

Report for: Leader Signing

Title: Buy Back of Fusion's New River Lease and Provision of a Short Term Lease

Report

authorised by: Director of Housing, Regeneration and Planning
Director of Environment & Neighbourhoods

Lead Officer: Assistant Director Capital Projects and Property (Interim)
Head of Parks and Leisure (Interim)

Ward(s) affected: All

Report for Key/

Non Key Decision: Key

1. Describe the issue under consideration

- 1.1. On 11 July 2014 the Council granted a long lease for the leisure facility at New River for a period of 50 years from 11th July 2014 to Fusion Lifestyle ("New River Lease"). Also, on 11 July 2014 the Council provided a loan which was used towards making improvements on the site. That loan is secured by a first legal charge registered against the New River Lease. A plan of the site (outlined in red) is set out in Appendix A.
- 1.2. On 28th August 2020 a Cabinet Member decision did not agree to a request from Fusion to allow NatWest to take a charge (under the CLBILS) of the New River Lease equal to that of the Council's legal charge.
- 1.3. As mentioned in the 28th August 2020 report Fusion has now offered to hand back the New River Lease so they can proceed with their Coronavirus Large Business Interruption Loan Scheme (CLBILS) funding. Fusion's offer to hand back of the New River Lease is based on the Council acquiring the lease for the sum outstanding on the New River loan to the Council under the Loan Agreement dated 11 July 2014. Fusion will then use the proceeds to pay back the outstanding New River loan.
- 1.4. In order to ensure that the site reopens quickly and does not have to shut to the current users at the point of hand back it is proposed that a short term lease for a period of twelve months be granted to Fusion on the current lease terms. This will allow the Council to complete its options appraisal for the future management of the site, which includes an in-house option and to implement an operating model which will provide a smooth transition from the short term lease.
- 1.5. This report seeks authority to acquire the New River Lease from Fusion for the sum of the New River loan outstanding to the Council and for Fusion to then pay back the New River loan to the Council and to grant Fusion a new short-

term lease for 12 months which will include break clauses at six and nine months.

2. Cabinet Member Introduction

- 2.1 The acquisition of the New River Lease represents excellent value for the Council and residents. The centre has benefited from substantial investment since 2014.
- 2.2 The provision of a 12 month short term lease back to Fusion allows the Council to complete an options appraisal regarding the future management arrangements at the site while still maintaining the centre's operations and business continuity.
- 2.3 The options appraisal will be developed in accordance with the Council's agreed Insourcing Policy (Oct 2019) and Insourcing Action Plan (Mar 2020).

3. Recommendations

Cabinet agrees:

- 3.1. To the acquisition of the New River Lease from Fusion for a sum equal to the amount of the loan outstanding under the Loan Agreement dated 11 July 2014.
- 3.2. To fund the acquisition through utilising the Responsiveness Fund capital budget and the approved capital programme contingency budget.
- 3.3. To the Council leasing back part of the site (not subject to the Tenancies) to Fusion Lifestyle for a period of up to 12 months.
- 3.4. To note the Tenancies that will be directly managed by the Council on the site once the Head Lease is acquired (as set out in appendix C).

4. Reasons for decision

- 4.1. Fusion have indicated that in order to restart their business they need to obtain a loan under the CLBILS funding arrangements. A condition of that scheme is that the bank supplying that loan needs to take a charge on all the assets of Fusion and the charge needs to rank equal to any existing charges granted by Fusion. On the 28th August 2020 a Cabinet Member decision agreed:
 - a) That the Council does not agree to Fusion's request to allow NatWest to take a security against the New River Lease.
 - b) In anticipation that Fusion may wish to hand back the lease to the Council, that the Council commissions a Leisure Management Options appraisal for the New River Sports Ground. The options to include proposals for the sale of the freehold, a new lease hold arrangement, direct management, or management by a third party.
- 4.2. As a consequence, Fusion have now offered the New River Lease back to the Council for the sum outstanding on the New River loan and for Fusion to repay this loan back to the Council.

