



Executive
16th July 2007

**Joint Report from the Directors of
Environment and Culture &
Finance and Corporate Resources**

Ward Affected:
Northwick Park

**Northwick Park Golf Course - grant of lease pursuant to
agreement for lease entered into between Brent and
Playgolf Holdings Plc**

Forward Plan Ref: F&CR-06/07-36

The Appendix 1 to this report is not for publication

1.0 Summary

1.1 This report informs the Executive of:

- i) the current position regarding the occupation of the Northwick Park Golf Course by PlayGolf Holdings Plc under an Agreement for Lease
- ii) Decisions of the Planning Committee and the Planning Inspector in respect of applications from PlayGolf to vary the original consent for its operations on the land including provision of a further parking area, adventure golf facility and a baseball batting cage; and
- iii) seeks the Executive's approval for officers to complete the lease and to agree that the Head of Property and Asset Management be authorised, before completion, to vary the lease terms so as to ensure the Council will share in the income from the adventure golf facility and baseball batting cage.
- iv) action undertaken by officers to resolve the issues created by the construction by PlayGolf of the driving range across a section of Public Right of Way (PROW) 37.

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2.0 Recommendations

- 2.1 The Executive note the current position regarding PlayGolf's occupation of the site under the terms of the agreement for lease
- 2.2 The Executive note the decisions of the Planning Committee and the Planning Inspector pursuant to PlayGolf's applications to vary the original consent; and further agrees as freehold owner of the site, to allow the retention of the further parking area, adventure golf facility and baseball batting cage
- 2.3 The Executive authorises the Head of Property and Asset Management in consultation with the Borough Solicitor to complete the lease (allowing for the retention of the further works referred to in paragraph 2.2 above) subject to any variation considered to be in the Council's best interests to ensure an appropriate share of any income generated from these additional uses.
- 2.4 The Executive endorses officers' further application for the Planning Inspector to determine the realignment of PROW 37 in accordance with the route agreed by officers and PlayGolf so as to provide and maintain a safe route for the public's right of way across the site.

3.0 Detail

- 3.1 By way of background Members will note that Playgolf Holdings Plc entered into an Agreement for Lease dated 18 April 2002 with the Council to build and manage the golf facility following open market tendering of the land. The agreement provides for the parties to enter into a full repairing and insuring lease for 99 years from the commencement date after completion of the golf facility, which is subject to both base rent and turnover rent provisions relating to the golf driving range and ancillary retail user.
- 3.2 Planning consent was obtained on 14 May 2001 [ref 99/2397] for the development of a golf centre comprising part single/ part 2 storey building for use as clubhouse and floodlit practice facility/ driving range, provision of ball stop fencing, landscaping, car parking, new access roads and new 9 hole golf course . In fact, in the event only a six hole course was constructed. The centre as constructed comprises a pay and play six hole golf course with 2 tier 56 bay driving range, various ancillary facilities, which are a golf professional's shop, restaurant, fitness/gym facility, conference suites, administration offices, children's adventure golf area, a baseball batting cage and additional car parking area. The land to be demised is shown on the attached location plan which also shows the 2 public rights of way (PROWs 36 and 37) within the land. The Agreement for Lease required that the golf course should be constructed in accordance with the planning permission granted on 14th May 2001 and any other supplemental planning permission, or other approvals, obtained for the carrying out of the building works to

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construct the course. The further parking area, adventure golf facility and baseball batting cage were not covered by the planning permission granted on 14th May 2001. Enforcement notices were issued under the Town and Country Planning Act 1990 by the Planning Service seeking removal of these particular items. Officers considered that they had grounds to take proceedings for forfeiture of the Agreement for Lease, since, by constructing these additional items, PlayGolf have not complied with the Agreement. However, PlayGolf submitted planning applications seeking permission to retain these further items, and officers considered that it was reasonable to allow these applications to be considered by the Council's Planning Committee, and if the view of that Committee was that they were acceptable in planning terms, to then seek the Executive's view on whether the lease should be granted to PlayGolf with these particular items being retained. In the meantime, the lease has not been completed.

