



Executive
12 November 2012

**Report from the Director of
Regeneration and Major Projects**

Wards affected:
Tokyngton

Olympic Way

1.0 Summary

The council has disputed the ownership and status of Olympic Way with Quintain Estates (QED) for a number of years. In recent years QED has carried out much of the maintenance and has derived income from advertising along it. Olympic Way needs long term capital investment to bring it to a standard worthy of a key route in the borough and to maintain the route in excellent condition. This report proposes an agreement between the council and Quintain that fairly apportions maintenance costs and income from advertising and other uses and guarantees the long term significant improvement of the route.

2.0 Recommendations

That Executive:

- 2.1 Approve the drawing up of a legal agreement with Quintain Estates on the future maintenance of Olympic Way and share of income from advertising and other activities; and
- 2.2 Instruct officers to prepare, subject to further legal advice, legal documents for the Olympic Way agreement based on the principles set out in paragraph 3.13 of this report; and
- 2.3 Delegate the exact terms of that agreement to the Director of Regeneration Major Projects/ Assistant Director, Property and Asset Management

3.0 Background

- 3.1 Olympic Way is the main processional route from Wembley Park to Wembley Stadium. Its current role is as a clear route to move crowds and it performs this well. Although it has been improved it now looks tired and in need of a significant capital investment. However in the future development will face directly on to it in the form of cafes restaurants and bars in particular. It will be more dramatic and perform more than just the 'route to the stadium' function in that it will be a route to the shops, a place to linger and a route of real character.
- 3.2 The ownership of Olympic Way is the subject of a dispute between Brent Council and Quintain Estates (QED). While the Council consider it to be public adopted highway as derived from when the Council resolved to adopt Olympic Way in 1983 post original improvements and subsequently when the route was punched through the Bobby Moore Bridge as part of a major pedestrianisation scheme, it is the view of Quintain that the land was a private road that transferred into their ownership upon their acquisition of the Palace of Industry land. Appendix 1 sets out the complex history in terms of management, land transfers, rights and responsibilities.
- 3.3 Since their purchase of the freehold interest of Olympic Way as part of the purchase of Wembley London Ltd in 2002, Quintain has undertaken general maintenance on Olympic Way in respect of street lighting (including the electricity bills); trees and clearing the street post major events. The council's current maintenance functions relate to highway inspections, safety repairs and enforcement of the highway.
- 3.4 The key issue is that the 'owner' of the land will be entitled to secure revenue from advertising and other activities. The owner would of course also have to pay for maintenance and repair liabilities and fund the costs of capital improvements. In cases of dispute of this nature the council and Quintain would need to undertake costly and lengthy legal action as this dispute would need ultimately to be settled by the courts. However in view of the regeneration benefits and building long term partnerships with major landowners, your officers propose a negotiated settlement that reasonably apportions both costs and revenues.
- 3.5 The council now has three options.

Option 1

The council maintains that Olympic way is a publicly adopted highway.. It will need to assume the maintenance costs currently met by QED and put in place a strategy to secure income from advertising and other uses. It will also most likely need to secure the disputed status through the courts from QED.

Option 2

The council secures an agreement with QED on the long term status, ownership, maintenance, income distribution and capital improvements required for Olympic Way. This would then need to be discussed with other

adjoining landowners and interested parties such as the stadium and metropolitan police to ensure that the scheme worked for event days.

Option 3

The third option is to maintain the ad-hoc arrangements and to leave the question of status and ownership unresolved. This uncertainty will delay the investment needed along Olympic Way and raises questions about the Issues of liability which may arise re the legitimacy of enforcement by the Council, the various statutory orders in place and those that might be forthcoming through the NEW development proposals and the risks attached to situations such as a serious personal injury accident occurring on Olympic Way. This option is therefore not recommended.