- 4.3. The recommendation to accept the surrender of the lease for the sum outstanding and then for Fusion to pay back the loan to the Council represents a good financial proposition for the Council for the following reasons: -
- Since leasing the site to Fusion, the Council has not subsidised the site.
 - The site has benefited from investment and been significantly upgraded since the lease was granted.
 - The New River Lease has been valued by Wilks, Head and Eve (WHE) which demonstrates that the buy back of the lease is good value.
 - The potential lease income per year for the site should meet the outstanding loan repayments and then from April 2030 would return an income that could be used to support other services.
 - By taking the lease back the Council will be in full control of the site and free to review the future management arrangements.
 - A short-term lease back to Fusion prior to the new management arrangements being implemented ensures that the site can reopen quickly allowing residents and clubs to participate in their chosen physical activity. It allows for an ongoing business to be maintained. It avoids the Council being liable for additional site management costs in this financial year. Fusion will accept all risk in the running of the site during a period of continued uncertainty related to Covid-19 and the national pandemic.
 - It also means that an options appraisal, including an in-house option, can be developed in accordance with the Councils agreed Insourcing Policy (Oct 2019) and Insourcing Action Plan (Mar 2020). Following a further Council decision any transfer to another form of management can be done in a well-planned and careful way to ensure the best outcome for the Council, Fusion staff and site users.
 - Based on the assumption that the Council agrees the recommendations in the report then Fusion plan to reopen the New River site on the 5th October 2020.

5. Alternative options considered

- 5.1. One alternative would be to refuse to accept the offer. However, this would mean that Fusion will be unable to obtain the CLBILS loan and this would cause severe financial difficulty to Fusion and make them more vulnerable to failure.
- 5.2. A Fusion failure is not in the best interest of the Council.
- 5.3. If Fusion were to become insolvent, then there would be no clear date for reopening the New River site.
- 5.4. In the event of Fusion becoming insolvent the Council has two routes available to it to recover its loss at New River.
- 5.5. The first is as landlord, in this situation the Council could forfeit the New River Lease and take the premises back into its control. In this instance the Council's loan would become an unsecured debt (which may have to be written off) but the Council regains control of the site and its future. Fusion or its liquidator

could apply for relief from forfeiture and if that happens it will be for the courts to decide.

- 5.6. The second route available to the Council is to enforce its charge over the New River Lease and appoint an LPA Receiver to sell the New River Lease. In the event of a sale the Council would receive up to the amount outstanding under the loan from the sale proceeds. However, any amounts achieved over and above the outstanding loan would go to the Fusion or its liquidator to meet other Fusion debts. The site would be sold on the open market and the Council (as landlord) may have to agree to relax or remove some of the provisions in the New River Lease in order to achieve a sale to a third party in these circumstances.
- 5.7. In addition, if Fusion were to become insolvent then several new risks would be realised on the Leisure Management Contract that covers Park Road, Tottenham Green, and Broadwater Farm.
- The Council would need to step in and manage the facilities until a temporary or permanent arrangement could be put in place. This may include closing the centres for a period.
 - All risks and costs of operating the leisure centres would return to the Council until such time as other arrangements are put in place.
 - The cost of the leisure centre service in the case of Council step in is estimated to be considerably more than the current cost. An emergency tender for an interim operator is also estimated to cost the Council considerably more.
 - The Council would also cease to receive the annual capital repayment for the loan related to the main leisure centre contract for Tottenham Green, Park Road and Broadwater Farm.
 - The Council's abilities to achieve its MTFS savings over three years would be lost.
 - The extent to which the Council could offer concessionary access to the centres could be reduced.
- 5.8 An alternative option was to bring the service back in house at the point of transfer of the lease back to the Council. This was rejected on the basis that it would not give adequate time to carry out the necessary TUPE consultation with staff employed at New River. Another option to address this TUPE issue was to second staff from Fusion for a six month period, after receiving further legal advice this was rejected as TUPE would still apply to the Fusion staff from day one of the secondment.

6. Background information

- 6.1 The proposal in the report supports Fusions ability to obtain their CLBILS loan which forms part of the Fusion Business plan to ensure they continue as a business in the current difficult financial climate.

