

LONDON BOROUGH OF BRENT

EXECUTIVE MEETING

23.06.03

FROM THE DIRECTOR OF EDUCATION, ARTS & LIBRARIES

NAME OF WARD(S)
ALL

REPORT TITLE: GORDON BROWN OUTDOOR EDUCATION CENTRE

1.0 SUMMARY

This report updates members on progress of negotiations with Hampshire County Council regarding the possible transfer of the Gordon Brown Outdoor Education Centre (the Centre), and asks them to decide whether to implement the transfer or whether to retain the Centre in Brent ownership.

2.0 RECOMMENDATIONS

- 2.1 The Executive is asked to consider and choose one of the following options in respect of the Centre:
 - 2.1.1 To dispose of the Council's freehold interest in the Centre to Hampshire County Council without any restrictive covenants, subject to negotiating with Hampshire County Council an agreement setting out the Council's right of access to the centre for the next 25 years.
 - 2.1.2 To retain the Centre and to submit a second stage bid to the New Opportunities Fund (NOF) for the sum of £200,000 to be used for urgent repairs and improvements to the centre.
- 2.2 In the event that Members agree recommendation 2.1.1, it is recommended that the Director of Education, Arts and Libraries be delegated power to negotiate the terms of an agreement with Hampshire County Council in accordance with the principles outlined in paragraph 6.15 of this report.
- 2.3 In the event that Members agree 2.1.1, it is recommended that the Director of Education, Arts and Libraries be authorised to advertise the proposed disposal of the property to Hampshire County Council, as required under Section 123 (2A) of the Local Government Act 1972, to consider any representations or objections received, and to refer these back to the Executive as he deems appropriate.
- 2.4 In the event that members agree recommendation 2.1.2, it is recommended that the Council submit a stage 2 application for a grant from the New Opportunities Fund (NOF) of £200,000, should a single authority bid be acceptable to NOF.

3.0 FINANCIAL IMPLICATIONS

- 3.1 The financial implications of Option 1 are as follows. Brent would transfer the Centre to Hampshire for a nil up-front consideration. Hampshire would make an additional capital contribution of £270,000, which, together with combined NOF funding of £540,000, would be used to refurbish the Centre. Brent would then receive discounted fee rates over a 25 year period under a management agreement. If HCC breaches the agreement such that the Council no longer has access to the Centre, the Council will no longer be using the Centre at the reduced rates which are to take account of the transfer of the Centre at less than market value. In addition, the Council may decide it needs to pay for Brent children to attend another centre, possibly at an increased rate. The Council would be able to make a claim for damages to seek to recover its losses. With regards to the sale of the freehold interest in the property, there will be no financial implications per se.
- 3.2 The financial implications of Option 2 are as follows. Brent would retain ownership of the Centre and would use its NOF funding of £200,000 to upgrade the Centre's facilities. The Centre's income currently reflects an upward trend and budget projections are for a £10,000 increase for each of the next three years (see Appendix 1). If realised, there would be no implications for the Council. However, both income and expenditure have fluctuated in the past (for example, as a result of the Foot and Mouth epidemic that affected the number of bookings) and it is therefore possible that losses could occur in the future for which the Council would be liable. There would additionally be further maintenance and repair costs in future years.

4.0 STAFFING IMPLICATIONS

- 4.1 In the event that the freehold interest in the Centre is transferred to Hampshire County Council, the Council staff currently employed at the centre will transfer to Hampshire under TUPE Regulations. Current staff are aware of the discussions that are taking place in relation to the proposal and have the benefit of being represented by their trade unions. In the event that the centre does transfer, there will be a formal period of consultation and staff will be involved in discussions in respect of the social, legal and economic effects of the transfer.
- 4.2 In the event that the transfer is concluded, it is likely that there will be little effect on the staff's terms and conditions given that the transferee is also a local authority and party to the National Joint Council negotiating body.