- 3.3 The application for planning permission in respect of the adventure golf facility was, following revisions by the applicant, reported to Planning Committee on 10th October 2006, with an officer recommendation to grant permission. The recommendation was accepted by the Committee, but the application had to be referred to the Government Office for London and the Mayor of London. The Mayor did not direct refusal of the application and the Government Office for London did not call the application in. Accordingly planning permission was issued for this facility.
- 3.4 The application for retention of the further parking area was reported to the same Planning Committee meeting. Although the applicant had made revisions, including reducing the size of the area, officers still considered the application was unacceptable and recommended refusal. However, the Planning Committee resolved that they were minded to grant permission, which was confirmed by them when the application was further considered at the Committee meeting of 31st October 2006. Again, the Government Office for London and the Mayor of London decided not to intervene following referral to them, and accordingly planning permission was issued.
- 3.5 The application for the baseball batting cage was considered at the Planning Committee meeting of 10th October 2006. Again, the applicant had made revisions to the proposal but officers still considered that the application should be refused. On this application the Planning Committee concurred with officers' views and the application was refused. However, the applicants appealed to a Planning Inspector and on 13th April 2007 he granted planning permission subject to conditions. Officers were concerned about one of the conditions which required the netting of the baseball cage to be lowered when the cage was not in use. Officers therefore sought Counsel's advice as to whether there were grounds for a legal challenge against the Inspector's decision because of the inclusion of this particular condition, but Counsel advised that there were no grounds for such a challenge.

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- 3.6 The reports to Planning Committee referred to above, the minutes of those meetings and the Inspector's decision letter are available as background papers for this report and accordingly can be made available to members if they wish to look at the issues considered in determining these particular applications.
- 3.7 Since the three Enforcement Notices referred to in 3.2 above were issued, there have been ongoing discussions with PlayGolf regarding more minor matters in which the construction of the course does not comply with the original planning permission issued on 14th May 2001. Firstly, the netting around the driving range was largely constructed at a height of 20 metres rather than the required 10 metres. PlayGolf made an application to retain the netting at a height of 20 metres which was approved by Planning Committee on 31st May 2007. Again, that report and the minutes of the meeting are available as background papers.
- 3.8 Planning Committee also considered a number of other more minor issues at its meeting on 31st May. These issues are referred to in Recommendations 7, 9, 10, 11, 12 and 13 of that report. Members will also note that an allegation that the building had been built higher than approved was investigated (see pages 264 and 265 of the Planning Committee report). It will be noted that the building is very slightly higher relative to the road due it is believed to marginal increase in ground height on construction and this is considered not to be significant.
- 3.9 Officers consider that it is appropriate to proceed to grant the lease, allowing for the retention of the adventure golf facility, further parking area and baseball batting cage, and notwithstanding the other more minor planning breaches referred to above. Planning Committee considered the first two of these items to be acceptable in planning terms. As far as the baseball batting cage is concerned, although the Planning Committee felt that this was not acceptable, a Planning Inspector has taken a different view. It should be made clear that the Executive in considering the current report is exercising the Council's functions as the land owner. Accordingly, it is open to the Executive to refuse to permit the retention of any or all of these items on the grounds that their installation does not accord with the Agreement for Lease entered into with PlayGolf. However, the view of your officers is that as these particular items have been approved in planning terms by the Planning Committee (or in the case of the baseball batting cage by a Planning Inspector), then the Executive, in its land owner role, can consider that it is reasonable to allow them to be retained. However, this should be on the basis that the provisions of the lease under which the Council is entitled to receive as additional rent, a share of the retail turnover from the golf course centre should apply to the adventure golf facility and baseball batting cage. The details of the rent which would be payable under the proposed lease are contained in a confidential appendix to this report. It is considered that the other more minor planning issues can be adequately addressed through the planning enforcement system (if necessary) and it would be excessive to seek

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forfeiture of the agreement for lease on their account.