- 6.2 The market and financial models for local authority leisure provision have been severely impacted by the Covid-19 pandemic. Fusion have previously indicated that in order to restart their business they need to obtain a loan under the CLBILS funding arrangements. A condition of that scheme is that the bank supplying that loan needs to take an equal charge on all the assets of Fusion. Fusion made a request of the Council to share security on the New River site with NatWest and on the 28th August 2020 the Council decided not to agree to this request. As a consequence, Fusion have now offered the lease back to the Council in consideration for the outstanding loan amount.
- 6.3 Overall, the Council will receive back a significantly improved site that was operated prior to lock down at a surplus.
- 6.4 The investment was spent on the following upgrades: -
- Upgrade of the existing 3G all-weather pitch
 - Creation of an FA accredited 3G all-weather match pitch
 - Creation of 10 five aside 3G all-weather pitches
 - Creation of four indoor tennis courts
 - A refurbished athletics track,
 - A new gym and group exercise studios
 - Improved Reception and Changing Areas
 - Refurbishments to the 'old' and 'new' pavilions and installation of a café
- 6.5 The value of the New River Lease has recently been assessed by WHE working on behalf of the Council and demonstrates good value.
- 6.6 Should the Council choose an option to re-lease some or all of the site then the Council can anticipate an annual rental. Whilst initially this rental income would be used to pay back the Council loan and interest by 31st March 2030 the loan would be fully repaid. From April 2030 the Council would receive a regular annual income from the site which could be used to support other services in the Council.
- 6.7 By acquiring the New River Lease the Council will regain full control of the site and free to review the management arrangements during the period of the lease back to Fusion on how the site is run.
- 6.8 The Cabinet report on the 28th August 2020 set out in recommendation 3.2 the following:
- 6.9 Recommendation 3.2 – *“In anticipation that Fusion may wish to hand back the lease to the Council, that the Council commissions a Leisure Management Options appraisal for the New River Sports Ground. The options to include proposals for the sale of the freehold, a new lease hold arrangement, direct management, or management by a third party”.*
- 6.10 Para 5.5 of the 28th August 2020 report set out that the options review would be presented to members within eight weeks. The options appraisal has been commissioned and work is progressing to draft a suitable report for members to consider. Any recommendations will then be subject to a further Cabinet decision.

- 6.11 At the point of hand back of the New River Lease the Council will receive from Fusion all assets associated with the operation of the New River. These assets will then be leased back to Fusion for the duration of the short-term lease.
- 6.12 The Council and Fusion have previously entered into five sub leases on the site. Because the term of those sub leases is longer than the proposed short term lease the Council will become the direct landlord to other tenants on the site and these portions of the site will be excluded from the short term lease. The tenancies are detailed in Appendix C.
- 6.13 Heads of terms have been agreed with Fusion to transfer the New River Lease back to the Council. The Council will pay Fusion a sum equal to the outstanding loan amount for the return of the lease. Fusion will immediately repay the outstanding loan amount to settle the amount owed to the Council under the loan agreement. Fusion will also be offered a new lease on the site (apart from those areas leased to others) for a term of up to 12 months with a break clause after 6 and 9 months.
- 6.14 This time frame will allow an options appraisal to be developed in accordance with the Council's agreed Insourcing Policy (Oct 2019) and Insourcing Action Plan (Mar 2020). Following a further Council decision any transfer to another form of management can be done in a well-planned and careful way to ensure the best outcome for the Council, Fusion staff and site users.

7. Contribution to strategic outcomes

- 7.1 The provision of leisure centres in Haringey support the outcomes covered in Priority 2 – People and Priority 3 - Place.

Priority 2 – People

- Happy childhood: all children across the borough will be happy and healthy as they grow up, feeling safe and secure in their family, networks, and communities
- All adults are able to live healthy and fulfilling lives, with dignity, staying active and connected in their communities

Priority 3 – Place

- A healthier, active, and greener place
- A cleaner, accessible, and attractive place
- A culturally engaged place.

8. Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)

Finance

- 8.1 [This information is contained in the exempt part of the report]

Procurement

- 8.2 Strategic Procurement do not believe there are any procurement implications with this report.

Legal

- 8.3 The Assistant Director of Corporate Governance has been consulted in the preparation of this report, and makes the following comments.
- 8.3.1 The Council has the power under section 120 of the Local Government Act 1972 to acquire land for the purposes of any of its functions. The Council may acquire by agreement any land for any purpose, notwithstanding that the land is not immediately required for that purpose and until it is required for the purpose for which it was acquired, then that land may be used for the purpose of any of the council's functions. The lease will be acquired for the sum outstanding under the loan, that loan will be redeemed and the lease can then be merged back into the freehold. Stamp Duty Land Tax will need to be paid on the amount of the consideration.
- 8.3.2 After the acquisition, the Council can grant a lease of part of the premises to Fusion to allow it to continue to operate from the site. That lease is not a disposal for the purposes of Section 123 of the Local Government Act 1972 as it is for only 12 months. The lease will be contracted out of the provisions of part II of the Landlord and Tenant Act 1954 so Fusion will not have security of tenure.
- 8.3.3 Confirmation can be given as to the accuracy of the legal advice referred to at paragraph 5.8 above, in that it is considered probable that TUPE would apply to an arrangement whereby staff employed by Fusion are transferred to the Council.

