

# LONDON BOROUGH OF NEWHAM

## COUNCIL

**28TH NOVEMBER 2011**

**Subject:** Securing a community and regeneration legacy for the Olympic Stadium

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**Sources:** Regeneration, Property and Planning and Resources

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**Wards Affected:** All particularly Stratford and New Town

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### **Exempt Information**

A separate exempt report will be considered by Members of the Council in respect of this matter.

### **Purpose of the Report**

To provide an update on the position regarding the Olympic Stadium, following the decision of the Founding Members of the Olympic Park Legacy Company (OPLC) to terminate the process in which the Council and West Ham were the preferred bidders; and for Members to consider an exempt report to agree recommendations which would include providing delegated authority to the Chief Executive in consultation with the Executive Director of Resources, the Director of Finance and the Divisional Director of Legal and HR Services to make a proposal to, and enter into negotiations with, the OPLC with a view to enabling the Council to enter into a public sector organisation with the OPLC in relation to the operation and development of the Olympic Stadium site, subject to satisfaction of the Council conditions for entering into such an organisation.

The Council previously gave delegated authority to the Chief Executive in consultation with others and being satisfied of a number of considerations to provide a loan of up to £40M to a Special Purpose Vehicle to enable the conversion of the Olympic Stadium to take place. It will be recommended that the delegation will enable the Chief Executive to offer a similar investment of up to the same amount; the terms of such investment to be negotiated and agreed.

### **Recommendations**

Council is asked to agree that Members consider an exempt report in connection with this matter and to make decisions accordingly.

## **Reasons for the Recommendations**

To enable decisions to be made that would secure a community and regeneration legacy for the Olympic Stadium.

**NAME OF CHIEF OFFICER**      Kim Bromley Derry

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## **Local Government (Access to Information) Act 1986**

### **Background papers used in preparing this report:**

- Published minutes of the meetings of Cabinet and Council of 23<sup>rd</sup> November 2010 and 20<sup>th</sup> January 2011

### **List of enclosures/Appendices**

- None

## REPORT

### 1. Background

- 1.1. In January 2011 the Council agreed to jointly bid with West Ham United (WHU) to the Olympic Park Legacy Company (OPLC) for a lease for the Olympic Stadium to create a multi-purpose venue that would secure a community and regeneration legacy for the Olympic Stadium
- 1.2. The Council's decision gave the Chief Executive the authority to make the bid, and subject to the satisfaction of a number of conditions, enter into a lease with the OPLC and provide a loan to the SPV (later established as the Legacy Stadium Partnership (LSP)).
- 1.3. Since the Council decision:
  - 1.3.1. OPLC granted the WHU/LBN bid "preferred bidder" status in March 2011.
  - 1.3.2. The Legacy Stadium Partnership (LSP) was registered at Companies House (April 2011).
  - 1.3.3. Extensive negotiations took place with the OPLC towards a lease between the LSP and OPLC (March 2011 – October 2011).
  - 1.3.4. Negotiations took place between LBN, WHU and LSP over the terms of WHU's presence at the stadium and their role in the LSP (March 2011 – October 2011).
  - 1.3.5. A process was conducted to select a Design and Build Contractor for the stadium conversion works.
  - 1.3.6. The Council and OPLC's decisions have been made the subject of judicial review challenges by Tottenham Hotspur and Leyton Orient. In October the Council were notified that anonymous complaints had been made to the European Commission relating to the process and the Council's proposed £40M loan to the SPV. These proceedings were ended after the OPLC decided to end the process.
  - 1.3.7. The concerns over timetable issues meant that LBN wrote to the OPLC on the 10<sup>th</sup> October 2011 to state that "LBN believes that we cannot maintain a commitment to achieve conversion of the stadium by the summer of 2014".
  - 1.3.8. Following receipt of that letter the OPLC Founder Members decided on the 11<sup>th</sup> October 2011 to end the current process and committed to a new "public ownership" model, which would seek a football tenant.
  - 1.3.9. In view of the fact that the OPLC have stated that they are looking to progress a new public ownership model it is considered that the Council should make an offer to the OPLC to invest up to £40M in the development of the Stadium in order to secure a community and regeneration legacy for the Olympic Stadium. The general terms of such an investment will be set out in a separate exempt report.