- 3.10 The legal status of Playgolf is as a tenant at will. Officers have therefore demanded payment for use and occupation of the land instead of rent and Playgolf has duly paid and continues to pay such charges since opening to the public. This is on the basis of the agreed terms for the base rent stipulated in the draft lease. Other charges relating to golf and retail turnover rent becoming due have now been demanded on this same basis and will continue to be demanded until the lease is duly completed or other action is deemed appropriate.
- 3.11 There are certain other issues raised in the report to the Planning Committee of 31st May which should be mentioned by way of completeness. Firstly, recommendations 1-5 inclusive deal with issues as to whether various uses being carried on at the centre are ancillary or not. These issues relate to 'JJB Sports' Pro Shop, 'Amano' Restaurant, 'Uniq' Fitness Club, Conference rooms and Office Spaces. The Planning Committee determined no further action should be taken on JJB Sports pro shop, conference rooms and office spaces. Grant of the lease would not prejudice the ongoing action by officers on the remaining issues, since the authorised user under the proposed lease is specifically stated as only including "all purposes reasonably ancillary" to the use as "a golf course and driving range and ancillary leisure facility". Secondly, there is an issue as to siting of telecommunications cabinets which is referred to on pages 265 and 266 of the report to Planning Committee of 31st May. These cabinets are sited on highway land outside the area of the proposed lease and need to therefore be considered as a separate issue. Thirdly, there is an issue regarding public right of way 37 which crosses the golf course which is addressed in Appendix 2 (which for completeness also covers public right of way 36 which runs along the boundary of the course).
- 3.12 To summarise the position on rights of way, there are two public rights of way which run across the golf course and are within the land intended for transfer to Playgolf. PROW 36 is part of the Capital Ring, (London wide] and runs east to west along the northern boundary of the site adjacent to Northwick Park Hospital. PROW 37 runs across the golf course and driving range north to south. These two PROWs are identified on the attached location plan of the golf course.
- 3.13 The development of the golf centre has closed PROW37 where it crosses the driving range. Playgolf are aware that it is their responsibility to ensure the right of way is not impeded and they should have made early arrangements for appropriate diversion or re-design of the development. In October 2006 the Planning Inspector refused diversion of the PROW because it is not substantially as convenient to the public and with significantly detrimental effect on the enjoyment of the route as a whole and also on public safety considerations (a summary of the Inspector's decision is set out in Appendix 2 Para 11 a, b and c) The Council therefore served notice in January 07 requiring Playgolf to re-open the path and this notice has now expired. The Council has not enforced the notice because the parties are working

together and have identified a safer route which it is hoped will comply with the Inspector's decision. Additionally it is considered, if the notice were enforced, the only alternative to closure of the driving range was a proposal from Playgolf to erect a poly-tunnel type of protection for walkers as they use that part of the current route which now cuts across the driving range at about the 160 yard mark. This does not seem particularly sensible whilst the parties pursue a seemingly viable route diversion. The General Secretary of the Open Spaces Society (OSS) is aware of this development. She has informed the Council that the Society opposes the proposed diversion on the grounds that it is not safer and is more circuitous. However officers have again written to the General Secretary to welcome her practical involvement in resolving this difficult issue. Officers wish to have an urgent meeting on site to discuss the Council's proposals so as to clear any misunderstandings there may be.

- 3.14 The current position is that an application for a Diversion Order will be made at Playgolf's cost. In the meantime a permissive route with appropriate signage following the proposed new safe route is to be made available for walkers. If there are objections, the proposed diversion order will need to be considered at a public inquiry. A plan of the proposed alternate route is available with the background papers.
- 3.15 It is accordingly considered that the issue of obstruction of public right of way 37 is being addressed. Furthermore, completion of the lease will not prejudice this since if a diversion order is unsuccessful then the legal route of public right of way 37 would remain as it is at present, and PlayGolf would need to reopen this in any event (probably by providing some engineering solution to allow walkers to cross the range).
- 3.16 However on 3 July 07 OSS served notice on the Council requesting the Council as Highway Authority to remove the obstructions from PROW 37. The Council has 30 days to respond by way of service of its own notice on PlayGolf stating what action if any the Council propose to take.
- 3.17 Members may be aware that there are 2 complainants who have been dealt with at Stage 3 of the council's internal complaints procedure. The Chief Executive has responded and in his decision to one of the complainants dated 21st February 2007 he stated 'On the basis of the information available to me, I have concluded that, in its arrangements for leasing the site and dealing with the development as it has proceeded, the Council has had proper regard to its responsibilities, as owner of the land, as local planning authority safeguarding MOL, and towards local residents....' Consequently the complainants have chosen to refer their complaints to the Ombudsman who has confirmed he intends to investigate. However in accordance with S28(4) Local Government Act 1971, Members are able to take a decision with regard to the recommendations in this report.
- 3.18 If the Executive did wish, contrary to officers' views, to pursue

