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|  | <p>Executive 13th November 2006</p> <p>Report from the Director of Environment and Culture</p> |
| <p>For Action Wards Affected: All Wards</p> | |
| <p>Authority to Tender for Wembley Toilet Enhancement</p> | |

Forward Plan Ref: E&C-06/07-016

1.0 Summary

- 1.1 This report considers the opportunity for improving the public convenience facilities in Wembley from Wembley Central Station to Wembley Stadium (Stadium Route). Officers have identified six sites (See Appendix 1 below) and seek authority from the Executive to tender for a contract to improve public convenience provision at these sites. Officers are looking for experienced contractors to provide a bespoke solution to the provision of public conveniences, including project management, design, supply and installation, and maintenance and cleaning for a period of four years. For the purposes of the report the provision of toilets at the six sites will be known as “the Project”.
- 1.2 The report also identifies the business case to extend the parameters of the contract to cover not only toilet provision for the Project but also future toilet provisions. For the purposes of the report the contract covering toilet provision for the Project and generally will be known as the “Framework Agreement”.
- 1.3 This report seeks approval to invite tenders in respect of the Framework Agreement as required by Contract Standing Orders 88 and 89.

2.0 Recommendations

- 2.1 The Executive to give approval to the pre - tender considerations and the criteria to be used to evaluate tenders for a framework agreement for the provision and maintenance of toilet facilities as set out in paragraph 3.3 of the report.
- 2.2 The Executive to give approval to officers to invite tenders for the provision and maintenance of toilet facilities and evaluate them in accordance with the approved evaluation criteria referred to in paragraph 2.1 above.

3.0 Detail

- 3.1 The Council is due to receive £600,000 plus £96,000 interest from the Wembley Stadium Section 106 contribution for providing new toilet facilities for Event Days. £246,000 of this money has already been received and the remaining £450,000 will be received at a later date. Under the Section 106 agreement it is intended that the sum would be used for the acquisition of land on which new toilets would be situated including preparation of land on which the new toilets are to be situated, and associated works (eg drainage). The Council is also required to obtain all necessary consents, licences and permissions and to provide connection to all electricity and drains and sewers that serve the operation of the new toilets. However, it would be the responsibility of WNSL to actually install the toilets (at their own cost) and then maintain them.
- 3.2 Local residents and traders have been lobbying for some time for additional toilet facilities in Wembley for all days not just Event Days. It is therefore considered that there will be widespread support for the Project. The Environment and Culture Department will be consulting with local residents and traders concerning the Project.
- 3.3 It is now intended that rather than purchasing land, the Council will install the toilets on its own land (save for an area of land which will be leased from the LDA) and the S106 contribution will be used for provision of the toilets by the Council (rather than by WNSL) and the Council will now maintain these rather than WNSL. This is because it is now considered that the contribution will be insufficient to enable the purchase of enough land to accommodate the proposed toilets and it is therefore more sensible for the Council to provide the land itself and use the contribution towards the provision and maintenance of the actual toilets themselves. Officers have identified suitable sites along the Stadium Route to install six toilets (Appendix 1). Given the intention of the Council to maintain the toilets, it will be possible for all of the toilets, except for those at the White Horse Bridge site, to be used daily rather than opened only on 'Event Days' as was originally intended by WNSL. WNSL have confirmed their agreement to this revised approach.

- 3.4 Officers are aware of the importance of signposting of toilets, especially for visitors. Officers would ensure signs are erected to show the direction of, and distance to the nearest toilet with symbols for the various facilities available e.g. nappy changing. For the Project, Officers would propose (subject to planning permission) that small 'distance direction' arrows could be placed at regular intervals e.g. on the front of litter bins.
- 3.5 As part of its day to day business the Council has a refurbishment and replacement programme for toilet provision. The Environment and Culture Department has also submitted a budget bid (of £486,000) to provide new toilet facilities in the borough. As a result, it is expected that there will be a need in the near future to tender for toilet facilities similar to those required for the Project. In order to avoid the time and expense in re-tendering for such provision, it is proposed to tender for a Framework Agreement. The Framework Agreement would allow the Council to appoint a contractor or contractors to provide and maintain toilet facilities to the Council. The Council would then be able to "call off" the provision of toilet facilities under the Framework Agreement as and when required during the duration of the Agreement.
- 3.6 In accordance with Contract Standing Orders 89 and 90, pre-tender considerations have been set out below for the approval of the Executive.

| Ref. | Requirement | Response |
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| (i) | The nature of the contract | A supply contract for the provision and maintenance of public toilets |
| (ii) | The estimated value | In excess of £1 million over the 4 year period of the Framework Agreement including £696k for the Project. There is provision in the annual budget for refurbishment and replacement for a small number of toilet facilities. This will be reviewed and new provisions will be called off as and when necessary. |
| (iii) | The contract term | 4 years - due to start February / March 2007. |
| (iv) | The tender procedure to be adopted including whether any part of the procedure will be conducted by electronic means and whether there will be an e-auction. | The tender will be conducted under the Open (Single Stage) Tender Procedure. There will be two lots for: <ul style="list-style-type: none"> • Lot 1: Building and Installation of Public Conveniences and associated maintenance. • Lot 2: Cleaning of Public Conveniences The Open Procedure was selected as: <ul style="list-style-type: none"> • Lot 1: there are few suppliers in the market |