5.0 LEGAL IMPLICATIONS

- 5.1 The Council has the power under Section 123 of the Local Government Act 1972 to dispose of the property to Hampshire County Council.
- 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 that is the best that can be reasonably obtained. Where this is not received, the Council must obtain the consent of the Secretary of State for the disposal.
- 5.3 As the property contains open space, the Council must 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 to consider any objections received before transferring the property to HCC.
- 5.4 If HCC does not agree that the Centre has a value of £350,000 the consent of the Secretary of State would be required for the transfer which would be at a value less than best consideration.
- 5.5 It is noted that HCC is unwilling to accept a leasehold transfer or a freehold transfer with covenants on the title requiring it and successive owners of the land to use the property as an outdoor education centre as desired by the Council. While there would be an agreement between the Council and HCC setting out the Council's right of access to a centre owned by HCC, HCC has indicated that this would be for a 25 year period and it should not therefore be seen as a substitute for the permanent protection that would be provided by covenants on the title. HCC could later sell on the property for development at a profit unless there are some mechanisms such as covenants on title either restricting use or agreeing not to dispose or develop without the consent of Brent, such consent to be conditional on a profit-sharing agreement.
- 5.6 In addition, although the agreement between the Council and HCC would be legally enforceable through the Courts, it is unlikely that the Council would be able to claim successfully for specific performance requiring HCC to make the Centre available for Brent children. The Council may be able to claim damages for any losses it suffered as a result of a breach by HCC but this would not ensure access for Brent children.
- 5.7 The effect of this is that HCC or a subsequent owner could decide to use the property for another purpose and whilst the Council would be able to pursue legal action for breach of its agreement, it will not necessarily ensure that Brent children have access to this Centre or indeed any other outdoor education centre at all.
- 5.8 While it is acknowledged that the current use of the property is an outdoor education centre, and that under current practices and law it is unlikely that the local planning permission will allow the property to be used for any other purpose, Members should not rely on this when making their decision as

planning considerations and practices do change, and it is possible that, over time, planners may allow the property to be used for other purposes.

- 5.9 If Members decide to transfer the freehold interest in the property to HCC, it will be necessary to negotiate and finalise with HCC an agreement setting out the Council's right to have access to the Centre for children in Brent.
- 5.10 Should the Council decide not to transfer the property to HCC, it is imperative that it undertakes any works necessary so as to comply with applicable Health & Safety requirements. Obviously, the Council could be sued for any injury suffered by any visitor to the premises as a result of the state and condition of the property under the Occupiers Liability Act 1957. Furthermore, Health & Safety officers could take action against Brent under Health & Safety legislation if requirements are not met.

6.0 DETAIL

Role of the Centre

- 6.1 The Gordon Brown Outdoor Education Centre offers environmental and outdoor education opportunities mainly aimed at primary schools. It is a Brent-owned and managed residential centre in the Hampshire countryside. Its main users are pupils aged nine to ten, in residence from Monday to Friday during term time. Limitations are imposed on the use of the Centre and on its ability to generate additional income by the amount and quality of accommodation, the condition of the buildings, and the range of activities available.
- 6.2 In October 2002 responsibility for the Centre transferred from the School Improvement Service to the Lifelong Learning and Cultural Services division of Education, Arts and Libraries.

Financial position

- 6.3 In 1998/9 the Brent subsidy to the Centre was £100,000. Policy and Resources Committee agreed in April 1999 that the Centre should receive a tapered subsidy of £50,000 and £25,000 in the financial years 1999/2000 and 2000/01 respectively, and that, as from 2001/02, no subsidy be provided. The budget now balances, and indeed the centre made a small surplus in the financial year 2002/3.
- 6.4 Under Brent's successful first phase bid for the development of PE, sport and outdoor education from the New Opportunities Fund, the Centre has been allocated £200,000 for refurbishment and development. The bid was, however, made on the basis of a partnership with HCC. NOF will require a justification from the Council as to why it no longer wishes to proceed on a partnership basis and will then consider whether it will still make the funding available to Brent. This matter is being actively pursued with NOF and it is hoped to be able to report on NOF's likely decision at the Executive meeting.