Best Option

- 3.6 The council has tried for some years to reach agreement with QED over the status and ownership of Olympic Way and therefore maintenance liabilities and rights to income. The council appears to have a reasonable case in the matter and this would support the case for option 1. Nevertheless QED have carried out a number of maintenance and improvement projects in recent years and Quintain use this as an argument to justify its own claim on Olympic Way. Even if the council legally established status of Olympic way as a publicly adopted highway then it would need to find funds to undertake maintenance of the public realm and also to finance longer term improvements and for which no budget exists. Establishing ownership would however allow the council to derive income from advertising and other uses. But this pushes the risks of ensuring income from advertising and the like covered the costs of maintenance works whereas under option 2 these risks are shared and the council benefit from QED's commercial acumen. It is also clear that QED would contest Option1 and this inevitably will only be resolved in court.
- 3.7 Your officers have undertaken negotiations with QED to establish the basis of an agreement and this option2 is the recommended option. The basis of the proposed agreement is set out below.

The Olympic Way Agreement

- 3.8 The nature of the agreement is to look at the costs of maintaining and improving Olympic Way. The main costs are highway maintenance, lighting maintenance and costs of operating, street cleaning, highway inspection, tree maintenance and media costs (for banner and lamppost advertising). The second part is to estimate income from Olympic way, notably Advertising (Banner and lamp post), outdoor seating from future cafes etc, commercial hire and filming rights hire. The final part of the agreement is to agree what upgrades could be made as a consequence of this agreement and these include new lampposts and new trees and some cosmetic surface improvements (note that under the terms of the S106 QED are committed to undertaking £4m of capital improvement works plus a tree planting strategy to the southern section of Olympic Way (between Engineers Way and Fulton

Road) as part of the NWL development proposals). They do not have to start these works until they have built out two of the three blocks on Olympic Way. This means that any improvement works may be at least five, and more likely fifteen years away. The £4m sum would in all probability pay for repaving works only. If the council secure an agreement this could bring forward some of these works, particularly to trees and lampposts.

3.9 Summary of Possible maintenance costs on OW

Your officers estimate that it costs about £65k per year to keep OW running in good repair and maintained to an appropriately high standard although the council costs set out in Appendix 2 are estimates often based on borough 'per head' costs. Clearly new capital investment may lower potential maintenance costs. Conversely if we do not get agreements that allow for capital upgrades, the maintenance bills may well be higher in the future because of the condition of existing highway, trees and lamp posts etc.

3.10 Summary of Possible income from Olympic way

It is estimated that income from advertising, café seating and commercial hire of OW (for filming and promotional activity) will initially be between £86-£101k per year and rise to between £107-£143k per year when café seating is provided along OW. The details of the income and the assumptions to estimate this is contained in Appendix 2.

3.11 Capital Improvements

Under the terms of the agreement, QED will commit to providing over £500k's worth of capital investment on new lampposts, trees, hedges along OW and a new replacement toilet for the closed toilet on OW (including match day temporary toilets). QED would meet these up-front costs but would be allowed to defray any income for five years (or until the costs are met). Thereafter the council would share any income on a 50;50 basis after maintenance costs are met.

3.12 Summary of costs and incomes

Under option 3, the council would have limited annual costs related to maintenance but no income as that is currently kept by QED. Under this scenario there would be little capital investment because there is no certainty over ownership going forward. If the council assume that the whole of OW is in the council's responsibility then we would secure an annual income of between £20-£40k (£86-£106 income and £65k's worth of costs). The council would of course have to find the £500k capital costs if it wanted to improve OW to the same standard as in Option 2. The caution in this option is that the council will in all probability foot legal bills if QED chose to dispute status. QED may also not chose to provide outdoor space for café's on OW if it received no benefit. Under Option 2, the preferred option, the council get very limited income over costs in the first five years but it does share both costs and incomes with QED thus reducing any risk on costs. This option does

encourage QED to make the long term capital improvements to OW of around £500k with little cash contribution from the council. QED can write off some of these costs against income for the first five years, thereafter any income will be shared after agreed maintenance and management costs. It is estimated that the council's income will increase annually to £30-47k a year assuming a limited amount of outdoor café seating. The £30k is estimated to be a minimum which will grow over time as new development comes forward and the quality of OW improves and makes the space more marketable for advertising and other commercial activity.