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| | | <ul style="list-style-type: none"> • Time Constraints <p>The tender procedure will lead to the award of a Framework Agreement or possibly 2 separate agreements if the lots are awarded to different contractors. The Council is not obligated to make purchases under the Framework Agreement(s).</p> | |
| v) | The procurement timetable. | <p>Indicative dates are:</p> <p>Adverts placed in OJEU under the Open Procedure</p> <p>Invite to tender</p> <p>Deadline for tender submissions</p> <p>Panel evaluation and interviews</p> <p>Panel decision</p> <p>Report recommending award of Framework Agreement circulated internally for comment</p> <p>Executive approval Mandatory minimum 10 calendar day standstill period – notification issued to all tenderers and additional debriefing of unsuccessful tenderers</p> <p>Framework Agreement start date</p> | <p>November 2006</p> <p>November 2006</p> <p>January 2007</p> <p>January/February 2007</p> <p>January/February 2007</p> <p>January/February 2007</p> <p>February/March 2007 February/March 2007</p> <p>February/March 2007</p> |
| (vi) | The evaluation criteria and process. | The preferred procurement route is the Open Procedure and this is a one stage process. The tenderers will have their financial standing | |

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| | | <p>tested, together with their health and safety and diversity policies, in accordance with Contract Standing Orders. The tender will be assessed on the basis of the Most Economic Advantageous Tender. The panel will evaluate the tenders against the following criteria:</p> <ul style="list-style-type: none"> ▪ Financial competitiveness and affordability ▪ Health and Safety ▪ Ability to meet the requirements of the service specification ▪ Quality control and assurance ▪ Technical competencies associated service provision ▪ Customer Care ▪ Ability to meet the Timescales ▪ Ability to ensure smooth and seamless implementation ▪ Environmental Matters |
| (vii) | Any business risks associated with entering the contract. | A risk Log has been completed and business risks associated with entering into the proposed contract are contained in Appendix 2. |
| (viii) | The Council's Best Value duties. | <ul style="list-style-type: none"> ▪ The Framework Agreement will be advertised to encourage lower prices through open competition thus providing value for money for the council. ▪ By using the Framework Agreement it will allow further purchases to be made at a later date. Officer's time will therefore be saved as future purchases will not require a lengthy tender process. By offering a Framework Agreement with the potential for further "call offs", the tender will be more attractive to contractors with the prospect of contractors tendering lower costs. ▪ The tenders will be assessed on the most economic advantageous tender. Part of this assessment will be to look at the whole life costs of the service. |
| (ix) | Any staffing implications, including TUPE and pensions. | See section 5 below |
| (x) | The relevant financial, legal and | See sections 4 and 6 below |

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| | other considerations. | |
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3.7 The Executive is asked to give its approval to these proposals as set out in the recommendations and in accordance with Standing Order 89.

4.0 Financial Implications

4.1 The Council's Contract Standing Orders state that contracts for supplies and services exceeding £500k or works contracts exceeding £1million shall be referred to the Executive for approval to invite tenders and in respect of other matters identified in Standing Order 90.

4.2 The estimated value of the initial purchases under the Framework Agreement for supplies is £696k for the Project but as detailed in paragraph 4.5, it is envisaged that further provision of toilet facilities will take place under the Framework Agreement with the value of contracts placed therefore exceeding £1 million.

4.3 It is anticipated that the cost of this Project will be funded from Section 106 money.

4.4 All of the section 106 money would be spent on the provision of toilets in Wembley.

4.5 Additional purchases will be made from the Environment and Culture Department's normal budgets for this area. There is a small annual provision for upgrading, replacing and refurbishing existing toilet provisions throughout Brent. Environment has also submitted a budget bid of (£486k) to provide new facilities in the borough.

4.6 The outcome of the bid, submitted by the Environment and Culture Department for funding for additional toilet facilities, will not be known until 2007. As a procurement exercise will need to be conducted, in line with Contract Standing Orders for this Project, it would be prudent to tender for a framework agreement to allow additional purchases. This will mean that the Council will gain efficiency savings as the tender exercise will only be conducted once, thus saving staff resources. There will be no commitment from the Council to guarantee levels of purchasing under the Framework Agreement.

4.7 The borough currently has nine toilets located on the public highways and these will be unaffected by these arrangements. Six of nine toilets are maintained by J.C. Decaux under contract where it provides and maintains the toilets in return for advertising and media rights on the highway. The current budget for toilets is around £90k per annum, which is spent on staff costs for Council employed staff for the remaining three toilets and other associated costs.

