

LONDON BOROUGH OF BRENT

Executive – 20th June 2005

Report from the Director of Environment

For action

Wards affected:
ALL

Report Title: Willesden Leisure Centre PFI – Update on Progress and Future Management of the Project

Forward Plan Ref: ES 04/05-325

1.0 Summary

1.1 Financial close on the Willesden PFI project was achieved on 8th March 2005. This report provides members with an update on progress with the construction phase. In addition the report outlines proposed management arrangements for this phase of the project.

2.0 Recommendations

2.1 Members note the details at financial close of the project and for contingency arrangements during the construction phase.

2.2 Members note the progress made on the construction phase of the project.

2.3 Members agree the management arrangements as set out in paragraph 3.14 and 3.15 of this report.

2.4 Members delegate to the Director of Environment the authority to agree to variations to the project during the construction phase up to a value of £50K per item and not to exceed a total value of £160K.

3.0 Detail

Update on Progress

3.1 Negotiations on the Willesden PFI scheme have been completed and financial close (i.e. contract signature) was achieved on 8th March 2005. Subsequent to this, final confirmation from the Department for

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Culture, Media and Sport that they agree to issue the PFI credits was received on 17th March 2005. The PFI contract is for twenty seven years, with the next phase of the project (the 'construction phase') due to be completed by November 2006.

- 3.2 Formal hand-over of the site to Alfred McAlpine Capital Projects plc (the principal construction contractor) took place on 21st March 2005. The construction phase of the project is due to take 20 months with the new facility being opened in November 2006. By the end of May 2005, the old leisure centre and stadium building had been fully demolished, the site levelled ready for construction of the new single facility and initial works started on the foundations of the new building.
- 3.3 For health and safety reasons the whole of the construction site area has been fenced off to the public and access into the King Edward VII Recreation Ground from the Donnington Road entrance has been closed for the duration of the build programme. All other entrances to the recreation ground remain open as normal. At the time of handover all local residents in the roads adjacent to the site were written to with details of the build programme and the closure of the Donnington Road entrance and notices were put up in the park to inform park users. A further PFI newsletter has been produced updating people with the programme. It is intended that a newsletter will be produced every six months to keep people up to date with progress.

Delayed Start to Demolition Works

- 3.4 The final contract (the 'project agreement') required that the council handed over the site with the existing buildings empty (i.e. all loose equipment and materials removed) and with all utility services disconnected. This was achieved, with the exception of disconnection of the electricity service. Full disconnection of the electricity supply did not take place until the following week as a result of the electricity supplier not disconnecting the supply as requested.
- 3.5 To date the contractor has not provided notification that this will result in any delay to the building being open by November 2006. However, a claim has been submitted that the delay has resulted in additional costs of £11.5K as a result of having staff and machinery on-site during the delay period. This position is being questioned in terms of how this figure was arrived at and what actions were taken to mitigate costs.

Demolition of Toilet Block

- 3.6 As part of the PFI Scheme the contractor had agreed to undertake some minor additional works to provide an improved service and to create environmental improvements within the King Edward VII Recreation Ground. One of these works was the demolition of a disused toilet block to the south of the old Lido. As the contractor moved on-site the Council were contacted by a member of the public claiming they were using the disused toilet block as a store and had been granted verbal permission to do so by the Council as far back as 1989.

- 3.7 Officers dispute this position and court proceedings have been progressed in order to remove the individual. Whilst officers are confident of success, this delay means that it has not been possible for the toilet block to be demolished during the planned demolition period. Therefore a variation to the Project Agreement has been agreed, including a cost reduction of £6,989, which will reduce the unitary charge by approximately £700 per year. The toilet block is outside the main construction site and this variation will not affect the construction timetable in any way. It is recommended that this small saving be netted off against any of the potential increases discussed in this report.

Adverse Dark Ground

- 3.8 This issue was reported to Members at the September 2004 Executive. Dark ground refers to the area of land below the “existing” sports centre and stadium buildings. Information on the ground conditions around the site was available to contractors during the tender phase and therefore it was considered reasonable that they should have submitted proposals that took account of ground conditions. However, as information on dark ground was not provided, the contractor would not accept any construction risk with respect to this area and so this risk remained with the Council.
- 3.9 As construction has progressed significant levels of landfill material have been discovered, and formal notification of this matter has now been made. Tests have been made and the fill is inert so does not require any treatment. However, it is likely that different building foundations will be required which may result in a higher cost. Alfred McAlpine Capital Projects have been asked to provide further details on the exact extent of the landfill material and what amount, if any, relates to the dark ground area. It should be noted that most of the new building will not be over the footprint of the original building. Further negotiations need to take place but there will be a cost implication of the foundation works and the Council may be required to accept a percentage of this.