Physical condition

- 6.5 A report by Hampshire County Council's Property Services estimated that the Centre required £379,000 of repair and refurbishment work in order to bring it up to the standard of other County facilities. This contrasted with a maintenance report prepared for Brent Council by Amey that stated that no major repairs were required. Officers from the Council's Corporate Property service have recently visited the Centre and consider expenditure of the magnitude of £379,000 to be generous. The main building is essentially sound but in need of refurbishment.
- 6.6 Since the beginning of the Autumn term 2001, a classroom block has been closed because it was in a dangerous condition and a temporary replacement has been hired at a cost of just over £10,000 per annum. The block is beyond the end of its useful life and hence beyond repair.
- 6.7 The existing sleeping accommodation is in need of refurbishment, and the 24 bed unit will need to be replaced in ten years when it will have reached the end of its life. At today's prices this would be in the order of £200,000 - £250,000.
- 6.8 The Shrubbery roof is in need of replacement and the building suffers from an inadequate hot water supply.
- 6.9 Installation of a toilet and shower block in the campsite area would increase the centre's capacity both for term time use by schools and for holiday use by youth and uniformed groups.
- 6.10 Officers from the Council's Corporate Property service consider that the £200,000 of NOF funding would facilitate construction of a new building on the site of the existing redundant classroom and additional improvements. Such a construction could be done economically using environmentally sustainable methods in keeping with the centre ethos. This would also allow a saving of £10,000 p.a. for the hire charge for the temporary classroom making the centre more financially viable.

Proposed transfer to Hampshire County Council

- 6.11 At the Education, Arts and Libraries Committee of 28th April 1999, Members directed that a proposal to transfer ownership and management of the Centre to an independent charity or trust be actively pursued. Discussions with two prospective partners regarding agreement for a long term lease or sale of the Centre and/or its move to charitable status proved to be unsuccessful. In the meantime, Hampshire County Council Outdoor Education Service has maintained a keen interest in acquiring the Centre.
- 6.12 The County Council's stated aim is to gain access to outdoor education facilities in the north of the county. It is prepared to invest in the development of the Centre and to manage it as part of its outdoor education service. Its plans for the Centre involve increasing the available accommodation to eighty bed spaces.

- 6.13 Proposals were therefore made to transfer the Centre to Hampshire County Council, together with Brent's NOF contribution of £200, 000. In return, Brent schools would continue to have access to the Centre on terms no less favourable than at present (subject to inflationary increases) for 25 years. They would also have access to Hampshire 's other outdoor education centres at the same rates as Hampshire schools, again for 25 years.
- 6.14 At the Education, Arts and Libraries Committee meeting of 13th February 2002, Members instructed officers to pursue the possibility of transferring the Centre to Hampshire County Council, with the following caveats:
- i) retention of the Centre's name
 - ii) retention of the Centre's ethos and distinctive contribution to environmental education
 - iii) staff protection
 - iv) safeguarding of Brent schools' use of the centre for the duration of the agreement (25 years)
 - v) safeguarding of Brent schools in terms of charges for use of the centre for the duration of the agreement
 - vi) access by Brent schools to other HCC outdoor education facilities for the duration of the agreement
 - vii) safeguarding of Brent schools in terms of charges for the use of HCC facilities for the duration of the agreement
 - viii) reference group to monitor the operation of the centre in terms of the safeguards listed above
 - ix) safeguards for Brent Council in the event of closure, sale or change of use of the Centre during the period of the agreement
 - x) that the transfer of the Centre be on the basis of a leasehold agreement rather than transfer of the freehold
 - xi) that the Centre should revert to Brent Council's ownership at the end of the 25 year agreement.
- 6.15 Subsequently, draft Heads of Terms were drawn up by Hampshire's Estates Practice service, and there have been negotiations between officers from both authorities. During the course of these negotiations it has become clear that Hampshire County Council is prepared to accept a transfer on the following basis only:
- i) a change of name to the Rotherwick Outdoor Education Centre
 - ii) the transfer of current staff to Hampshire County Council in accordance with TUPE regulations
 - iii) overall equal access to the Centre by Brent and Hampshire schools
 - iv) fees for all users will reflect the cost of running the centre. Fees for Brent schools will reflect the "transfer cost" of the Centre of £270,000. Over a 25 year period this translates as £17,000 a year and the fees would reflect this. Hampshire's draft business plan for the Centre suggests a differential of £10-£15 less per pupil per week for Brent schools than for Hampshire schools.
 - v) Brent schools will have use of Hampshire's other outdoor centres at the same rate as Hampshire schools

