

LONDON BOROUGH OF BRENT

Executive - 12th September 2005

REPORT FROM THE THE DIRECTOR OF FINANCE & CORPORATE RESOURCES

For action

Wards affected:
DUDDEN HILL

REPORT TITLE: THE PAKISTAN COMMUNITY CENTRE: PROPOSED SALE OF LONG LEASE TO THE PAKISTAN WELFARE ASSOCIATION

Forward Plan Ref: Corp-05/06-75

1.0 Summary

- 1.1 This report seeks the approval of the Executive to the sale of a long lease on the Pakistan Community Centre (the Centre) to the Pakistan Welfare Association (PWA).
- 1.2 The proposed transaction is intended to create a proper landlord and tenant relationship between the Council and the PWA at the Centre in place of the current arrangement which is unsatisfactory from both parties viewpoint.

2.0 Recommendations

- 2.1 That the Executive agrees to the sale of a long lease on the Pakistan Community Centre to the Trustees of the Pakistan Welfare Association on the terms as detailed in paragraph 3.11 of this report.
- 2.2 That the Executive instructs the Head of Property & Asset Management, in consultation with the Borough Solicitor, to agree such other terms to the lease which are deemed to be in the best interest of the Council.

3.0 Detail

3.1 The PWA was formed in 1967 and succeeded an earlier group known as Eastern Friends which had met at premises in the Kilburn High Road. Later, as its membership increased, the PWA looked to acquire a centre of its own. The current objects of the Association as stated in their Constitution are for the benefit of the general public and in particular Members of the Pakistani Community:

- a) To provide or assist in the provision of facilities for recreation and leisure time occupation with the object of improving their conditions of life by the maintenance and development of a Community Centre known as the Pakistan Welfare Association – Pakistan Community Centre.
- b) The advancement of education. In particular, in arts, customs, history and language of Pakistan.
- c) The relief of poverty by the provision of an active Advice and Counselling Service.

The PWA try to address the Council's Corporate Strategy as follows:

- i) Supporting children and young people: by having a weekly programme of activities for boys and girls, each in two age groups.
- ii) Promoting a green agenda: by participating and promoting sporting and outdoor activities, particularly in the under 25s age group.
- iii) Regeneration and priority neighbourhoods: by working with disadvantaged and marginalised sections of the Pakistani community, by providing language and skills classes.
- iv) Tackling crime and community safety: by working with the police and community officers and arranging talks and sessions at the Centre on the question of personal safety and tackling crime.

3.2 In 1980 the Council acquired the freehold interest in the former Willesden Green Goods yard site in Lennon Road from the London Transport Executive, using Housing Act powers. Over half of the site was reserved for housing development. Of the balance, sites of 0.34 acres and 0.3 acres were reserved for a mosque and car park for the Pakistan Community, and a site of 0.29 acres was reserved for a community centre for the Pakistan Community.

- 3.3 Freehold interests in the mosque and car park sites were sold to trustees of the Pakistan Community in August 1985 for the sum of £ 200,000 less a grant from the Council of £ 98,000, making a net payment of £ 102,000 (one hundred and two thousand pounds).
- 3.4 A community centre was built on the site reserved for this purpose using £ 100,000 of grant funding from the Government's then Urban Programme, with a top-up sum of £ 18,164 provided by Brent Council as a loan, although £ 10,000 of this was later written off by the Council.
- 3.5 In October 1981 the Council agreed by letter to grant a licence to the PWA for its occupation of the site and new centre, which was formally opened in December 1981. The letter to the PWA referred to a form of Agreement appended to it which the parties were meant to complete nine months later, by which date the loan from the Council should have been repaid. However, the Agreement was never executed and it is not clear from our records why.
- 3.6 Between 1981 and 2005 the PWA have occupied the community centre without proper title to the building or the site. The Council remains the registered owner of the freehold interest in the property and the Council contends that the PWA are licensees holding over under the terms of the 1981 letter which effectively gave them a licence to occupy the site. The current trustees of PWA claim that it was intended that the site be gifted to them. The documentation on file only ever refers to a licence. In any event, the situation should now be regularised in some way.
- 3.7 Research into exactly what the parties intended is inconclusive as records are incomplete. Some current trustees of the PWA, and some former trustees, have submitted affidavits to support their claim. The Council's position is that all documentary evidence on file refers to a licence and there is nothing from the Council agreeing to grant a lease or transfer the freehold to the Association.
- 3.8 The parties are in agreement over a need to resolve the current situation which is unsatisfactory from both parties viewpoint: the PWA cannot obtain funding to improve the centre without proper title to the property: the Council is not receiving any rent for one of its assets.
- 3.9 Negotiations commenced shortly after officers reported to Members on the status of some sixteen non-Brent managed youth & community centres in August 2003. At first the PWA's stance was uncompromising: they wanted the freehold for no charge. The Council quoted a capital sum of £ 100,000, payable in stages, but this was rejected by the Association. There then followed a period of negotiation between the Manager, Corporate Property Services and Messrs. Tariq Dar and Mohammad Aslam Choudry of the PWA (Chairman and General Secretary respectively). The Association continued to offer nil consideration which was refused but eventually an amount of

£ 37,500 was agreed in principle, subject to Members approval. The Net Present Value of this sum, payable over 10 years, is £27,600.