4.8 It is difficult to ascertain the precise cost of maintaining the toilets in the

future (after the initial 4 years) because we are not sure what type of toilets are going to be installed. Currently it costs J. C. Decaux around £30k per annum, per toilet to carry out cleaning and maintenance duties. I expect the individual cost of maintaining the six toilets in Wembley will be around £30k allowing for inflation and excluding leasing costs. Officers are expecting that the six toilets be purchased outright. A growth bid would be submitted in the last of the four year maintenance contract for around £180k per annum for future year's maintenance. This is a worse case scenario and Officers would be hoping to negotiate a much better deal during the last year of the four year contract.

- 4..9 The overall cost of the installation, maintenance, cleaning and other associated costs, would not exceed the s106 funding of £696k over the four year initial period (April/may 2007 to March 2011).

5.0 Staffing Implications

- 5.1 Existing StreetCare Ward Officers within the Wembley Wards would be expected to monitor the new toilets installed in their Wards
- 5.2 TUPE does not apply to the Project as these public conveniences are new provisions. Should the Council be successful in its bid for further monies as detailed in paragraph 4.5, this again would be for new provision and therefore TUPE would not apply.

6.0 Legal Implications

- 6.1 The proposed Framework Agreement contains a mix of services (e.g. cleaning) and supplies (e.g. the provision of the toilet facilities). Where there is such a mix, it is necessary to look at the relevant spend on the different elements to establish on what element the greatest spend occurs. This generally determines what rules will apply to framework agreement or contract. In this case, it has been determined that rules applicable to the Framework Agreement are those relating to supplies as the supply element is greater than the services element.
- 6.2 The estimated value of the Framework Agreement over its lifetime is above the EU threshold for supplies contracts of £144,371 and therefore the procurement and award of the Framework Agreement is subject to EU Procurement Legislation. The contract will be tendered under the Open Procedure and will be advertised in the Official Journal of the European Union.
- 6.3 The estimated value of the Framework Agreement over its lifetime is in excess of £500k and therefore its procurement and award is subject to the Council's Contracts Standing Orders in respect of High Value Contracts and Financial Regulations.
- 6.4 Officers propose that the procurement of toilet facilities should be by way of a framework agreement. A framework agreement is an agreement with

contractors which sets out terms and conditions under which specific purchases (“Call-offs”) can be made throughout the term of the agreement. The Framework Agreement proposed will allow for the provision of this Project and for future purchases. This will allow the Council to have flexibility on the number of toilets that it wishes to procure in the future without making a firm commitment to the exact number.

- 6.5 Contract Standing Orders 89 requires the Executive to approve the evaluation criteria to be used in the tender process. The evaluation criteria are set out in paragraph 3.6(vi) of the report.
- 6.6 Once the tendering process is undertaken Officers will report back to the Executive in accordance with Contract Standing Orders, explaining the process undertaken in tendering the Framework Agreement and recommending award.
- 6.7 This procurement is subject to the full application of the EU Regulations, the Council must observe the requirements of the mandatory minimum 10 calendar standstill period imposed by the EU Regulations before the contract can be awarded.
- 6.8 The requirements include notifying all tenderers in writing of the Council’s decision to award and providing additional debrief information to unsuccessful tenderers on receipt of a written request.
- 6.9 The standstill period provides unsuccessful tenderers with an opportunity to challenge the Council’s award decision if such challenge is justifiable. However if no challenge or successful challenge is brought during the period, at the end of the standstill period the Council can issue a letter of acceptance to the successful tenderer and the contract may commence.
- 6.10 Planning permission will be required for the installation of the toilets and insofar as they would be situated on highway land, an order to “stop up” the areas in question (ie remove their status as highway land) will be required.
- 6.11 A deed of variation of the Wembley Stadium section 106 agreement will be required in order to reflect the revised approach agreed with WNSL.
- 6.12 The Council will need to enter into a lease of the land required at the White Horse Bridge site. The Council has wide powers under section 120 of the Local Government Act 1972 to acquire land for the purposes of exercising any of its functions.

7.0 Diversity Implications

- 7.1 A Consultation process would be carried out to ensure that the toilets installed are accessible to all members of the community. Officers would be attending the Wembley Consultative Forum to be held on the 25th October 2006 and consultation will also be carried out with residents

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| Meeting Date 13 November 2006 | Version 4.0 26 th Oct.06 |
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during the planning application process.

- 7.2 Officers believe that there are no adverse equality implications. All the toilets will comply with the Disability Discrimination Act. The proposals will have a positive impact on all residents and visitors.

8.0 Staffing/Accommodation Implications (if appropriate)

- 8.1 None specific to this project.

9.0 Background Papers

Section 106 Agreement
Toilet Enhancement Procurement File.

