

Cabinet

17 July 2006

Streatham Ice and Leisure Centre Funding and Construction

Item 5

St Leonards Ward/ Streatham Area

Cabinet Portfolio:

Environment and Culture:
Councillor Lib Peck

Report authorised by:

Executive Director, Environment and Culture:
Robert Overall

Executive summary

This report provides the Cabinet with a progress report on the current proposals to procure the new Streatham Ice & Leisure Centre in conjunction with Tesco and requests agreement to the Development Agreement which will trigger:

- The Section 106 agreement between the Council and Tesco.
- The procurement of the Ice and Leisure Centre building by Tesco.

The agreed way forward is to allow Tesco to be the sole contractor to procure the Streatham Ice and Leisure Centre on the Council's behalf. It is anticipated that this will enable the anticipated costs of development to be reduced through economies of scale and via an integrated approach; limit the Council's financial contribution to the total project costs; accelerate the delivery of the building and provide a more competitive environment for the letting of a new leisure management contract.

At the Planning Applications Committee (PAC) meeting held on 30 May 2006 it was approved that officers be delegated to make the necessary changes to the S106 in order to address the changes to the procurement route as a result of Tesco becoming the sole contractor to procure the Streatham Ice and Leisure Centre on the Council's behalf. The S106 to be finalised simultaneously with the completion of the Development Agreement and that arrangements are to be put in place so that the Council and Tesco could only call a halt to the project for 'commercial reasons'.

Summary of financial implications

The Council has allocated a budget of £17.92 million as its contribution towards the Streatham Ice and Leisure Centre. There is a further contribution of £300,000 as a result of a Section 106 agreement. This leaves a gap of £1.2 million. The financial implications in the main body of the report identify options from which this may be found.

Recommendations

- (1) That Cabinet notes the draft of the Streatham Ice and Leisure Centre 'Development Agreement' for the procurement of the Streatham Ice and Leisure Centre and agrees that the Council should enter the 'Development Agreement' with Tesco PLC, subject to:

- The Council being able to close the funding gap of £1.2 million.
 - The final draft of the document being agreed with the Council's legal officer.
- (2) That the Executive Director of Finance and the Executive Director of Environment and Culture seek to close the funding gap through obtaining additional third party funding, reducing the project scope and/or other similar action as appropriate.
- (3) That, in the event that efforts arising from recommendation 3 are not successful, the Executive Director of Finance and the Executive Director of Environment and Culture report back to the Cabinet on viable options to reduce other items in the approved capital programme in order to bridge the funding gap.

Consultation

| Name of consultee | Directorate or Organisation | Date sent to consultee | Date response received from consultee | Comments appear in report para: |
|--------------------------------------------------|------------------------------------------------|------------------------|---------------------------------------|---------------------------------|
| Tony Otokito | Corporate Finance | 22.06.06 | 23.06.06 & 05.07.06 | |
| Les Brown | Assistant Director of Planning | 22.06.06 | 23.06.06 | |
| Mark Hynes | Legal Services | 22.06.06 | 23.06.06 | |
| Jo Negrini | Revitalise | 22.06.06 | 26.06.06 | |
| Councillor Lib Peck | Cabinet Member for Environment and Culture | 22.06.06 | 26.06.06 | |
| Councillor Paul McGlone | Cabinet Member for Regeneration and Enterprise | 05.07.06 | 05.07.06 | |
| Entered in Consultation and Events Diary? | | | | |
| No | | | | |

Report history

| | | | |
|-----------------------------------------------------------------|------------------------------------------------------------------------------------------------|----------------------------|--------------------------|
| Decision type: Key Decision Forward Plan June 2006 | | Urgency item? No | |
| Authorised by Cabinet member: | Date report drafted: | Report deadline: | Date report sent: |
| 26.06.06 | 18.06.06 | 26.06.06 | 26.06.06 |
| Report no.: | Report author and contact for queries: | | |
| 50/06-07 | David Lawrence, Interim Divisional Director, Culture 020 7926 2896 DLawrence@lambeth.gov.uk | | |

Background documents

Delivery of Leisure in Lambeth – Executive Committee – September 2004
 Streatham Sports Hub Construction and Leisure Operations Contract – Officer Delegated Decision Report – March 2005
 Streatham Leisure Centre – An Ice Rink over a Swimming Pool Feasibility Study – Ove Arup – May 2005
 Preliminary report into proposed budget costs Bernard Williams Associates – May 2005
 Streatham Leisure Centre and Ice Arena – A Review of the Planning Application Scheme – Ove Arup – August 2005

PAC Committee Report – May 2006
Streatham Area Committee Report – June 2006
Draft Section 106 agreement

Appendices

Draft Development Agreement - between London Borough of Lambeth and Tesco Stores Limited.