Equality

- 8.4 The Council has a Public Sector Equality Duty under the Equality Act (2010) to have due regard to the need to:
- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act
 - Advance equality of opportunity between people who share those protected characteristics and people who do not
 - Foster good relations between people who share those characteristics and people who do not.
- 8.5 The three parts of the duty applies to the following protected characteristics: age, disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex and sexual orientation. Marriage and civil partnership status applies to the first part of the duty.
- 8.6 The proposed decision is to agree to Fusion Lifestyle surrendering the current lease on New River Leisure facility back to the Council and to agree to a short-term lease back to Fusion.

8.7 One of the objectives of the proposed decision are to protect the Council's asset in the New River Sports Ground. This is located in Woodside ward and is easily accessible from neighbouring wards including White Hart Lane, Noel Park, and Bounds Green. Due to the demographic profiles of the populations of these wards and the nature of the activities that the New River Sports Ground is used for, it is likely that young people, Black people, and people from Asian and non-British white communities are overrepresented among those who use it, relative to their representation in the borough or London. Protecting the asset therefore represents a measure to prevent indirect discrimination based on these protected groups. These groups are also likely to disproportionately benefit from the short-term lease back to Fusion, as this will help to ensure that the site can reopen quickly.

9. Use of Appendices

Appendix A – Plan of the site

Appendix B – Heads of Terms for new lease [This information is contained in the exempt part of the report]

Appendix C – Existing tenancy details

Appendix D – Facility Stock Take

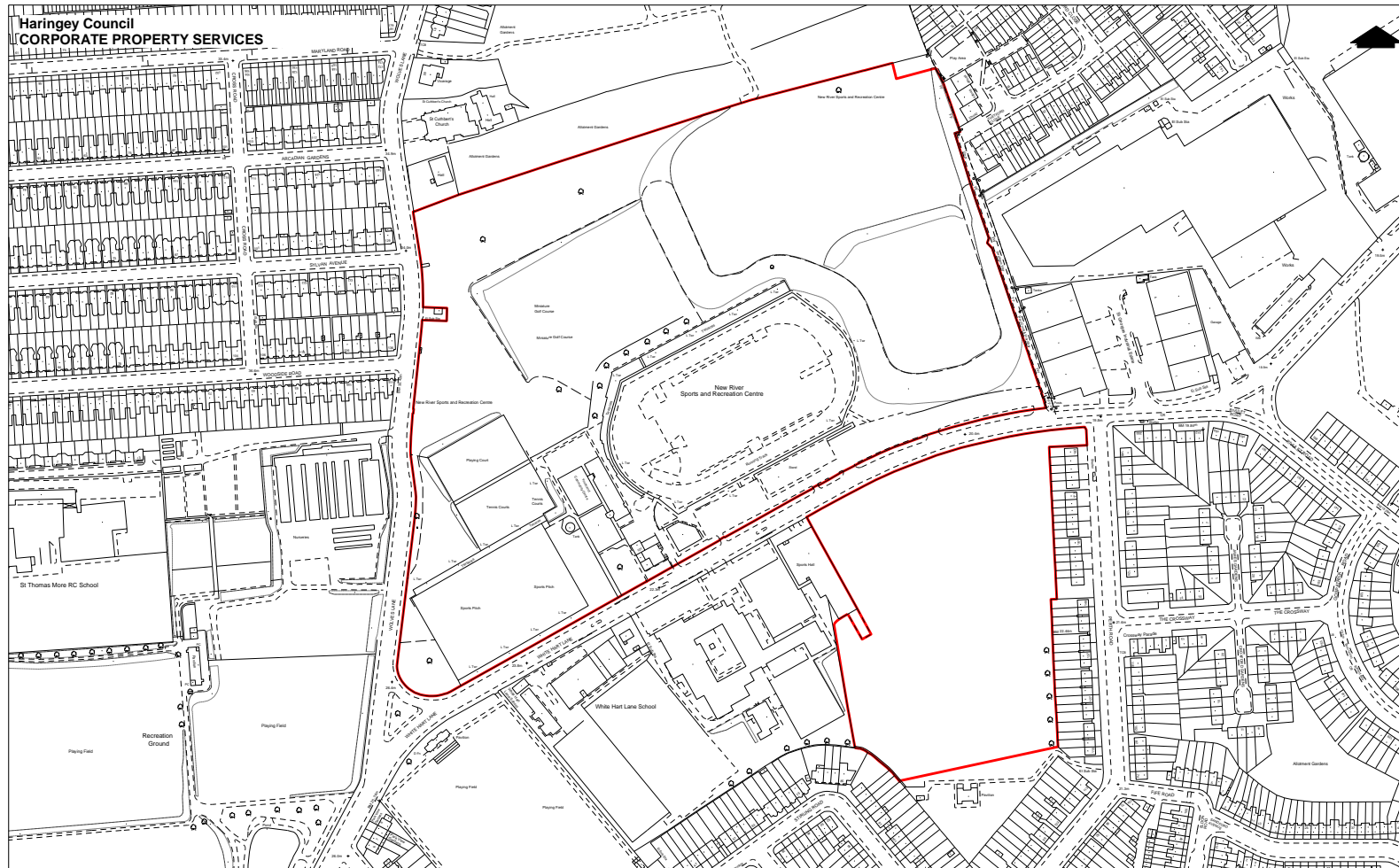
10. Local Government (Access to Information) Act 1985