Contact Officers

Neal St Lewis,
StreetCare Service Unit,
Brent House,
349/357 High Road,
Wembley,
Middlesex HA9 6BZ
Telephone: 020 8937 5079

or Joyce Ip
Planning Service
Telephone: 020 8937 2274

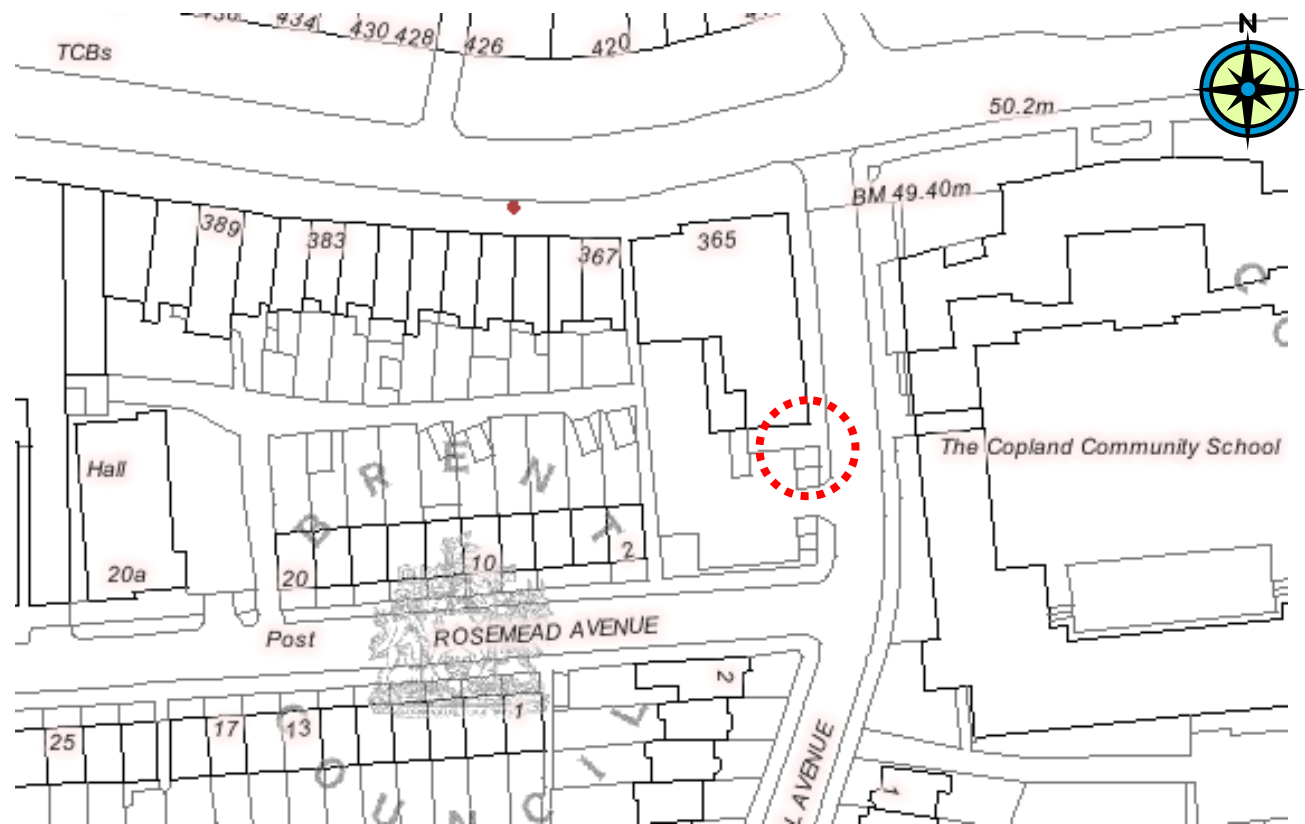
Richard Saunders

Director of Environment and Culture

Appendix 1 – Proposed Six Sites

1. Car Park at rear of Valiant House, Cecil Avenue, Wembley

The flower bed by the entrance of the car park behind Valiant House, Cecil Avenue. One parking space will be lost.



Scale - 1: 1,250

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2. Parking spaces behind 494 and 500 High Road (former Marks and Spencer)

