Orders in relation to the procurement of the 20-year service contract.

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3.0 Detail

- 3.1 The Freeman Trust was established following the death of Mrs Iris Freeman in 1997. Mrs Freeman lived in Anson Road in Brent in her formative years and retained a life long affection for the area. Her family wish to create a “living monument” to her by funding a suitable children’s project in the area where she was brought up. Mrs Freeman was an Educational Psychologist who then became a lawyer, and it seems fitting to the family that the monument to Mrs Freeman’s memory be a resource that will provide services for vulnerable children.
- 3.2 The Freeman family wish to use the Trust fund to build a high quality, purpose built facility in Brent that will create a centre of excellence for the provision of statutory children’s services. They wish the services to be provided through a voluntary sector provider with a proven expertise in working with children and families, as they believe this will ensure the highest quality of services. The provider they have chosen is Barnardo’s. If the project is agreed, Barnardo’s will design and build the centre and provide services from it. The Freeman family wish the facility to be a “vibrant children’s / family / community centre offering as wide a range of services over as many hours as possible, including evenings and weekends”.
- 3.3 The proposal is that the Trust fully funds the building of the centre and fully equips it. The Council, through Social Services, will be the third partner and will commission and pay for the services provided by Barnardo’s. This will be by way of a Service Contract which will include a full service specification and monitoring arrangements to ensure that the services meet the needs of Brent children and families.
- 3.4 This an excellent opportunity for Brent Council as it will gain a high quality, newly built and fully equipped family centre providing family support services to families with children from birth to 18 years. Brent currently has no family centres and this project would meet a gap in existing service provision, fit well within the Local Preventative Strategy and contribute to the Council’s evolving plans to implement the outcomes envisaged for children in “Every Child Matters”.

- 3.5 Brent Children's Services, Brent Core Property Services, Barnardo's and the Freeman family have been working together to identify a suitable site and to negotiate project terms acceptable to all the partners. A site was identified in Anson Road which proved attractive to the Freeman's because Mrs Freeman Snr had lived in the Road. However, there is a well used community centre located on the site and consultation with the groups who use it led officers to conclude that the family centre as envisaged could not meet the full requirements of the groups who use the existing centre.
- 3.6 An alternative site has now been identified at Longstone Avenue on land owned by the Council. This is a vacant site adjacent to Roundwood Park and accessible to public transport links. The Freeman family and Barnardo's have indicated that this is a viable alternative site. Full planning permission was granted for a Sure Start Centre with similar uses, earlier this year but a decision was made to build a Children's Centre at Curzon Crescent which integrated the Sure Start programme. There has been a building on the site in the past, the Roundwood Toddlers Club, run by Social Services, which was demolished in 1998.
- 3.7 The family centre will provide a multi agency support service to families that will underpin children's rights to being healthy, staying safe and achieving their potential. Services offered will include assessment, diagnoses and treatment packages for families in need of parenting support, healthy life style groups, contact facilities for family's with looked after children and flexible day care facilities through a crèche to enable parents to participate in family support programmes.
- 3.8 It will also offer additional facilities to Sure Start Roundwood to provide some of its outreach services and letting facilities for local community groups. The centre could therefore provide a base for services to vulnerable families across Brent but also facilities in the day and out of office hours for the community in which it is based.
- 3.9 Terms of the proposed agreement
- 3.9.1 Brent Council will grant a lease to Barnardo's for a term of 100 years at a peppercorn rent, with break clauses at 20 year intervals. At the end of the first 20 years, either the Council or Barnardos may choose to terminate the lease by activating the first break clause in it, but only if that party buys out the other's interest. Alternatively, the parties could agree to terminate the lease, and in this case the building would be sold for continued use as a family centre. In the event that the latter option was taken, any proceeds of sale would be distributed and shared in proportion to the inputs of Brent Council and Barnardo's, being the beneficiary of the Freeman Trust's contribution of the construction cost, fees and fit out of the centre. Should the lease not be broken at the end of year 20 then similar break and distribution arrangements would apply at years 40, 60, 80 and 100.

- 3.9.2 The terms of the Service Contract will be agreed between Barnardo's and the Council but would be for a 20 year period with breaks at 5 year periods with a right for the Council to renew it at the end of the 20 year period.
- 3.9.3 Notwithstanding the above, there would however be a further provision in the lease saying that if the Council wished to terminate the Service Contract at the end of the 20 year period for any reason other than Barnardo's material default, then if Barnardo's were able to fund the provision of children's services at the Centre by a body and on terms approved by the Council (such approval not to unreasonably withheld), then the lease would continue.
- 3.9.4 To protect the interest of the Freeman Trust it is proposed that covenants be incorporated into the property documentation requiring the building and any replacement thereof on the site to be used for the benefit of children. In addition, whilst the building remains under the control of either Barnardo's or the Council or both then the name of the centre shall continue to be called the Freeman Centre.

4.0 Financial Implications

- 4.1 The Freeman Trust to meet the full cost of building and equipping the centre up to a total of £1,700,000 and this would be the value of their contribution to the project. The full cost of the building will be met by this donation. Cost overruns will be avoided by the high level of specification and agreed contingency arrangements. Brent Council will grant a lease to Barnardo's for a term of 100 years at a peppercorn rent. The value of the land is estimated at £300,000 and to reflect the Council's contribution by providing the site for the development and the Freeman Trusts funding of the construction, fees and fit out of the centre, the Service Contract will not include any element of rent for the building.
- 4.2 As described earlier, the Council will grant a lease to Barnardo's for a term of 100 years at a peppercorn rent. At the end of every 20 year period, either party may choose to terminate the Lease, leaving the parties free to buy out the other's interest or sell the building. Any proceeds of sale will be distributed and shared in proportion to the inputs of the parties (which in the Council's case would be the value of the land provided).
- 4.3 The Service Contract with Barnardo's will reflect the cost of providing services from the centre and will determine what the services will be. It will be at the level of approximately £350,000 per year. This figure is based on a staffing establishment which includes a Centre Manager, assessment and play workers, administrative staff, a cleaner and a caretaker. The target date for the opening of the centre is spring 2006, so revenue funding will not be required until 2006/2007. This will be

included as part of the Budget Report on this Agenda and subsequently to Full Council to consider. If this growth is not agreed, the project cannot proceed or resources will have to be found from within the Social Services Budget but members should be aware that by entering into this agreement they would be making a commitment to funding the growth of up to £350,000 from 2006/7.

