

Item No. 18.	Classification: Open	Date: 21 June 2011	Meeting Name: Cabinet
Report title:		Disposal of Site 19 Elephant & Castle	
Ward:		Cathedrals	
Cabinet Member:		Councillor Fiona Colley, Regeneration and Corporate Strategy	

FOREWORD – COUNCILLOR FIONA COLLEY, CABINET MEMBER FOR REGENERATION AND CORPORATE STRATEGY

The decision is another significant step towards moving from vision to reality for the Elephant & Castle regeneration project.

Last November we decided to building a new leisure centre for the Elephant including a long awaited 6 lane 25m swimming pool, a learner pool, a 4 court sports hall, a gym and an exercise studio. We agreed this would be part funded by the council's own resources and part by the sale of part of the site next to the Tabernacle.

I am delighted that officers are recommending a sale that achieves best consideration for the land and makes a significant contribution towards covering the cost of the new leisure centre. It is also an excellent opportunity for our regeneration partner Lend Lease to bring forward a high profile development at the heart of the town centre as a taste of the regeneration to come.

RECOMMENDATIONS

That Cabinet agrees:

1. The council enters into an agreement to transfer part (parcel B on the accompanying plan) of the existing leisure centre to Lend Lease (Elephant and Castle) Ltd ("LL") on the principal terms set out in the closed version of this report.
2. The Head of Property be delegated to agree the detailed terms of the agreement for lease and subsequent lease or if appropriate freehold transfer.
3. In accordance with section 122 of the Local Government Act 1972 the land shown edged on the plan at the appendix to this Report is appropriated from the purpose of leisure to planning purposes and in particular purposes set out in section 237 of the Town and Country Planning Act 1990.

BACKGROUND INFORMATION

4. The current Elephant and Castle Recreation Centre is shown edged red on the plan at the appendix to this report. On 23 November 2010 Cabinet approved funding for the regeneration of the Centre. A substantial element of funding will be achieved through the sale of part of the site for residential development. The site has an area of 7,570m². The part of the site that will provide the new leisure

centre is parcel A on the plan and parcel B is to be disposed of for new housing. Parcel A has an area of 3,890 m² and parcel B has an area of 3,680 m².

5. LL, the council's regeneration partner for the Elephant and Castle has approached the council to take forward the residential development aspect and following negotiations the principal terms set out in the closed version of this report are recommended to Cabinet.
6. A report was made to the Cabinet on 7 July 2010 setting out the rationale for regenerating the Leisure Centre. This established the principle of part of the existing site being disposed of to cross-fund the regeneration. The November 2010 report sets out further details of the mechanics of the regeneration and confirmed that part of the site be disposed of to provide capital funding.

KEY ISSUES FOR CONSIDERATION

7. The approach to the regeneration of the existing leisure centre approved in earlier reports is that it will be by way of two elements: the new leisure centre and adjacent new housing. There will be separate partners for each element but a single planning application will be jointly submitted by them covering their respective elements. Subject to an IDM by the Cabinet member for finance, resources and community safety the Local Education Partnership provider 4 Futures will initially take forward the new leisure centre on the council's behalf.
8. The Leisure Centre site is held by the council's general fund and therefore any disposal is governed by section 123 of the Local Government Act 1972 that requires a sale to take place at best consideration. It is usual practice to expose such sales to competition for instance by auction or tender to satisfy this obligation. However in this case it has been decided to negotiate directly with LL for the following reasons:
 - They are the council's partners for the wider Elephant and Castle regeneration.
 - They are a special purchaser because of their wider interest in the Elephant and Castle area and may offer higher consideration to secure a prominent development opportunity as a shopping window for the wider regeneration.
 - Certainty of receipt, as highlighted in last July's report certainty of receipt is very important, LL is considered unlikely to make an inflated offer that will ultimately not proceed and their financial status and track record has already been evaluated as part of their selection as partner for the wider regeneration.
 - The partner taking forward the residential aspect will have to work in tandem with the council's leisure centre partner in both submitting a joint planning application and construction terms, it is considered that existing relations with the council means LL is better placed than others to succeed in this.
9. As the regeneration opportunity has not been exposed to market competition an independent valuer was instructed to confirm the terms offered satisfies best consideration. Such confirmation has been received. It is therefore considered the proposal satisfies the council's best consideration obligation under section 123 of the Local Government Act 1972.

10. The boundary between parts A and B of the site is indicative at the present time and may need to be varied once design proposals for the proposed new leisure centre and residential development are developed.
11. Whilst LL is the council's partner for the wider regeneration of the Elephant and Castle, this site and the proposed transfer is outside of the remit of the regeneration agreement and is not bound by its provisions.
12. At this time, only principal terms for the proposed agreement to dispose of the residential part of the site can be reported to Cabinet for approval. If these are approved there will be a series of negotiations between the parties to finalise and agree the detailed terms. It is recommended that the Head of Property be delegated authority to agree these terms.