Streatham Ice and Leisure Centre Funding and Construction

1. Context

- 1.1 During 2005, significant concerns were raised, by Ove Arup – Consulting Engineers, on the outline scheme that had achieved planning permission in February 2003 (the Tesco scheme). This followed a review commissioned by the Council. The concerns related to the innovative and novel configuration of the design (ice pad above pool), the functionality of the design and the anticipated costs of the Tesco scheme. The Council undertook a process of seeking Counsel's opinion on the proposed procurement arrangements and as a result, the Council entered into discussions with Tesco for Tesco to act as the sole contractor to the Council for the procurement of the Streatham Ice and Leisure Centre as part of the development of the Streatham Hub. The decision to use Tesco as the sole contractor was influenced by:
- the substantial financial 'penalty' associated with having two different sets of contractors operating upon the same site (proved by the Council's aborted procurement process).
 - Tesco's strengths in procuring competitive sub-contractors;
 - Tesco's ability to deliver projects within a short time frame;
 - Tesco's technical ability within its project teams,
 - the improved affordability of delivering the scheme by spreading some costs across the whole housing, store and car park development.
 - Tesco's ownership of the land required for the new 'Ice and Leisure Centre' development.
 - a substantially increased cash contribution from Tesco as a direct contribution to the Streatham Ice and Leisure Centre costs.

2. Proposals and reasons

2.1 The decision to allow Tesco to act as sole contractor is as a result of concerns raised over the Tesco scheme that obtained planning permission in 2003. In summary, the key areas of concern related to timing, design, costs, project management, the planning position, the legal position on procurement and stakeholder consultation.

2.2 Timing

The original scheme was agreed by PAC in 2003. There have been complex site acquisition issues that Tesco has been working through since that time, but there was also growing pressure from Tesco to start work on the site as it has already committed significant expenditure. The Council embarked upon a Design Build Operate Maintain (DBOM) contract but as this progressed it became apparent

that there was little competition in this area of the market and the DBOM produced costs models that proved the facility to be unaffordable. There was a great danger therefore that unless an alternative and acceptable procurement route was agreed, the Ice and Leisure Centre would not go ahead.

2.3 Design

In order to sign off the Tesco design, the Tesco team has had to develop the outline design to a level to respond to the comments raised by 'Arup' – consultant engineers - who were appointed by the Council to run a 'health check' on the scheme proposals. A significant number of issues were identified by 'Arup' that has resulted in Tesco making a number of internal design changes that substantially address the concerns raised.

There has been an on-going review of the design development process in conjunction with Arup and the National Ice Centre, Nottingham. Arup and others will have the responsibility of providing a detailed assessment of the proposals with particular emphasis upon the structure, environmental control within the building, fire safety issues and cost.

2.4 Costs and Affordability

An assessment of costs is running in parallel with the design development, a final cost plan will not be known until the final contract price is agreed between Tesco and its sub-contractors. Tesco expect to be able to contain costs through an integrated scheme development, market strength in procurement and excellent project management, it is believed that the leisure element total cost will be around £24 -£25m for a turn key project. Other costs associated with car parking and other works will take the full costs nearer to £26 - £28 million – this additional cost is absorbed by the whole project costing.

A fixed contribution to Tesco's costs is being proposed within a target financial envelope of £17.9m, using BCIS index of 5.5% inflation per annum the figure of £15.5m is in accordance with the previous decision in Sept 04 regarding a budget for Streatham and in line with the figure provided by Tesco.

However, the figure of £15.5m plus inflation is on the basis that Tesco will deliver a turnkey building and that the only other expenditure will be for equipment and furnishings that are proposed to be funded by the leisure management contractor through the new leisure management contract.

It is proposed that payments will be made by the Council to Tesco on the basis of achieving key milestones.

2.5 Project management

In order to harness Tesco's expertise in procurement, whilst safeguarding the Council's interests in owning a building of an appropriate specification, a responsibility chart and procurement methodology, setting out the respective responsibilities of the Council and Tesco has been agreed in principle with

Tesco. This covers the pre-construction, construction and post construction phases and the triggers and key milestones for approval at various points.