Stamp Duty Land Tax

- 3.10 Stamp Duty Land Tax (SDLT) was introduced in December 2003 as a replacement to Stamp Duty on land transactions. At the time the Treasury undertook that it would not apply to PFI transactions. In most PFI projects where the land is leased to the private sector operator it is then leased back to the public sector. In sports PFI projects there is no need to lease back the property as it is a total operation. In a recent similar case the Inland Revenue have said that SDLT would apply as there is no lease back. This decision is being contested; however there is a chance that a similar decision could be made with respect to the Willesden PFI.
- 3.11 The contractor was not prepared to take full risk on the SDLT and the Council agreed to pay a contribution if it did become payable. This would increase the unitary charge by £20K per year and Members

agreed to this extra budget provision at Council on 28th February 2005. Members should note that in paragraph 4.3 it is recommended that the additional £20K be used to balance the increase in unitary charge achieved at financial close. Therefore, if the Inland Revenue do decide that SDLT applies in this case an additional £20K per annum will be required.

Reporting Arrangements

- 3.12 A joint Technical Advisor has been appointed to oversee the construction phase of the project. This is a joint appointment between the Council and Linteum Willesden Limited. The purpose of this role is to oversee the construction work during each month of the construction phase; ensuring work is completed as per the construction programme and to the required specification and standard so that the monthly capital payment can be made. The Council has also retained the services of Gibson-Hamilton Limited to advise in the case of any dispute.
- 3.13 To this end a site meeting is held at the end of each month involving Council Officers, Linteum Willesden Limited, the joint Technical Advisor, and representatives from McAlpine Capital Projects. The meeting receives a monthly report from McAlpine detailing progress and any issues arising. This is followed by a site inspection by the joint Technical Advisor after which a certificate is produced confirming that the value within the monthly capital invoice is correct.
- 3.14 During the contract negotiation phase of the project the negotiations from the Council's side were overseen by a PFI Project Board. This was chaired by the Director of Environment and attended by the Lead Member for Environment, the Director of Finance, the Borough Solicitor, the Assistant Director (Sport and Leisure), the Project Manager (Leisure Futures) and the Head of the Sports Service. The main aim of the Board was to oversee the progress and successful delivery of the project and to review risks and take appropriate action. In order to oversee progress with the construction phase of the project it is recommended that the PFI Board is reconvened. This will allow Officers directly involved in the project to feedback on progress and on any issues that may arise and so allow risks to be reviewed and appropriate action taken. The membership of the board will remain the same with the exception of the Project Manager whose role was complete at financial close and with the inclusion of the Recreation Commissioning Manager.
- 3.15 Whilst it is not expected that there should be any major changes to the project there are always risks with large construction schemes of this type. As previously reported to Members some of the risks remain with the Council. The Project Agreement sets very specific timescales for any notification to vary the project by either party and response times to those notifications. It may not always be possible to report a variation for agreement to the Executive given the timescales for response to such variations. Therefore, it is recommended that any single variation with a value of £50K or below be delegated to the Director of Environment to agree. Where a variation is submitted which includes a

number of individual items below the value of £50K each but which in total cost more than £50K, it is recommended that the Director of Environment be able to agree up to the £160K maximum being approximately 1% of the total capital costs. In addition, the Director will not exercise this delegated authority in any case when the variation would have a significant negative impact on the Council or its position under the contract. Advice will be taken from the Director of Finance and Corporate Resources and/or the Borough Solicitor.

4.0 Financial Implications

4.1 The Willesden Sports Centre PFI project is supported by Central Government PFI credits of £14.446 million, under the new annuity method of PFI credits. Total grants will amount to £29m over the life of the project (after allowing for inflationary updates). The final annual total unitary charge at financial completion is £1.667m. Two-thirds of the unitary charge increases with inflation, and the other third is fixed. These figures are all at 2002 prices. To fund the project fully, the Council will be required to make an annual budget contribution of £731,000 (at 2005/06 prices) once the centre has fully opened.