a. 28th August 2020 Report: Leisure Provision by Fusion and support in respect to the restart of the Fusion Business

b. Appendix B is NOT FOR PUBLICATION by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

Part of this report is not for publication as it contains information classified as exempt under Schedule 12A of the Local Government Act 1972 in that it contains information relating to the financial or business affairs of any particular person (including the authority holding that information) and information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

Appendix A – Plan of the site



White Hart Lane Community Sports Centre
 (including Perth Road Playing Field)
 White Hart Lane
 Wood Green
 N22

Red verge - Boundary of site

This product includes mapping data licensed from Ordnance Survey with the permission of the Controller of Her Majesty's Stationery Office. © Crown Copyright 2013 LBH. All rights reserved. Licence number 100019199

Deed document no. WGUDC 286 & WGUDC 181

Title no. freehold AGL201176, AGL200220

CPM no. 0850 & 0891

Overlay : Env. - Leisure

Plan produced by Janice Dabinett on 07/06/2013

Site area in hectares : Total sites = 15,1070 ha (main site 11,932 ha, Perth Rd field 3,1750 ha)

Scale 1:2500@A3

BVES Drawing No. A3 0240t

Appendix C – Existing tenancy details

Subtenant
Rhinos Rugby Union Club for x 2 rugby pitches and grass surrounds on the site known as Perth Road
Rhinos Rugby Union Club for club house/New Pavilion
London Skolars Rugby League Club for club house/New Pavilion
EE mobile mast
Vodafone mast

Appendix D – Facility Stock Take

40 acre site

1 x full sized third generation football pitch (floodlit)

1 x full size third generation football pitch also compliant for rugby (floodlit)

10 x 5 a side third generation pitches(floodlit)

4 x outdoor tennis courts

4 x indoor tennis courts (dome structure)

2 x grass rugby pitches (floodlit on the site called 'Perth Road' opposite the stadium)

3 x 11 v 11 grass football pitches

1 x athletics track and ancillary

1 x 1000 seater Stadium – located below it is:

- 1 x gym (35 stations)
- 2 x exercise studios
- 1 x spinning studio
- Office accommodation

1x old pavilion (6 team and 1 x large changing areas)

1 x café (located at the end of the old pavilion)

1 x new pavilion (shared club house, offices and changing facilities) for Skolars and Rhinos

1 x caretaker house occupied by Haringey Sports Development Trust

1 x youth building (small basketball court, boxing gym, class room and offices (occupied by Footsteps - alternative education)

1 x maintenance depot (occupied by the Parks Department)

Various containers for storage

Car park – approximately 100 spaces