Arup or another company with complementary expertise are to be commissioned to assist the Council in monitoring the project's development throughout the construction phase.

2.6 Planning position

Providing the design can be contained within the approved footprint and no material changes are made to the exterior of the scheme, it is possible that there will not be a need for a new planning application that would severely hinder the projects development and the agreement with Tesco. The planning department are being consulted on a regular basis in relation to design development matters and guidance is being sought where necessary.

2.7 Legal position

The Public Works Contracts Regulations 1993, which adopted the Works directive 93/37/EEC would apply to any agreement between the Council and Tesco for the works to Streatham. The regulations permit the Council to negotiate a tender with a provider, without the publication of a contract notice in the official journal where for technical, artistic or for reasons of exclusive rights there is only one manufacturer or supplier in a position to supply the works. In this respect Tesco own the only land suitable for the building of the Streatham leisure facilities.

Accordingly the Council would be entitled under the Regulations to negotiate a contract with them to arrange the building of the centre as they have exclusive rights to the land.

2.8 Stakeholder consultation

Given the sensitive on-going negotiations with Tesco, the decision to abort the DBOM process, there had been limited consultation with stakeholders during 2005. However, recent meetings of the Streatham Forum have been provided with the proposed solution and revised timetable. Given the long delay in the delivery of the project overall, stakeholders reacted with enthusiasm to the plans and that potentially the centre would be opening earlier than previously planned.

Regular briefings are now being given on the project and the proposals for the leisure management procurement process and it was agreed that key individuals would be consulted during the design development stage.

2.9 As outlined above, in order to procure the Streatham Ice and Leisure Centre within an acceptable timescale, at an affordable cost and to an acceptable quality, the decision to allow Tesco to be sole contractor is a clear and positive move forward. In order to ensure that the Council's interests are protected, the design, technical performance, costs and Warranties to be provided must be acceptable. The basis of the PAC decision is that these constitute the Council's

'commercial reasons' and the Council can call a halt to the scheme if these prove not to be acceptable.

2.10 At the time of receiving the 'health check' from Arup and coupled with the feedback from the market on the viability of the DBOM procurement route, a number of alternative options for the funding and procurement of Streatham were assessed. These included:

- Allocating additional funding to deal with the design issues identified by Arup;
- Acquiring additional land and change the configuration of the design;
- Acquiring additional Tesco land and changing the configuration of the centre;
- Locating the pool on an alternative site or remove the pool from the design altogether;
- Reducing the scope of the facilities to fit the existing footprint.

2.11 Each of these options has been considered alongside the engineering assessment of the present proposals. Officers are satisfied that the present proposal is feasible and can be delivered by the team Tesco have assembled.

2.12 The PAC (30th May 2006) agreed changes to the Section 106 agreement to enable the procurement of the building by Tesco however a further agreement is required – the Development Agreement – to deals with the terms and conditions that will apply to the:

- Procurement and contracting arrangements.
- Exchanges of property with Tesco.
- The phasing of the elements of the scheme.
- The phasing of payments.
- Confirmation of the final specification, design & compliance with regulations etc.

2.13 The Council's risk in proceeding with the 'Development Agreement' is controlled by an opportunity to withdraw from the project prior to the Council agreeing the signing of the building contract by Tesco – for commercial reasons (price, affordability, detail of the building warranties et al).

3. Comments from Executive Director of Finance

3.1 The Council is requested to make a £19.42 million contribution to this project. The council has identified £17.92 million of this contribution which includes an inflationary element of £2.4 million that addresses the delay between the original report and the point at which payments will be required. A further £300,000 will be funded from planning benefits generated from the S106 agreement. This leaves a shortfall of £1.2million. This funding gap must be reduced.

3.2 The Council is considering a number of funding options to bridge the gap. The Council will continue to explore the possibility of obtaining additional third party funding for the project. Additionally, the Council will consider allocating additional

capital resources to the scheme, either as a new bid in 2007/08 (or beyond, depending on profile) or by reallocation of existing capital resources which would entail a reassessment of existing priorities. If this cannot be done, then the scheme will need to be reduced to contain the cost.

4. Comments from Director of Legal and Democratic Services

- 4.1 Comment on the Legal position is contained in clause 2.7 of this report.
- 4.2 The Director of legal and Democratic Services is satisfied that the recommended approach to the procurement of the development is lawful following receipt of specific legal advice from specialist counsel.