1.3.10. The Council previously gave delegated authority to the Chief Executive in consultation with others and being satisfied of a number of considerations to provide a loan of up to £40M to a Special Purpose Vehicle to enable the conversion of the Olympic Stadium to take place. The exempt report will recommend, similarly, that delegated authority is given to the Chief Executive in consultation with the Executive Director of Resources, Director of Finance and Divisional Director of Legal and HR Services to make an offer to OPLC, to enter into negotiations with a view to having a stake in any public organisation which is created, and agree the terms of the investment subject to a number of considerations which the Council will specify.

## **2. Comments of the Legal Officer**

- 2.1. As reported to Members when making decision previously on the Council's input into matters relating to the Stadium there are a number of legal powers which it is considered would enable the Council to approach OPLC with a view to exploring the opportunities there maybe for the Council to be part of a Public solution for the Stadium.
- 2.2. Section 2 Local Government Act 2000 enables the Council to do anything which it considers is likely to achieve improving one or more of economic, social and environmental wellbeing of the Borough – wellbeing powers cannot be used to override any restrictions contained in other relevant legislation. Well-being powers cannot be used to raise money. Section 2 alone may not therefore provide sufficient powers for the Council depending upon how the Council's involvement develops.
- 2.3. However, if the solution is developed by way of a SPV (which is possible ) that would not itself be subject to the restriction on raising money and so it will be possible for the SPV to generate surpluses.
- 2.4. The judgement in the LAML case will need to be considered in exercising the well-being powers. That case confirmed that in exercising these powers a Council must have regard to its Community Strategy and show that there is sufficient nexus between the Strategy and the outcomes it intends to achieve through the transaction it enters into. Relevant links to the community strategy include:
  - The future use of the Olympic Stadium is a key part of securing a lasting legacy from the 2012 Games for Newham and achieving convergence with the rest of London in terms of the opportunities and quality of life enjoyed by Newham's residents.
  - Delivery of a stadium consistent with the proposals would secure a direct significant community benefit for the Borough.
  - The proposals are consistent with the Council's Sustainable Community Strategy, and should provide a valuable resource for delivering the strategy from 2014.
  - In particular it is considered that the proposed use of the Olympic Stadium would contribute to the overall objectives of connecting people through

getting people together through activities from sports to events; active and connected Newham; young Newham in assisting with facilities which schoolchildren can utilise; ambitious Newham through supporting regeneration and ensuring that this benefits local people; healthy Newham through assisting with creating employment opportunities as well as sports opportunities.

- The sustainable community strategy makes specific reference to convergence creating an Olympic legacy for the host Boroughs and the bid if successful would contribute to creating a coherent and attractive city within a city region; reduce worklessness; enhance health and well being and assist in maximising the sports legacy and raise participation levels
- 2.5. Other powers which may be relevant include Section 19 Local Government (Miscellaneous Provisions) Act 1976 - which enables the Council to provide a wide range of recreational facilities. This may include sports facilities, athletics grounds and other facilities for recreation.
  - 2.6. There are also other powers that could be considered and relied upon to support the Council's involvement in the joint bid proposal, including powers relating to investment and (potentially) trading and charging powers under the Local Government Act 2003.
  - 2.7. The Localism Act contains new powers of relevance to this proposal. The new power of general competence may be relevant but that will depend on the timetable for this project and the coming into force of those provisions.
  - 2.8. In accordance with general principles of administrative law, whatever power(s) the Council uses, regard must be had to the risks associated with the transaction and the anticipated benefits must be commensurate to those risks. The Council will need to take this risk/ reward issue fully into account in relation to this proposal.
  - 2.9. At the moment the Council's position on its financial input is not known but as the proposals progress (if OPLC agree to work with the Council in this regard). However the Council considers that there are conditions it would need to be fulfilled in any participation by it to ensure proper protection of the Council's resources and a return on the investment. These will be set out in more detail in the exempt report and are considered commercially sensitive at the moment as the Council would wish to be in the best position in its negotiations with OPLC in this regard.
  - 2.10. The Council's proposal would not constitute State Aid as this would be a public/public proposal. However the Council will keep this (along with its powers under close review) as any proposal develop to ensure the arrangement remain within the statutory framework applicable in terms of state aid and procurement.
  - 2.11. Submitting a proposal to OPLC now would not commit the Council. Any proposal will be subject to contract and to protect the Council it will be made clear to OPLC that the Council will not commit until it is satisfied of the business case and terms of the transaction.