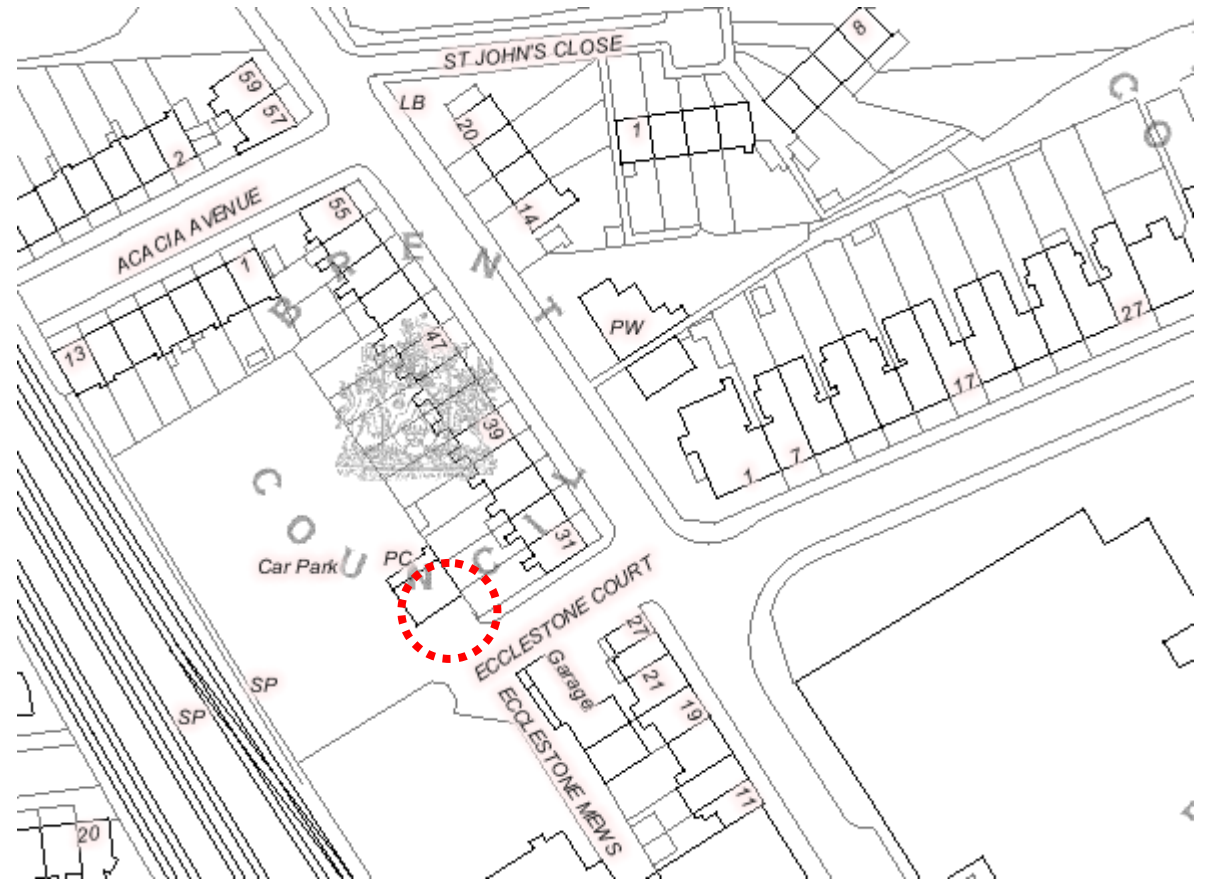
Two parking spaces will be lost to be replaced by a toilet block.

Three options –

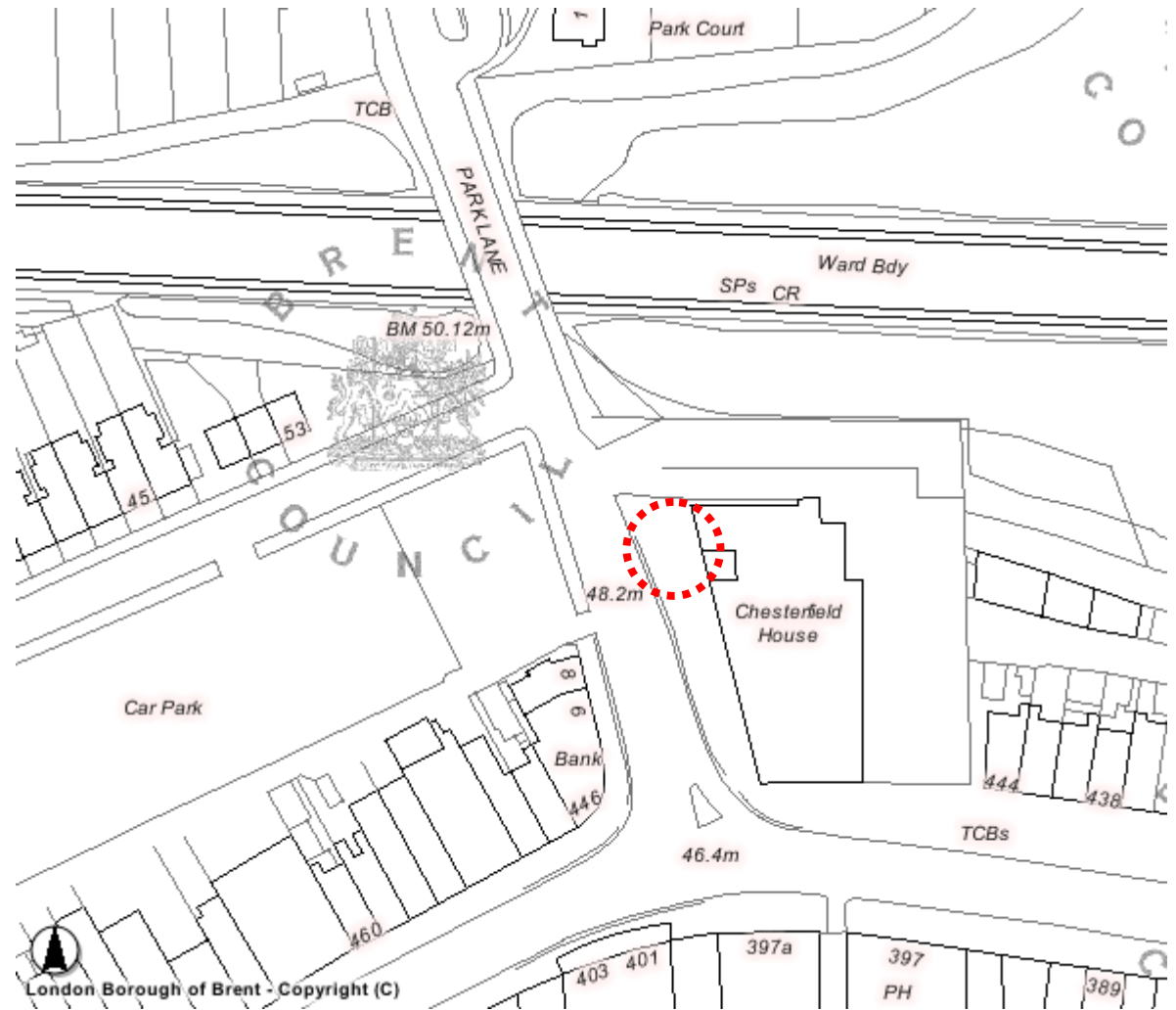
1. To replace/demolish the existing faulty toilet
2. To integrate the existing faulty toilet
3. To keep the existing toilet and build a new toilet block separately on the two parking spaces



