

## **Committee: Cabinet**

**Date: 16<sup>th</sup> January 2012**

Agenda item: 15

Wards: Village/All

### **Subject: Future governance arrangements for open space at former Atkinson Morley Hospital site/Community trust management models for open spaces**

Lead officer: James McGinlay, Head of Sustainable Communities

Lead member: Councillor Andrew Judge

Forward Plan reference number: 1096

Contact officer: Doug Napier, Greenspaces Manager

Appendix 2 is exempt from disclosure on the grounds that it involves the disclosure of exempt information falling within Category 3 of Paragraph 10.4 of Part 4B of the Constitution.

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#### **Reason for Urgency:**

Pursuant to the Access to Information Regulations, the Chair has approved the submission of this item as a matter of urgency in order that further and meaningful discussions can take place in respect of future site access and operational arrangements with existing stakeholders, and to enable proposed legal agreements to be drafted and considered in advance of the site handover.

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#### **Recommendations:**

- A. That Cabinet agrees that Morley Park should be managed, first and foremost, in the public interest and in a transparent and accountable manner.
- B. That Cabinet agrees that the management principles and priorities for the site should include public access, the provision of sport and allied recreational pursuits, and the protection and enhancement of its biodiversity interests.
- C. That Cabinet agrees that, above all, the preferred management model for Morley Park should secure the best value and best facilities and services for the community within the borough and that, in addition to any lawful requirements, the process for selecting such should also be reasonable, fair and transparent.
- D. That Cabinet agrees that, as the future freeholder of the site, the default position for its operational management will be the Council, unless and

until such time as a suitable and acceptable alternative vehicle or service provider is secured.

- E. That Cabinet agrees that there should be ongoing discussions with all relevant and key stakeholder groups who have an interest in Morley Park during its development phase, irrespective of the management model that is ultimately selected.
  - F. That Cabinet confirms that consideration be given to future access to the sports facilities at Morley Park be made available to Ursuline High School as a matter of priority in order to assist the school fulfil their outdoor sport and educational needs. Subject to suitable and mutually agreeable terms being identified, and recognising local social and economic needs, this possibly could be in the form of a lease that covers the relevant components of the site.
  - G. That Cabinet instructs officers to continue to review the details, rules and implementation of the Localism Act 2011 to ensure that the Council does not frustrate the aims of the legislation and, furthermore, to explore the opportunities presented by community trusts in respect of the management of parks and open spaces and to support local groups to achieve this objective where it can be demonstrated that there are clear and sustainable social, environmental and/or financial benefits to be gained from doing so.
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## **1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY**

- 1.1. This report presents a brief summary of some possible models for the future management arrangements for the management of the open space component of the former Atkinson Morley Hospital site, known locally as Morley Park, following the redevelopment of this site and the transfer of the freehold of the land to the London Borough of Merton.
- 1.2. The report also considers the wider opportunities, benefits and risks associated with the transfer of public open space assets to community trusts that is one of the management options for this facility.
- 1.3. A broader report on the potential opportunities available from community trusts is being worked on by officers. This report will examine experience elsewhere and consideration of the opportunities in Merton. The report will be presented to Cabinet by the summer of 2012.

## **2 DETAIL**

- 2.1 The open space component of the site is classified as Metropolitan Open Land (MOL) and comprises approximately 8 hectares in total. The majority of the MOL, specifically that located to the west of the public footpath that bisects the site, will be transferred to the ownership of the Council, who will be required to maintain the land itself or devolve its management to another party (see plan, Appendix 1).
- 2.2 The development, overall, includes both new build residential redevelopment and the conversion and refurbishment of the former hospital building, including the provision of affordable housing.
- 2.3 The proposals for the open space component of the site include the re-laying of the currently redundant former sports pitches within the south-west corner of the site with improved drainage and allied improvements to the quality of the playing surface.
- 2.4 The existing derelict sports pavilion on the site will be demolished and replaced with a brand new pavilion of 403 square metres, comprising: 4 changing rooms, officials changing facilities, indoor teaching space and storage; and externally, cycle and car parking provisions and landscaping.
- 2.5 An existing 2-bed cottage, which is currently in poor condition, will be demolished and re-built at a location slightly further to the south of the pavilion in order that the rental income from it can be used to co-fund the ongoing maintenance of the site.
- 2.6 A publically accessible ecological area containing a pond that will serve as a sustainable urban drainage solution for the new housing, and an area of mixed deciduous woodland (part of a wider Site of Interest for Nature Conservation) are included in the land parcel that is due to be transferred to the Council.
- 2.7 An exercise route (or “trim trail”) is planned for the perimeter of the site and, in addition, there will be improvements to the north-south footpath that form the eastern perimeter of the transferred land. The footpath will be widened to 3m to accommodate both pedestrians and cyclists and be publically adopted.
- 2.8 A dowry sum of £360k has been agreed for future management of the site as a part of a Section 106 Agreement following its transfer.
- 2.9 The redevelopment proposals were granted permission by the Council’s Planning Application Committee on 21 July 2011, subject to some conditions and amendments to the Section 106 agreement.