- vi) An Advisory Group will monitor and be consulted upon the activities of the Centre. The group would include a Brent elected member, an appropriate Brent officer, and two Brent user representatives
- vii) Brent Council may terminate the agreement with one month's notice at any time without penalty or compensation. Hampshire County Council may terminate the agreement at any time with one year's notice.
- viii) a freehold transfer with no covenants or other "onerous restrictions or liabilities", and a 25 year contract to provide facilities to Brent.

6.16 The implications of these conditions are as follows:

- i) The Council's Corporate Property unit estimates the value of the property to be £350,000 rather than the £270,000 estimated by Hampshire County Council. When coupled with Brent's £200,000 NOF grant, the Council's contribution as equity to the project would be £550,000. For the Council to recoup the value from this investment over a 25 year period means that a subsidy of about £34,000 per annum should be received as a discount on fee rates. This is well above the level assumed by Hampshire's calculations in its business plan. Officers are following up HCC to find out whether it will accept this or an independent valuation and will factor it into the subsidy level and its business plan. Appendix 2 sets out the estimated implications of both a notional transfer at £270,000 and at £350,000.
- ii) HCC is proposing to invest £270,000 plus £350,000 of NOF grant, a total of £620,000. Brent's Corporate Property unit consider this to be excessively generous for what is proposed and believe that it reflects the highest quality specification.
- iii) The proposed total expenditure on the buildings under the HCC plan is therefore £820,000. Officers from the Corporate Property unit believe that a sum in the order of £500,000 - £600,000 would be perfectly adequate for the improvements proposed, and that, if available, the NOF funding of £200,000 would be sufficient to make essential improvements and to rectify outstanding Health & Safety issues.
- iv) Termination by HCC would mean the loss of subsidised fee rates for Brent schools, while HCC would be able to compensate for the loss of take-up by Brent schools by letting to other authorities at a higher rate.
- v) Whilst the overall number of beds available would be greater than at present, Brent schools would be entitled to access them on an equal basis with Hampshire schools. This would mean a net reduction in access to the centre by Brent schools.

Long term options

6.17 Clearly, HCC is unwilling to proceed on the basis of the caveats made by the Education Arts and Libraries Committee on 13th February 2002. In particular, HCC has stated categorically that it will not accept the transfer on any basis other than a freehold transfer without any covenants to safeguard future use. The Executive is therefore now asked to consider whether the Centre should be transferred to HCC on the terms set out in paragraph 6.15 above or not. If Members are willing to transfer the Centre on this basis, officers recommend that this should be subject to negotiating with HCC an agreement setting out the rights of access for Brent children.

6.18 In the event that the Executive is not prepared to transfer the Centre to HCC on these terms, it seems that the only realistic option is for the Council to retain the property and carry out essential repairs and improvements. Should NOF decide not to allocate the £200,000 agreed at stage 1 as part of partnership bid with HCC, it will be necessary for the Council to identify the source of funds for such repairs. The Council can then continue to review the viability of the Centre on an ongoing basis.

7.0 BACKGROUND INFORMATION

The following papers were used in the compilation of this report:-

- i) Gordon Brown Outdoor and Environmental Education Centre, report no. 158 from the Director of Education, Arts and Libraries to the Education Arts and Libraries Deciding Committee, 13th February 2002

Any person wishing to inspect the above papers should contact Karen Tyerman, Assistant Director, Education, Arts and Libraries, Chesterfield House, 9 Park Lane, Wembley, Middx HA9 7RW. 020 8937 3146. karen.tyerman@brent.gov.uk.

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