3. Meter space in St John's Road Car Park



4. Pavement outside Chesterfield House

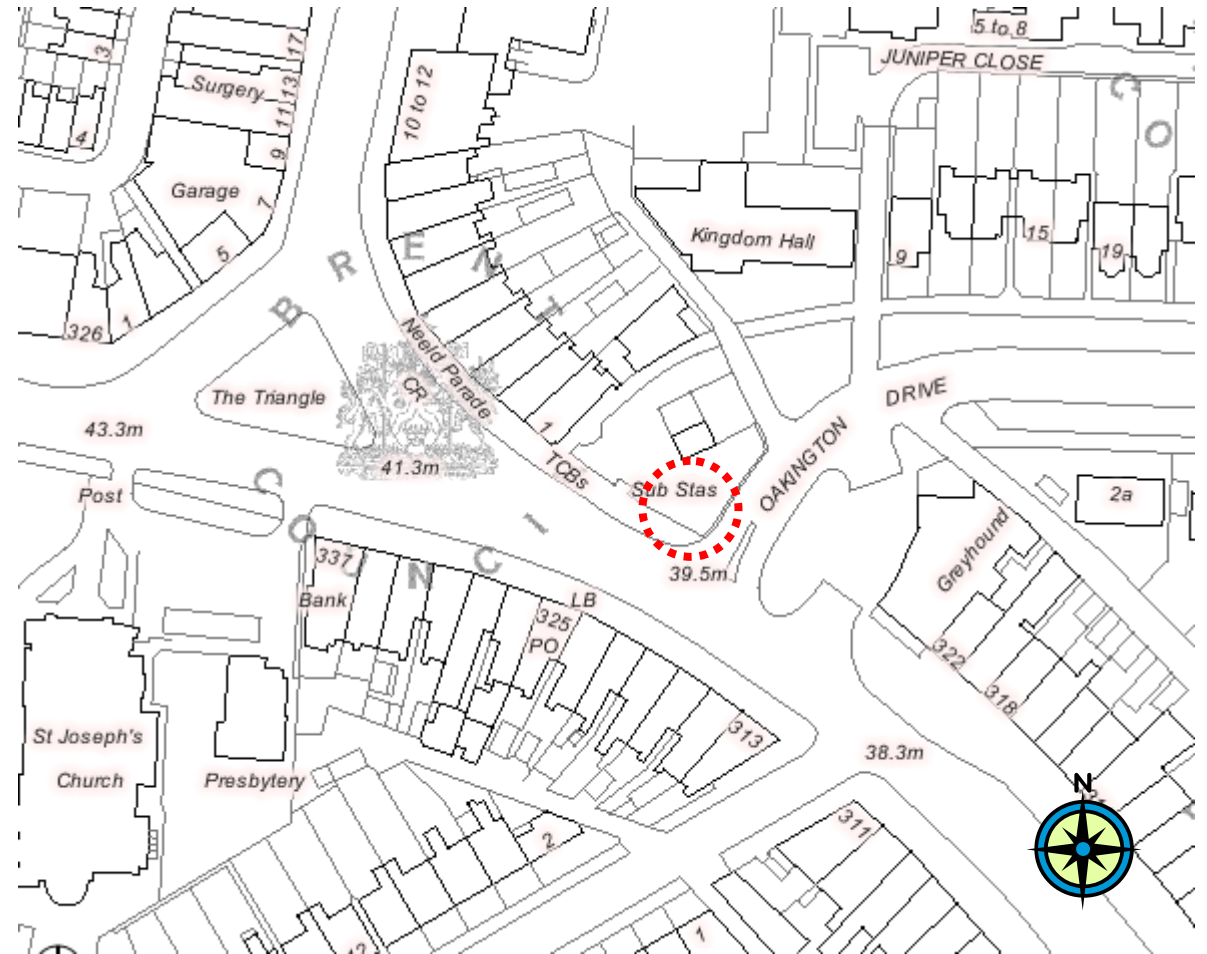


5. A small green surrounded by the Kingston Hall and Greyhound pub on Oakington Drive



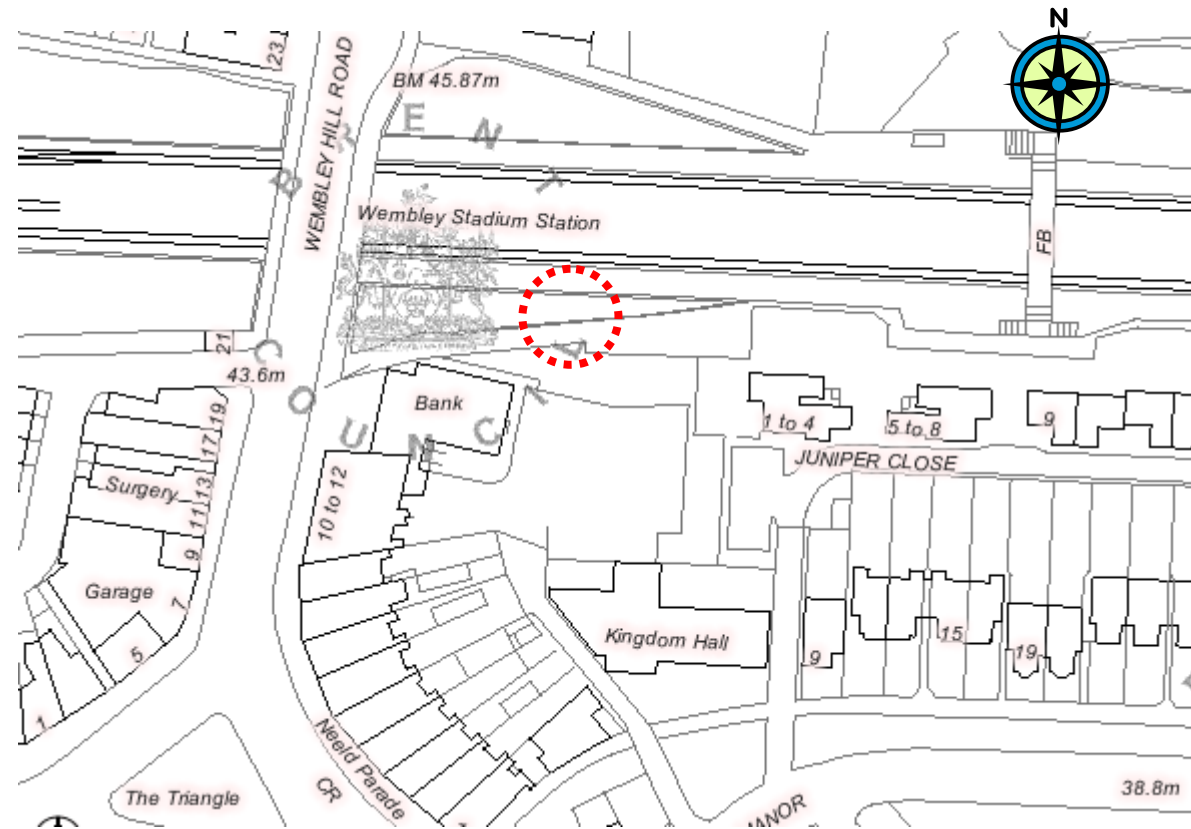
Scale - 1: 1,250




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6. South of White Horse Bridge on LDA land

One/Two blocks of toilets to be installed up to three years. Then the toilets will either be relocated somewhere else in the borough or sold back to the supplier. The buildings have to be moveable. The proceeds will then go to provide further toilet facilities in Wembley.