- 2.10 At the Planning Applications Committee of 21 July 2011 officers indicated that the Council was open to exploring the idea that a community trust could manage the transferred MOL land. The Director of Environment & Regeneration proposed to submit a report to Cabinet on this matter at that time. Herein is that report.

### **3 ALTERNATIVE OPTIONS FOR THE MANAGEMENT OF MORLEY PARK**

- 3.1. The major alternative options for the management of the former Atkinson Morley Hospital site can be summarised follows:

- Direct management of the whole site by the Council's in-house Greenspaces and Leisure teams (Option 1)
- Management of the whole site by a local community trust (Option 2)
- Management of the whole site by a local school (Option 3)
- A combination of the above over separate parcels of the site with, for example a trust managing the site as a whole but with a lease to a school over the playing pitch elements (Option 4)

The relative benefits and disbenefits of each of these options are summarised below.

#### **3.2. Option 1**

The direct management and administration of the site by the Council is in many respects the simplest and least risky scheme of management in that the site would simply slot into the existing parks portfolio and benefit from its existing policies, systems, infrastructure, staffing and their substantial skills and experience of offering community sport and recreational services, managing urban woodlands and sites of ecological value.

This model does not preclude the local community contributing significantly to the ongoing management, nor the scrutiny of that process, as, in general terms, the Council offers greater opportunities for transparency and accountability than many of the alternative models. The establishment of a local advisory committee or a friends group drawn principally from site users and its neighbours is a tried and tested model that operates successfully across the vast majority of the borough's Key Parks and Morley Park has, unquestionably, the credentials to become a member of that elite group of open spaces.

The current business plan for the site produced by Council officers (see Appendix 2 - exempt from disclosure) projects an annual operational deficit during the early years of the site when business is being developed. This deficit would be offset by the dowry sum.

#### **3.3. Option 2**

A community trust would ensure, above all, that local people would contribute directly to the management of the site and, furthermore,

know that their efforts, for example, in fund-raising, will be directly beneficial to the site. Such a management option would be in keeping with the principles of localism enshrined within the new Localism Act 2011.

There would be concerns, however, about any community trust's experience and technical knowledge and, furthermore, capacity in managing a complex open space for the benefit of the whole community. Its trustees would need to encompass a range of suitable skills and expertise, including, ideally, representatives of the Council as landlords. Any trust could, of course, commission or otherwise procure externally any such support services that it requires, including from the Council, much as the Mitcham Common Conservators currently do.

A trust could conceivably run as a very lean enterprise with few or even no staff but the downside to that situation is it could become a significant competitor to the local Council, its landlord, offering as it would some very high quality sports facilities. In general terms, the local authority would not be able to exercise the same influence over the management and decision-making that it enjoys on its own sites, a situation that could conceivably lead to frustrations both amongst Members and the wider public.

The Morley Park Trust, linked directly to the local community action group LUNG (Land for Urban Neighbourhood Greenspace) based in West Wimbledon, has expressed an interest in assuming the management responsibility for the site following its transfer to the local authority.

In the event of a procurement exercise in relation to this site the Council would need to consider the knowledge, experience, skills, capacity and resources of any trust with regards the management of such an important and diverse recreational facility.

#### 3.4. **Option 3**

As a significant proportion of the open space, its utilisation and its annual income concerns the sports pitch area and its allied pavilion, then it follows that the site as a whole could be administered by a single sports or educational establishment.

The nearby Ursuline High School has already expressed a keen interest in utilising this site in the future in order to meet its outdoor education and sporting needs of their students (currently some 1,300 in number), as their own on-site outdoor sports facilities are extremely limited with no access to sports fields on campus at all. The school is a voluntary aided comprehensive secondary school for Roman Catholic girls aged between 11 and 19 years. The school's representatives have expressed an interest in either managing the facility directly or, in forming a partnership with the local authority in order to do so. The school has expressed interest

in leasing the playing fields and pavilion from the Council for a period of 10 years.