	No Change (option 3)	LBB total Ownership (option 1)	Agreement-first 5 years- Option2	Agreement Next 5 years-option 2
Annual income	£0	£86-106,000	£15,000	53,000-£73,500
Annual costs	£9000	£65,400	£13300	£23,330
Income-costs	-£9000	£20,600-£40,600	£1,700	£29,680-£46660
Capital costs Paid by LBB	£0	£500,000	£10,000	£0
Total Capital Investment	£37,000	£500,000	£500,000	£0

3.12 A further consequence of the agreement is that it encourages QED to undertake a range of short term improvements, the capital improvements set out below and to plan for the longer term, such as replacing static kiosks with mobile ones. It also allows an agreement on community events and the council can plan for up to 12 community events per year. The council can also instigate a proper traffic management plan with signage and lining.

3.13 Set out below is a summary of the draft Heads of Terms of any legal agreement. The more detailed Heads of Terms are set out in Appendix 3.

Heads of Terms of the possible agreement

1. Council adopt a 20m strip down centre of Olympic Way (OW) that is kept clear during match-days
2. The 5M strip either side is QED's but must be traffic free (Pedestrian Zone) & may contain café seating
3. The council will maintain OW as a publicly adopted pedestrianised route apart from service vehicles, coaches and disabled access (on central 20m strip) plus currently permitted access rights
4. The council will put on signs and road markings and enforce
5. The council continue to inspect highway
6. The council allow an 8m strip either side to be used for seating on non-event days
7. The council will have responsibility to maintain the 20m strip and QED the 5m either side (can be same maintenance contract)
8. The vending huts are QED's and deal with Stadium remains but if moved will allow expansion of 20m highway
9. Vending huts revenue is historic-QED's-best endeavours clause to improve, replace with non-static kiosks
10. Trees and lamppost improvements agreed and costs set against income for the first five years-thereafter QED meet costs

11. Range of other short term (pavement marking, Bobby Moore bridge improvements) and long term improvements (walk of fame) at QED's expense.
12. QED & the council share commercial revenues on advertising, filming rights, commercial hire on a 50:50 basis & a share of outdoor seating revenue.
13. QED re-instate toilets on Wembley Retail park - both permanent and temporary for match-days. Toilet block used by QED for land train storage.
14. Each side meets own legal costs up to £50K which can be offset against income
15. Capital Improvements of over £500k are triggered at no upfront cost to council but are set off against first five year income from commercial revenues-these include new lamp posts, new hedging and trees along OW.

3.14 Summary of Legal and Highway Issues to be resolved

Should the Council maintain its conviction that Olympic Way is a highway adopted and maintained at public expense, there are several issues that will require resolution. Earlier advice from Legal Services highlighted the complexities and risk involved, including the validity of the earlier S52 Agreement and the Council's liabilities. Legal Services advised at the time that Counsel's advice may be required on the following matters:

- Whether the terms of the section 52 Agreement are enforceable and if so on what basis.
- The true legal status of Olympic Way.
- Whether the Council should proceed down the route of an s.38 Agreement as opposed to entering into a management Agreement regarding the maintenance of Olympic Way using its powers under section 111 of the Local Government Act 1972 as aforesaid.
- The best course of action the Council should take in all of the circumstances of the case having assessed the strengths and weaknesses.

If the Council maintain its current stance, QED may mount a legal challenge against the Council to resolve the situation. This will not only prove very costly and time-consuming but potentially the courts may find in favour of QED. Under such circumstances, the Council would lose control of Olympic Way which would revert to a private road status which will have significant consequences in terms of enforcement, use, operation and implications for event day control.

It is not considered a viable approach to leave matters as they are with the various ad hoc arrangements in place by the Council and QED. Issues of liability may arise re the legitimacy of enforcement by the Council, the various statutory orders in place and the risks attached to situations such as a serious personal injury accident occurring on Olympic Way.