5. Results of consultation

- 5.1 Regular reports on the status of the Streatham construction and the procurement of the leisure management contract have been given to the Leisure Programme Board and the Revitalise Programme and to individual Members and Officers during the past 12 months.
- 5.2 As negotiations have progressed with Tesco, the Streatham Forum and key stakeholders have been made aware of the outline proposals and potential programme.
- 5.3 External advice has been obtained on technical, operational and legal matters associated with the development from:

Ove Arup / Nottingham National Ice Centre / Starburst / Sport England / Bernard Williams Associates / PMP Consultants and Donaldson's / Leisure Operating Companies - Leisure Connection , Fusion, Parkwood / Legal Advice - Sharpe Pritchard , Nigel Giffin QC.

6. Organisational implications

- 6.1 **Risk management:**
Current key risks are as follows:

| Risk | Score | Action |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|-------------------------------------------------------------------------------------------------------------------|
| Cost and quality of provision – given that the council’s contribution is far lower than the actual cost of development, the council will need to ensure the finished quality of the facility matches its expectations and does not require further funding to finish | High risk | Agree the specification required and the level of finishes by means of agreed room data sheets prior to agreement |
| Warrantees – currently it is | High risk | Council to ensure that the |

| Risk | Score | Action |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| proposed that Tesco provides a single 'wrapped warrantee' for the performance of the building, services and major equipment | | proposal is accepted by Tesco |
| Compliance with tendering process – Council must ensure that Tesco follows the correct EU competition rules for procurement. This has been accepted as a principle by Tesco | Medium risk | Council to put in place a monitoring process to ensure compliance whilst liberating Tesco to use its expertise in procurement. |
| Functionality of design – Tesco cannot convince the council that its 'revised' design is fit for purpose | Medium risk | Tesco is confident that it can meet the council needs. On-going liaison taking place to address key issues. Some consolidation of areas has been agreed to reflect single operation. On-going input from Starburst and Nottingham in relation to operations |
| Planning issues arise due to revised design – significant changes may also require consultation with GoL and Mayor's Office | Low risk | Revised scheme is believed to fit within existing footprint, although any external changes will require consultation with planners |
| Risk of challenge from other contractors | Low risk | Legal advice advises that this will be a low risk due to the unique position of Tesco in relation to the delivering the development |
| Operator's input into design – the DBOM route provided the council with specialist input from operators of similar facilities into the design. The change to the leisure management procurement and the timing does not allow for this | Low risk | Starburst and Nottingham, as existing operators of ice, together with Arup have and will provide input during the design development process to help ensure fit for purpose, provide an operationally efficient layout and advise on maximising revenues through an appropriate design |
| Scope and design base position – council must ensure that its Output Specification is appropriately detailed and | Low risk | The council is reviewing and amending the original Output Specification to ensure it incorporates full details of its requirements |

| Risk | Score | Action |
|---------------|--------------|----------------------------------------------------------|
| comprehensive | | so that there is no dispute over design quality required |

The Council has the right to withdraw from the Development Agreement for 'commercial reasons' up to the point that the building contract is signed. The commercial reasons take into account all of the risk issues identified above – affordability, specification and performance, warranties and process.

6.2 Equalities impact assessment:

An Equality Impact Assessment has been undertaken upon the physical aspects of the building and this will be refined during the coming months. No assessment has taken place regarding the Council's leisure contractor's operation of the site as the appointment process is not yet complete.

6.3 Community safety implications:

Community safety issues will be addressed through the relevant permissions associated for the development.

6.4 Environmental implications:

Environmental implications will be addressed through the relevant permissions associated with the development. The expectation is that the facility will issues of heat exchange and recovery within the context of the swimming pool, ice rink, store and housing.

The extent of this sharing of energy issues and the possibility of the site generating surplus electricity is the subject of a detailed examination presently being undertaken by the Council and Tesco.

Tesco are funding this investigation.

6.5 Staffing and accommodation implications:

None

6.6 Any other implications:

None

7. Timetable for implementation

7.1 A programme from Tesco produced in April 2006 is currently being updated. An indicative timetable suggests the following:

- Finalise S106 agreement - June 2006
- Finalise Development Agreement – July 2006
- Agreement on final scheme to be developed – November 2006
- Complete stage 2 design development – November 2006
- Appoint Contractor – December 2006
- Enabling works commence – February 2007
- Ice and Leisure Centre construction commences – February 2007
- Ice and Leisure construction finishes – August 2008

- Fit out of new centre – September 2008
- Ice and Leisure opens – October 2008
- Removal of existing ice rink – October 2008