There may be additional sports or educational organisations that may be interested in the opportunities that Morley Park presents but clearly the local authority has a duty to support a significant local community secondary school with a clear need for high quality sports facilities within a convenient travelling distance of its premises. Morley Park would fulfil that need, enabling the school to offer a wide range of sports opportunities to its pupils throughout the academic year and presenting opportunities for other schools and clubs at other times, principally at weekends and in the evening when community demands are generally at their peak.

3.5. **Option 4**

Given that this site will eventually support a number of different land uses and a diversity of recreational activities, both formal and informal, then there is potential for a partnership arrangement that might involve a combination of the above options, perhaps with a degree of devolvement of responsibilities along the lines of the primary interests and skill-sets of the groups and organisations concerned. For example, the Council (or a trust) could retain overall responsibility for the management of the site but grant a lease to a local school, such as Ursuline High, to operate the playing pitches and pavilion.

**4 COMMUNITY TRUSTS**

- 4.1 Community trust models for the management of local leisure and recreational services are an alternative, outsourcing model to the traditional and direct management service delivery model adopted by local authorities. Consideration of such a model is very often allied to budget reduction objectives.
- 4.2 There is no single model for a community trust, but where, for example, a local authority is seeking to outsource its services in order to make savings and maximise the use of its assets then a charitable trust offers some taxation benefits and potential access to funding streams that are not otherwise available.
- 4.3 Trusts are often registered charities and, if so, are entirely independent of governmental or any external control. The Charity Commission oversees their operations and has wide powers.
- 4.4 Trusts require a board of trustees to direct their activities and whilst a council representative could become a trustee, local authority members would probably need to be in a minority on the board for the community trust to be formally recognised as such.

- 4.5 Cost savings cannot be guaranteed from the formation of a community trust and some existing practitioners have specifically advised that cost saving objectives alone are not necessarily a good driver for the adoption of such an approach “*don’t form a trust simply to save money*” (Wigan Leisure Services Trust).
- 4.6 Some trusts have separate but allied trading arms to undertake specific activities or services that cannot be performed by the charitable element.
- 4.7 In addition to the range of taxation and other financial benefits, one of the principal benefits of a trust is the willingness for community volunteers to invest effort and commitment to its operations that ordinarily it would not do for a local authority controlled service.
- 4.8 The taxation benefits could include:
- Exemptions on income from investments
  - Exemptions from tax on profits
  - Capital gains tax
  - Rate relief on premises
- 4.9 There are some important considerations for a local authority in seeking to transfer assets, such as parks and open spaces, to a charitable trust. These include the following:
- The asset is no longer controlled by the council; that power is vested with the trustees of the trust
  - Trustees will generally be independent of the local authority and will not necessarily act in accordance with council policies or strategies, nor members’ wishes; the trust will operate in accordance with the trust deed above all; local authority members will be in a minority if they are represented at all
  - Members and the general public will be less involved in the decision-making processes regarding the asset or assets that are transferred
- 4.10 Over and above these governance issues, there are other key risks associated with the transfer of assets to a community trust management model, including:
- The capacity and competency of the new organisation to effectively manage the asset
  - Insufficient funding to operate the asset at a satisfactory level or quality of service in the short (revenue) and/or medium term to long term (capital investment)

- The asset is not utilised in the public interest or access to it is not inclusive; the management organisation is an unrepresentative and unaccountable minority
- Smaller organisations may, through a lack of resources, rely on the endeavours of volunteers, rather than dedicated professional officers; volunteers will need to demonstrate the required level of commitment and possess (or acquire) suitable skills
- The strategic aims or objectives of the local authority could be undermined by the fragmentation of its asset base; the new organisation could become a competitor in the market place
- The relative roles and responsibilities of the local authority (the landlord) and the community organisation could become blurred and create confusion both between the respective parties and the customers/general public and a source of tension or even friction

4.11 There are some critical questions to be addressed in considering the possible transfer of an asset or assets to a community trust:

- Will the transfer result in a significant reduction in the overall cost of running the asset/service to the Council?
- Does the trust have sufficient support, skills, including business skills, and resources to operate the asset effectively and inclusively?
- What is the scope and range of the services that the trust will operate? Is there sufficient scale to achieve efficiencies?
- What is the timescale for establishing the trust and the takeover of the asset(s)?
- What are the expectations and requirements for ongoing local authority support? Is financial support required and if so, over what period?
- What assets are being transferred and what condition are they currently in? Who is responsible for short term and long-term maintenance?
- What are the implications for the local authority in terms of:
  - Loss of political control over the service or asset
  - Reduced revenue or loss of capital receipts?
  - Reduced economies of scale?
  - Developing cross-cutting services?
  - Transfer of staff, TUPE, etc?