Appropriation of the site for purposes set out in s237 of the Town and Country Planning Act 1970

Background to appropriation

13. The appropriation of land and buildings refer to the process whereby a council alters its purposes for holding those land and buildings. The power to appropriate is contained within section 122 of the Local Government Act 1972.
14. Section 237 of the Town & Country Planning Act 1990 [s237] provides that where a council acquires land or appropriates land for planning purposes the development of the land may override third party rights enjoyed over the land. The beneficiaries of such rights may however claim compensation [equal to the loss in value of their property caused by losing the right] but cannot seek an injunction to delay or terminate the development. However, if there is an adverse effect in value of their property from the loss of that right, they may have a claim for compensation. Provision has been made for this in the proposed transfer to LL, paragraph 3 (vii) of the closed report refers.
15. If having appropriated or acquired land for planning purposes a council transfers that land to another party perhaps a house builder, that other party will benefit from being able to override third party rights during construction work. This is important to those building or having construction work carried out because it gives them certainty the work will not be stopped as a result of a third party obtaining an injunction from the court. Such an injunction could severely delay the construction project and give rise to considerable additional financial costs.
16. Prior to developing land it is practice to make prudent enquiries of what rights might exist over the land, this will involve inspecting the land to see if there are any obvious rights and checking land ownership information. However, some rights may not be apparent from inspection and historic ones may not always be recorded at the Land Registry. The application of s237 therefore mitigates this risk.
17. The right to claim compensation for the depreciation in value caused by the loss of right is enforced against the owner of the land but if that owner does not meet this obligation then the compensation claim can be enforced against the local authority.

Rationale for appropriating the subject site

18. In the Core Strategy the current leisure centre site forms part of the Elephant and Castle Core Area [currently referred to as site 39P in the Southwark Plan]. The Southwark Plan identifies a specific need for a leisure centre within this site and this requirement is retained as part of the Core Strategy. Residential development is generally an acceptable use throughout the core site. A mixed development comprising a new leisure centre and residential is therefore acceptable in principle on the subject site. As set out in the report approved by Cabinet on 7 July 2010, it is council policy for the subject site to be regenerated for new leisure and housing in pursuance of the Core Strategy. Therefore it is more appropriate that the council holds the site for planning (to effect the regeneration) purposes rather than for leisure purposes (the current position).
19. The appropriation of the land for planning purposes will bring forward its regeneration and give more certainty because the risk of persons holding third party rights being able to obtain an injunction to stop the regeneration will be negated. However, as set out in paragraph 14 beneficiaries of such rights will be entitled to claim compensation.

Policy implications

20. The provision of leisure facilities is part of the Elephant and Castle regeneration. It is also a specific policy (4.26) in the adopted Core Strategy.

Community impact statement

21. The Elephant and Castle regeneration has been the subject of extensive consultation and the recommendations in this report will result in additional consultation as will the planning application for the overall regeneration of the area. A full Equalities Impact Assessment for the overall regeneration has previously been carried out and will be reviewed at the time of a planning application for the overall regeneration.

Resource implications

22. The cost of effecting the recommendations can be accommodated within the existing approved budget for the Elephant and Castle regeneration.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Communities, Law & Governance

23. Legal advice in relation to recommendations 1 and 2 is set out in the closed version of this report. In relation to recommendation 3, Cabinet it advised that Section 122 of the Local Government Act 1972 provides that a council may appropriate land from one purpose to another if immediately before the appropriation the land is no longer required for the purpose for which it is held. The land is held for leisure purposes but is now required for development for planning purposes.
24. Once appropriation has taken place, Section 233 of the Town and Country Planning Act 1990 ("the 1990 Act") enables the council to dispose of the land appropriated for planning purposes to such person in such manner and subject to such conditions as appear to the council to be expedient in order to secure the

best use of the land or to secure the erection, construction or carrying out on it of any buildings or works appearing to be needed with the proper planning of the council's area. The consent of the Secretary of State is needed where the disposal is for less than the best consideration that can reasonably be obtained, except in the case of short leasehold interests. Before disposing of any land consisting of or forming part of an open space, the council will need to publish a notice of their intention to do so for at least two consecutive weeks in a newspaper circulating in the area and consider any objections.

25. Section 237 of the 1990 Act allows works to be carried out on land appropriated for planning purposes as long as such works are in accordance with planning permission, even though these works will interfere with an interest or right affecting the land or involve a breach of a restriction as to the use of the land under contract. Compensation is payable where loss has been suffered as a result of the interference with any such rights.

Finance Director

26. This report recommends transferring part of the existing leisure centre at Elephant and Castle to Lend Lease Ltd. Paragraph 9 confirms that the terms offered satisfies best consideration requirements.
27. Paragraph 6 refers to the report to Cabinet in November 2010 which detailed how the sale of the residential component at the front of the site is intended to be reinvested to deliver the leisure facility at the rear.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Correspondence file	Property Services 160 Tooley Street SE1 2QH	Patrick McGreal 0207 525 5626
Cabinet report of 7 July 2010	http://moderngov.southwarksites.com/mgConvert2PDF.aspx?ID=10879	
Cabinet minute of 7 July 2010	http://moderngov.southwarksites.com/ieDecisionDetails.aspx?AllId=8877	
Cabinet report of 23 November 2010	http://moderngov.southwarksites.com/mgConvert2PDF.aspx?ID=14160	
Cabinet minutes of 23 November 2010	http://moderngov.southwarksites.com/mgConvert2PDF.aspx?ID=3334&T=1	

APPENDIX

No.	Title
Appendix 1	Land ownership plan

AUDIT TRAIL

Cabinet Member	Councillor Fiona Colley, Regeneration and Corporate Strategy	
Lead Officer	Eleanor Kelly, Deputy Chief Executive	
Report Author	Patrick McGreal, Property Services	
Version	Final	
Dated	9 June 2011	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS/ DIRECTORATES/ CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Communities, Law & Governance	Yes	Yes
Finance Director	Yes	Yes
Cabinet Member	Yes	Yes
Date final report sent to Constitutional/Community Council/Scrutiny Team	9 June 2011	