- 3.10 The current elected management committee of the community centre is not favoured by some members of the Pakistani community in Brent who have made representations to Members and officers against the Council dealing with the current management. Having considered all representations, officers are of the view that there are no grounds for not dealing with the current trustees and elected committee members as being proper representatives of the PWA.
- 3.11 Terms have now been agreed with the PWA and these are set out below:

Premises: The Pakistan Centre, Willesden Green, as shown on the attached plan.

Proposed Lessor: the Mayor & Burgesses of the London Borough of Brent (the Council).

Proposed Lessee: 3 of the 8 Holding Trustees of the Pakistan Welfare Association (the PWA) registered charity No.1088884.

Grant of Lease: the Council to grant to the PWA a lease of the Premises for a term of 99 years from 24 June 2005.

Lease Rent: For the first 10 years of the term, the PWA to pay to the Council an annual rent of £ 3,750 (three thousand, seven hundred and fifty pounds), payable annually in advance, the first payment becoming due on completion of the lease, and the second payment becoming due on 24 June 2006 with further annual payments becoming due on 24 June up until and including 24 June 2014. From 24 June 2015 until lease end the annual rent shall be £1 per annum (one pound per annum)

Repairing and Insuring Covenants: the lease to be drawn on full repairing and insuring lines with the PWA being responsible for all repairs and insurances during the term.

User Clause: the use of the Premises shall be restricted to that of a community centre.

Alienation: there will be a general prohibition in the lease against assignments or sub-letting although the PWA will be able to substitute trustees from time to time during the term. To enable the PWA to charge the property for the purpose only of raising funds to improve, refurbish or extend the Premises, the lease will permit the PWA to charge or mortgage the Premises but only with the Council's consent. The lease will contain a mechanism to permit a mortgagee to sell the lease in order to cover a debt in the event of payment default but the user clause will remain effective against the mortgagee in possession

and its assigns. In the event of such a sale, the balance of monies remaining after the mortgagee's debt has been covered will be payable as follows:

To the PWA : £ 37,500 or so much of it as has been paid by the Association to the Council at that date if the default occurs during the first 10 years of the lease.

To the Council: any balance remaining.

Legal Costs: the parties to pay their own legal costs in the transaction.

4.0 Financial Implications

4.1 Valuation

The proposed terms are concessionary and reflect the fact that the PWA have been in occupation for many years, that there is little documentary evidence on file concerning the original intentions of the parties and that the Association continues to provide a service to the community from the Centre which the Council wishes to see continue in the borough and which fits with the Council's Corporate Strategy, particularly in respect of supporting children and young people of Pakistani origin or descent, and providing services to underprivileged and marginalised sections of the Pakistani community. It also takes account of any protracted legal proceedings which might ensue if the position is not regularised. The figures below show Members the extent of the concession in the event title to the site with property erected thereon reverted to the Council, enabling the Council to let or sell the site for full value.

Market Value: unencumbered freehold, for use as a community centre: £ 500,000 (five hundred thousand pounds).

Market Value: restricted, subject to PWA in occupation : £ 35,000 (thirty five thousand pounds). This value has been reported in the CIPFA Revaluation as at April 2004.

Net Present Value: of proposed lease: £ 27,600 (twenty seven thousand, six hundred pounds).

Market Value as a development site: unrestricted, with likely user residential, with no community requirement: £ 650,000 (six hundred and fifty thousand pounds). *Please Note: it is considered unlikely that planning consent would be granted for such use without any community element.*

4.2 Disposal of Land at less than Best Consideration

4.2.1 In the Legal Implications, paragraph 5, this is explained in full, together with the need for Members of the Executive to consider any concession being granted against their general fiduciary duties.