3.15 Possible Legal obstacles to the Agreement

It is likely that any agreement on OW will be contested by some of the other land owners on OW as QED would receive the benefit of, for example, outdoor café seating along both sides of OW and not just on the side they own (this benefit of course is shared with the council). What has to be remembered of course is that QED are also putting in significant capital benefit to improving OW. It may be that other land owners would wish to take advantage of similar arrangements. We can only test this out but drafting an agreement and consulting with local land owners. If problems arise these would be reported back to Executive.

3.16 Conclusions

OW is one of the most important 'streets' in the borough- it is one of our most visited and is a key entry into our key regeneration area, yet it is not the world class entry we would like it to be. The Agreement attempts to give some certainty to allow future capital investment, and to provide a limited income to the council while reducing any significant risks. The alternatives are to do little that encourages any positive change or to risk the council going it alone. Not only does this face significant legal challenges but it may be better to leave commercial organisations to exploit the potential of OW rather than the council, noting that the council would get a reasonable share. Your officers have tried to estimate possible incomes from advertising and commercial activity (taking industry advice) but it is important not to overstate possible revenues nor understate the risks in trying to achieve revenue growth. The council has not secured an agreement with QED for many years but the proposed agreement Heads of terms are supported by QED and offers a way of regenerating OW at little risk and cost to the council.

4.0 Financial Implications

- 4.1 The council do not incur significant costs from the current arrangements but receive no income. A consequence of the current arrangement is that no party is prepared to invest on OW when the ownership of it is so unclear. The value of revenues from advertising, café seating and commercial hire for filming etc. has been speculated on. A more sober assessment using industry advice is that the returns are in all probability much lower than some estimates and they are more uncertain than some have made a case for.
- 4.2 What is clear however is they will significantly improve as the QED and other developments come forward, but it is difficult to assess accurately what they may be. The agreement proposed with QED allows the council to secure half of all those revenues while at the same time limiting council risks and securing some much needed capital investment, which the council will not have to pay for directly.
- 4.3 It remains open to the council to confirm that OW is a publicly adopted highway in order to secure long term revenues but it should expect that action to be challenged in the courts. It also means that the council would need to

make the significant capital investments required in upgrading OW ahead of revenue generation. Such capital funding has not been identified from current budgets.

- 4.4 The council's will incur legal costs, estimated to be £20k and this is budgeted for in Regeneration and Major Projects budget for 2012/13 financial year. Any costs incurred will be offset from any income made from Olympic way in the next five years.

5.0 Legal Implications

- 5.1 Should the Council decide that the best approach is to reach an agreement on the future use of Olympic Way in the manner covered by the draft Heads of Terms produced in consultation with QED, the following broad legal issues require resolution:

- The requirement to enter into a formal adoption agreement under Section 38 of the 1980 Highways Act with QED for those parts of Olympic Way which would remain as public highway and the manner in which it proceeds
- The requirement to consider the validity of existing statutory orders and the need for amendment, revocation or, as will be deemed necessary in later years, new statutory orders and the process to be taken forward
- The prospect of legal challenge by frontage owners for any statutory change to Olympic Way which they may deem disbenefits their interests particularly if parts of the Olympic Way frontages revert entirely to QED's control

- 5.2 It is recommended that the council take further expert legal advice from Counsel on the OW agreement and any implications arising from it being contested by third parties.

- 5.3 The council will then need to formalise the OW agreement with QED after consideration of the issues set out above , including consultation with adjoining landowners.

6.0 Diversity Implications

There are no specific diversity implications arising from this report.

7.0 Staffing/Accommodation Implications (if appropriate)

There are no specific staffing or accommodation implications arising from this report.

Appendices

A1. Site Map and Proposals

A2. Olympic Way-Summary Background on Status and Land Ownership Issues.

A3.Draft Heads of Terms

Background Papers

Background papers are not for publication as they contain the following category of exempt information in paragraph 3 Schedule 12(A) of the Local Government Act 1972 namely: information relating to the financial or business affairs of any particular person (including the Authority holding the information)]

Olympic Way Concept Paper
Olympic Way Business Case

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