| Location | Problems/Constraints | Advantages | Additional Cost | Potential types / costs (incl groundworks) |
|---|---|--|---|---|
| 1. Flower bed by the entrance of the car park behind Valiant House, Cecil Avenue | | | | |
|  | <ul style="list-style-type: none"> ▪ Potential objection from Valiant House. ▪ Additional parking spaces will be acquired to allow enough sightline | <ul style="list-style-type: none"> ▪ Council own land ▪ Slightly off Stadium-Central Station route | Planning fees - £135 Building Control - £5,000/6 Water - £1,000 Electricity - £900 Sewer - £5,000 Sewer permission- £350 Street signage - | Together with location above – A four run unisex facility £68,500 |
| 2. Parking spaces behind 494 and 500 High Road (former Marks and Spencer) | | | | |
|  | <ul style="list-style-type: none"> ▪ Loss of 2/3 parking spaces ▪ Duplicate existing toilet facility | <ul style="list-style-type: none"> ▪ Close to stadium-station route ▪ Facilities exist ▪ Benefits to the town centre ▪ Council own land | Planning fees - £135 Building Control - £5,000/6 Water - connected Electricity - connected Sewer - connected Street signage - | DDA + 2 unisex OSC building - £63,450 |
| 3. Meter space in St John's Road Car Park | | | | |
|  | <ul style="list-style-type: none"> ▪ Duplicate to the one at corner of St John's Road and Elm Road. | <ul style="list-style-type: none"> ▪ Council own property ▪ Space originally allocated for toilet provision ▪ Relatively low sewer connection fee | Planning fees - £135 Building Control - £5,000/6 Water - £1,000 Electricity - £900 (could share with the meters) Sewer - £3,000 Sewer permission- £350 Street signage – | |

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| 4. Pavement outside Chesterfield House | | | | |
|  | <ul style="list-style-type: none"> ▪ Potential objection from Chesterfield House landlord (Chesterfield House permission expired 04.07.06) ▪ Expensive sewer connection fees | <ul style="list-style-type: none"> ▪ Council own highway ▪ Sufficient width ▪ Prominent location | Planning fees - £135 Building Control - £5,000/6 Water - £1,000 Electricity - £900 Sewer 25ft - £10,000 - 15,000 Sewer permission- £350 Street signage - | DDA + one unisex OSC building - £55,950 |
| 5. A small green surrounded by the Kingston Hall and Greyhound pub on Oakington Drive | | | | |
|  | <ul style="list-style-type: none"> ▪ Off direct stadium-station route | <ul style="list-style-type: none"> ▪ Council own land ▪ Facilities exist ▪ Predicted to be welcomed by the Greyhound pub | Planning fees - £135 Building Control - £5,000/6 Water - £1,000 Electricity - £900 Sewer - £6,000 Sewer permission- £350 Street signage - | One DDA compartment, a run of 4 single occupancy unisex (£75,680) and a walk through urinal (£37,250) to the rear of the building |
| 6. South of White Horse Bridge on LDA land | | | | |
|  | <ul style="list-style-type: none"> ▪ Close to residential behind ▪ LDA land | <ul style="list-style-type: none"> ▪ Visible location ▪ Close to Stadium ▪ Cleared site | Planning fees - £135 Building Control - £5,000/6 Water - £1,000 Electricity - £900 Sewer - £4,000 Sewer permission- £350 Street signage - | Two x one DDA + two unisex (£63,450) + walk through urinal (£35,350) = £197,400 |

Appendix 2 - Risk Log

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| <p>a) Contract delayed because of unresolved planning obligations:</p> <ul style="list-style-type: none"> ▪ Deed of Variation to Section 106 Agreement will be concluded before the Framework Agreement is awarded. |
| <p>b) If the lease of the LDA site is incomplete before Stadium opening:</p> <ul style="list-style-type: none"> ▪ LDA is aware of Council's intention to acquire their land temporarily for the provision of temporary toilet facilities. The Council is pressing LDA for early agreement to a lease. |
| <p>c) Public Consultation: Delayed by planning objections:</p> <ul style="list-style-type: none"> ▪ Consultation with local people will be carried out before planning application is made to ensure that local people have the opportunity to discuss issues related to the Project. |
| <p>d) Delayed by unforeseeable problems e.g. challenged by unsuccessful tenderers, adverse weather conditions, water leaks, delay on electricity supply and sewer connections:</p> <ul style="list-style-type: none"> ▪ Contingency has been built into the project plan. However, temporary toilets could be installed on appropriate locations as required. ▪ An appropriate delivery plan will form the basis of tenders. |
| <p>e) Exceeding Deadline:</p> <ul style="list-style-type: none"> ▪ Prospective tenderers would be given a deadline as to when the project would be completed and must submit plans that quite clearly show that the desired work will be completed on time. ▪ Liquidated Damages clauses will be inserted into the contract to recover the Council's losses if deadlines are exceeded. |
| <p>f) Exceeding Budget</p> <ul style="list-style-type: none"> ▪ Officers during the tendering process would be asking prospective tenderers to give comprehensive breakdown of costs in their tender submission, including materials, labour and profit. |
| <p>g) The Council has to spend "up-front" before funding is fully recovered.</p> <ul style="list-style-type: none"> ▪ Officers during the tendering process would be asking prospective tenderers to give comprehensive breakdown of costs in their tender submission, including materials, labour and profit. Any staged payments agreed would be related to project milestones. ▪ Officers will request Section 106 money to be released in reasonable time. |
| <p>h) Too many tender responses in respect of Lot 2</p> <p>The project team will draw up a comprehensive specification which will make it clear that only those contractors with sufficient technical abilities should tender.</p> |