- 4.2.2 The Office of the Deputy Prime Minister (ODPM) issued a General Disposal Consent (Order) in August 2003, which allows local authorities to sell land for less than its full market value without having to ask the permission of the Secretary of State, provided that the undervalue does not exceed £ 2,000,000 (two million pounds) and provided that the sale at undervalue will contribute to the promotion or improvement of the economic, social or environmental well-being of the area.
- 4.2.3 The maximum undervalue in this instance in the case of an unrestricted sale of the property for community use is £ 472,400 (four hundred and seventy two thousand, four hundred pounds) should the Council secure vacant possession of the property.
- 4.2.4 Members may wish to take into account the work of the PWA and the community benefits which it provides to the Pakistani community in Brent when considering whether such work contributes to the promotion or improvement of the economic, social or environmental well-being of the area – and Members are referred back to paragraph 3.1 of this report, which lists the Objects of the PWA and how these address the Council's Corporate Strategy.

4.3 Grant Funding

In recognition of the services it provides to the Pakistani community in general, Brent Council awards the PWA an annual grant towards the running costs and staffing of the Association. The grant for 2004/05 was £ 39,249 and for the current year it is circa £ 40,000. Members should note that this grant funding is in addition to the reduced premium being proposed for the 99 year lease which is also another form of financial assistance to the Association.

5.0 **Legal Implications**

- 5.1 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.
- 5.2 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.

- 5.3 The 2003 General Disposal 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 consideration being received for the disposal does not exceed £2,000,000 (two million pounds).
- 5.4 Clearly the Council will not receive the best consideration as the property is being sold for less than the market value. As such reliance must be placed on the General Disposal Consent.
- 5.5 The Council can only rely on the General Disposal 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.
- 5.6 If Members conclude that the disposal will lead to the economic, social and environment well being of the area, then it is confirmed that reliance can be placed on the General Disposal Consent and the specific consent of the Secretary of State is not required. This has been addressed in the report and Members now need to decide for themselves whether they feel these criteria have been met. This is also relevant to the proper exercise of their fiduciary duty.
- 5.7 In addition to the requirement of the General Disposal Consent, Members are also under a fiduciary duty to act in the best interest of their charge payers. Thus they must not dispose of valuable public asset at an undervalue unless the circumstances warrant such an action.
- 5.8 In determining whether to grant a lease to the PWA Members must consider what other options are available to them. The Council could simply do nothing and permit the Association to continue in occupation on the same, irregular basis, that they occupy currently. The Association would no doubt argue that this is unsatisfactory for them because of the limitations it places on them in terms of raising finance. The Council may feel, however, that they should be able to raise finance by other means. Another option would be to re-open negotiations on the basis that the current 'offer' is not acceptable to Members and that a higher sum must be paid if the Association want to improve their current position to that of a 99 year lease. Similarly, the Council could agree to grant a lease but for a lesser term than 99 years, albeit sufficiently long to enable them to raise funding. A 99 year lease is not essential to enable them to raise funding and the Council could, say, offer a 25 year lease or could offer it to start at the date they originally went into possession rather than from the suggested date of June 2005. Another option would be to seek possession of the site and sell the site either to another community organisation or as a potential

development site. The Financial Implications of these options are set out above. If a higher rent was agreed this would increase the Net Present Value of the lease as set out in 4.1 above. If a shorter lease term was agreed the Council would be in a position to reassess options for use of the site at an earlier date. However, the Manager, Corporate Property Services is of the opinion that it is highly unlikely that an improved offer would result if negotiations were re-opened now with the PWA.

- 5.9 Good practice dictates that in the case of leases or other property transactions to community or voluntary organisations a lease at full rent should be granted and the organisation be given a grant to cover the rental costs. This means that the property transaction is transparent and the full extent of the grant or financial assistance being given to the organisation is clear. It also provides flexibility so that if the objects of the organisation change or the Council's own priorities change the grant funding can be removed and the organisation would have to find the rent themselves. This does, however, put community groups in a somewhat more vulnerable position and in this instance it is highly unlikely that such an arrangement could be agreed upon. Further, given the time during which the group have been in occupation it would not seem appropriate in this case.

6.0 Diversity Implications

- 6.1 The Pakistan Community Centre is a facility for the Pakistani community in Brent. The existing management claims that the centre is available for use by all sections of the Pakistani community, regardless of wealth, status or religious persuasion. Otherwise, officers believe there are no specific diversity implications to the proposals in this report.

7.0 Background Information

Report to the Special Meeting of the Executive on 18 August 2003 entitled "Review of the Non-Brent Managed Youth & Community Centres"

Report to the Executive on 11 October 2004 entitled "Youth & Community Centres Review – Update"

Briefing Papers to the Forward Plan Select Committee: 14 April 2004; 01 June 2004; 28 September 2004; 06 January 2005; 29 March 2005; 26 July 2005.

Members wishing to inspect any of the above should contact:

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