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proceedings for forfeiture of the agreement for lease, then, unless there is justification for a delay in pursuing this, it would be expected to pursue this promptly and any unjustified delay could reduce the Council's prospects of success in such proceedings. It is considered that there were good grounds for delaying a decision on whether to seek forfeiture, since it was reasonable to allow PlayGolf an opportunity to attempt to obtain planning permission for the further parking area, adventure golf facility and baseball batting cage. Whether planning permission for these items was granted, would clearly be a material factor which the Executive would want to consider in the exercise of its land owning role. There are admittedly other outstanding enforcement issues as set out above, but it is considered that these, can be adequately resolved even if the lease was granted. Accordingly, officers consider that any further delay could prejudice the Council's prospects of obtaining forfeiture of the agreement for lease if this is what the Executive wish to pursue. Members should therefore make a decision at this stage whether to pursue forfeiture or proceed with the grant of the lease. Furthermore, it is felt that it is unsatisfactory to continue with the uncertainty surrounding whether PlayGolf will be granted a lease or not. This clearly impacts on PlayGolf's future operations on the site, and also creates uncertainty for the Council as to PlayGolf's status on the land. This is therefore considered to be a further reason why, in the absence of some powerful justification otherwise, a decision should be taken at this stage whether to enter into the lease or not.

CONCLUSION

- 3.19 Members will note that the outstanding planning issues and solution to the footpath closure are under discussion and both officers and Playgolf are hopeful that these will be satisfactorily resolved. It is considered that the major disputes have now been settled and that we are now in a position to decide, as landowner, whether we wish, taking into account the various issues set out above to move to complete the lease or withhold consent pending the outcome of the various outstanding disputes or indeed initiate action for breach of the original agreement. The view of officers is that the Council would have grounds to seek forfeiture of the agreement for lease, for the reasons set out above.
- 3.20 However on balance it is considered the Council has achieved the objective of a high class golf centre and driving range. The addition of the batting cage, whilst originally not envisaged may well ultimately be seen as a further welcome leisure facility and indeed this appears to be the view of the Planning Inspector. The Planning Inspector's decision (ref paras 5 and 6) is included in the background papers. The right of way closure is a live issue. We have established our position in supporting a diversion and it would appear Playgolf will need to re-open the existing path if the application to divert is not successful. Therefore this issue is considered not to be sufficient reason to fail to complete the lease . Thus officers' recommendation to Members is to agree that the lease to Playgolf is completed as soon as is practicable (allowing

retention of the further parking area, adventure golf facility and baseball batting cage) so that a proper landlord and tenant relationship exists between the parties as per para. 2.3 above.

4.0 Financial Implications

These are contained in the Confidential Appendix 1 of the report

5.0 Legal Implications

These are contained in the body of the report

6.0 Diversity Implications

6.1 No particular implications

7.0 Staffing/Accommodation Implications (if appropriate)

7.1 No particular implications

8.0 Environmental Implications

8.1 The golf course is constructed on Metropolitan Open Land, but the implications of this were fully considered in dealing with the various planning applications made in respect of the site.

9.1 Background Papers

Property Files of the Head of Property and Asset Management, Finance and Corporate Resources Department and
Files of the Head of Parks Service, Environment and Culture Department

Reports to Planning Committee of 10th October 2006, 31st October 2006 and 31st May 2007