- 4.4 The Service Contract will be for 20 years, with reviews at 5 years and annual monitoring to ensure that the services offer value for money and meet priorities as identified by Brent Children's Services.

5.0 Legal Implications

- 5.1 The Council has the power under Section 123 Local Government Act 1972 to dispose of land.

- 5.2 Section 123 of the Local Government Act 1972 provides that the Council can sell any land it owns if it obtains a consideration which is the best that can be reasonably obtained. This is usually demonstrated by extensive marketing of the property and acceptance of the best price or by disposal at auction.

- 5.3 Where this is not being received, the Council must obtain the consent of the Secretary of State for the disposal. The Secretary of State issued a general consent in 2003 which allows Local Authorities to dispose of 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 area and the difference between the unrestricted value of the land to be disposed of and the consideration being received for the disposal does not exceed £2,000,000 (two million pounds). Regard must be had to the Community Strategy if appropriate.

- 5.4 Clearly the Council will not receive the best consideration as it is proposed that a lease of the centre should be granted at a peppercorn rent whereas the Head of Property Services considers that the land has a market value of £300,000. As such reliance must be placed on the general consent.

- 5.5 The Council can only rely on the general consent if it 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 area. It is stated in the detailed part of this report that the disposal will enable the construction of a family centre providing family support services to families with children up to 18 years old, which would meet a gap in current service provision. Officers therefore consider that the disposal will promote or improve the social wellbeing of the Borough.

- 5.6 If members conclude that the disposal will lead to the social wellbeing of the borough, then it is confirmed that reliance can be placed on the general consent and the specific consent of the Secretary of State is not required.
- 5.7 Planning permission will be required for the construction of the family centre but this is a separate issue which will need to be determined by Planning Committee.
- 5.8 The Council as a public body is obliged to abide by fundamental principles of EU public procurement when awarding contracts, including those whose value falls below the threshold for application of the specific rules laid down in the Directive or where the rules do not apply. The fundamental principles governing public contracts include a general prohibition on discrimination on the grounds of nationality.
- 5.9 The Directive and the Regulations only apply where a contracting authority “seek offers”. As the Freeman Trust/Barnardo’s transaction is in effect a gift to the Council, it is difficult to see how it could be said that the Council went out to seek offers. Accordingly, it could be argued that the Regulations and the Directive do not apply in this situation.
- 5.10 Alternatively, the transaction could be seen as a ‘mixed contract’ for the granting of a lease in return for the enhancement of an asset through the undertaking of certain works and the provision of services in return for a fee. The services component being £350,000 per annum for 20 years at the outset (although for the purposes of assessment for EU purposes only the first 48 months should be counted) would far outweigh the value of the lease and the works. In mixed contract situations, there are two tests that are applied; the “valuation test” and the “main object test”. The application of either of these results in the contract being assessed on the basis of the services to be provided. Should this be the case then the Regulations do apply but as the services are Part B services (social services), the Regulations would only be of residual application and all that is required is that a Contract Award Notice be sent to the Official Journal for the European Communities in due course.
- 5.11 For all these reasons, legal advice is that the transaction with Barnardo’s/the Freeman Trust does not have to be subject to open advertisement and competition under the EU public procurement Regulations. The Council simply has to consider whether any person would be prejudiced or discriminated against if the suggested approach were taken. Legal advice is that this is not the case, having considered all relevant factors.
- 5.12 Whilst the 20-year service contract is not considered to fall within the scope of the EU public procurement Regulations, it would still need to comply with the Council's Standing Orders requirement for tendering,

given its value (approximately £350,000 per annum for 20 years). However, officer's consider there to be good financial and/or operational reasons (the gift from the Freeman family is dependent on a service contract being awarded to Barnardos – there will be no gift without the service contract) to proceed with the negotiation and award of the 20-year service contract outside the Standing Orders framework. A recommendation has been included in this report to allow the negotiation and award of the contract in a manner that does not comply with the usual requirements of Standing Orders.

6.0 Diversity Implications

6.1 The centre will serve vulnerable children and families. The service contract will ensure that full advantage is taken of this opportunity to provide family support services that are appropriate to the needs of a diverse community. The Service Contract will be monitored so that services continue to meet the needs of the community as those change over time and to ensure that there is full compliance with Brent's Customer Care and Equal Opportunities Policies and with the relevant legislation. The building will be fully accessible to children and parents with disabilities and the fit out and finish of the centre will be child and family friendly.

7.0 Planning implications

7.1 Planning permission was granted in August 2004 for a single storey building to accommodate a Sure Start Centre. This following clearance by the Government Office for London as the development represented a 'departure' from the lands' designation as open space. A similar process would be required for a revised scheme although the Director of Planning advises that the suggested reduced scale of the proposed building should offer an opportunity to overcome some concerns about the impact of the earlier Sure Start scheme.

8.0 Staffing

8.1 There are no staffing implications. It is proposed that the centre will be managed by Barnardo's and that there will be a Service Contract between Barnardo's and Social Services.

Background Papers

None.

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