4.2. The Sports Service currently has a revenue budget of £2.663 million per year of which £677,000 is allocated to the Willesden Sports Centre in the current year. £162,000 of this has been agreed by Members to fund the costs of the temporary relocation of users. The remainder of this budget (along with any under-spend of the relocation costs) will be rolled-up into a "Willessden PFI Reserve". This will be used to meet the costs of the unitary charge, in addition to the PFI credits, and the ongoing budget contribution from the opening date. In addition, Members agreed at Executive on 14th February and Council on 28th February 2005 an extra £54,000 per annum as part of the final 2005/06 budget for increased building costs and stamp duty and land tax risks at the end of the negotiation process. An additional one-off sum of £25,000 was agreed for 2005/06 as a contingency against having to deal with Japanese Knotweed on the site as the Contractor was not prepared to take the full risk on this issue. In addition the SWAP interest rate, which is used in the unitary charge calculation, rose to 5.085% on the day of signing, adding approximately £15,000 to the annual unitary charge, raising the annual budget contribution to the £731,000 shown above.

4.3 The annual Council budget contribution of £731,000 will use both the existing Willesden Sports Centre budget of £677,000 plus the extra £54,000 agreed in February. The SDLT issue remains outstanding and would require approximately £20,000 per annum extra in the unlikely event that the Council has to contribute.

4.4 Following final negotiations the final cost of dealing with the Japanese Knotweed on site was agreed as £7,000. It is recommended the remaining element of the one-off sum of £25,000 be used as a contingency in the current financial year against the other issues in this report.

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- 4.5 The total capital costs of the construction phase (including fees) is £16.1 million. The Council will be required to contribute £3.2 million towards this cost: £1.6 million from S106 monies and £1.6 million from the capital budget. Both these budgets have been previously identified.

5.0 Legal Implications

- 5.1 The Council has power pursuant to section 19 of the Local Government (Miscellaneous Provisions) Act 1976 to provide such recreational facilities as it thinks fit. This power includes the power to provide buildings, equipment, supplies and assistance of any kind. In addition, the Council has power under section 2 of the Local Government Act 2000 to do anything for the economic, environmental or social well being of its area.
- 5.2 Although the Council will make staged capital payments during the construction phase, it will only be required to pay for the services to be provided at the new facility once the facility is fully available and the provision of the services commences.
- 5.3 The Project Agreement contains a variation mechanism and all variations will need to be agreed in accordance with that mechanism. Any variation which exceeds the maximum stated or which would have a significant negative impact on the Council will be reported to Members.

6.0 Diversity Implications

- 6.1 The payment mechanism includes a performance monitoring element that relates to ten performance indicators (PI's) that are designed to ensure that key issues relevant to the council's sports and leisure objectives are addressed. The Contractors performance will be monitored against each of these elements and deductions will be made on the monthly unitary payment if the required performance is not met. In relation to diversity, one PI relates to the delivery of the agreed 'sports development programme' and a second PI relates to 'encouraging participation' amongst identified target groups.
- 6.2 The new facilities will be accessible to disabled people in line with the requirements of the Disability Discrimination Act (DDA).

7.0 Staffing/Accommodation Implications

- 7.1 Non specific to this report.

8.0 Environmental Implications

- 8.1 The new sports centre will be a single building combining facilities that are currently provided within two separate buildings. This will make the site much 'tidier' and will provide much better security so reducing the effects of vandalism, etc. The new building includes a café which will open out onto King Edward VII Recreation Ground and a new children's play area. The project will provide new landscaping, a reconfigured car park and new pathways around the north area of the park and so overall will enhance the whole park environment.
- 8.2 The Contract requires that the new facility be energy efficient and environmentally friendly, and that the Contractor manages the facility in accordance with the Council's Environmental Policy. To this end the Contractor is required to work with the Council to achieve ISO14001.

Background Papers

Executive – 14th June 2004 – Willesden Sports Centre Closure – Relocation Plan

Executive – 25th November 2004 – Willesden Sports Centre – Update and Award of Contract in Relation to Private Finance Initiative (PFI)

Executive – 14th February 2005 – The 2005/06 Budget and Council Tax

Council Meeting – 28th February 2005 – The 2005/06 Budget and Council Tax

Contact Officers

Any person wishing to inspect the above papers should contact Sue Harper, Assistant Director, Environment, Brent House, Tel: 020 8937 5192.

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