Minutes of those meetings

Decision letter of Planning Inspector dated 13 April 2007

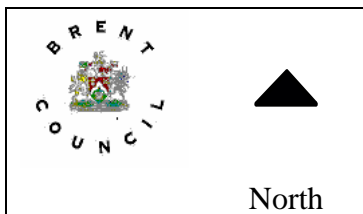
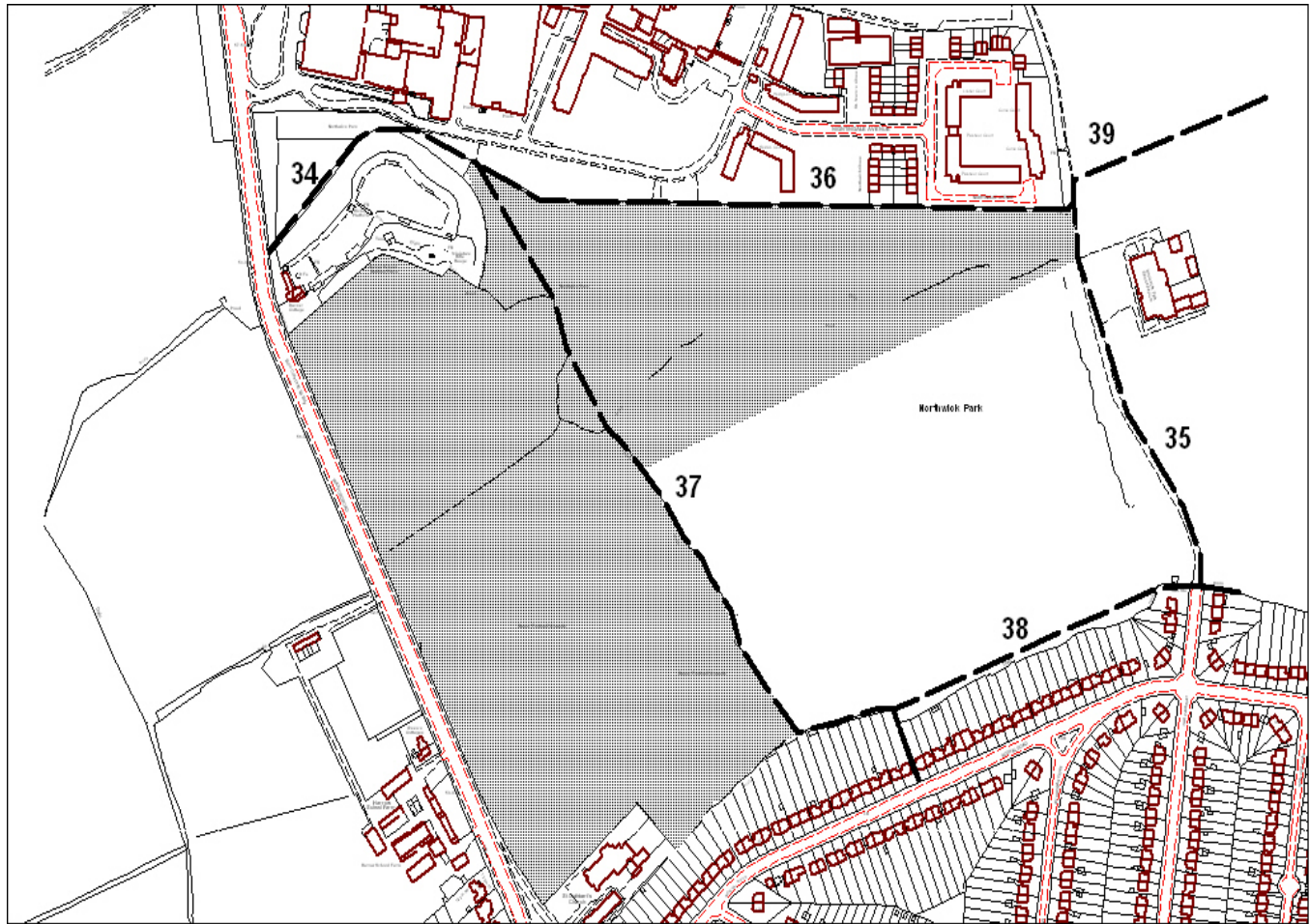
Plan showing the proposed new safe route around the driving range for the affected section of PROW 37 as agreed by Officers and PlayGolf

Contact Officer: Louis Eden, Principal Estates Surveyor, Property and Asset Management, Finance and Corporate Resources Dept, Room 1A Town Hall Annexe, Forty Lane, Wembley HA9 9HD

Any person wishing to inspect the above papers should contact the above officer on Tel 020 8937 1325.

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Northwick Park Golf Course shown stippled black. **WARNING** Golf Course boundaries are approximate only. Public Rights of Way shown with thick broken line and numbered.
Plan for information purposes only. Not to scale

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