- What happens if the new organisation fails? Will the local authority be obliged to step in and re-offer the service and, if so, at what cost?

These matters will all need to be thoroughly explored prior to the transfer of any park open space asset to a community trust.

## **5 CONSULTATION UNDERTAKEN OR PROPOSED**

- 5.1 The concept of a community trust or trusts model for the management of the Council's existing parks and open spaces was discussed with the members of the Parks Friends Forum at their meeting of 9th February 2011, and subsequently at one-to-one meetings with the individual friends groups, ward members and the Cabinet Member for Environmental Sustainability and Regeneration and the Greenspaces Manager between March and July 2011.
- 5.2 None of the groups expressed an interest in either a community trust model for the management of the Borough's parks portfolio as a whole, or the management of their own local park.
- 5.3 The Council has every intention to continue to discuss the development and management of the site with all relevant organisations in the run to its handover and to engage with site stakeholders and users beyond that, irrespective of the operational arrangements that it may adopt.

## **6 CONCLUSIONS**

- The formal establishment of Morley Park as an accessible public open space represents an important opportunity to improve both the formal and informal outdoor recreational provision in the West Wimbledon area. The recreational offer there will, above all, comprise new, high quality sports and educational facilities and enable the proactive enhancement and protection of local biodiversity interests.
- In general terms, there appears to be relatively little interest within the local community at the current time in a community trust model for the management of local parks and open spaces. The Morley Park Trust is the one exception to this situation. However, the Council cannot make any specific commitment to the MPT at this point in time and not least because a community trust model is one of several possible management options for the site, options that need also to seriously consider the opportunity that Morley Park presents in respect of the sport and physical activity needs of Ursuline High School.
- Any community trust will be required to demonstrate to the local authority's satisfaction its competency, capacity, resources, governance arrangements and its objectives for managing important recreational land assets.
- The restoration of the sports pitches and on-site pavilion at Morley Park represent an excellent opportunity to address the sports and

educational needs of one of the borough's most significant secondary schools: Ursuline High School. This school has very limited outdoor sports provision currently and in supporting their needs the local authority would be securing midweek utilisation and revenue stream to enhance the enjoyment and viability operation of the site. The school could either become a regular but casual hirer of the venue or become more formally part of the site operation via a lease over the whole or part of the site, or as part of a management trust. At this point in time, both the school and the local authority are considering a lease arrangement to secure the school's utilisation of the playing field elements of the site.

- The restored sports facilities at Morley Park, once completed and handed over to the Council, will be amongst the highest quality in the borough and therefore the local authority needs to consider its future in the context of the Localism Act whose details are still to be finalised in the making of regulations, its own strategic objectives for sport and sports provision and the new park's relationship and impact upon its own in-house leisure and recreational services. The Council's professional in-house leisure team has significant expertise, systems and resources and, and furthermore, a good reputation and track record in the management of sports facilities in the borough.
- Whereas a provisional business model produced by Council officers suggests that the site will operate at annual deficit during its early years, with appropriate marketing and promotion the site could, in the medium term, generate a small annual surplus as business is developed and the profile of the site is raised

## **7 TIMETABLE**

7.1 This report has already been considered by CMT and agreed at the Leader's Strategy Group prior to being considered by Cabinet.

7.2

The current timetable for the development as a whole means that the sports facilities are not envisaged to be completed before September 2013, in line with the developer's programme for the construction of the site, and therefore there is still sufficient time to consider management and administration matters in greater detail.

7.3 Interim management arrangements could, potentially, be adopted immediately post-handover of the site, if necessary, with the Council's own Greenspaces team strong candidates for such a role.

## **8 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS**

8.1 The overall objective for this site is financial sustainability in the short to medium term. This is considered to be achievable, albeit that the financial safety net offered by the dowry may be required in the early years based upon officers assessments of the current market, existing

interest in the site and the anticipated revenue costs. The general approach will be to preserve, insofar as possible, the dowry fund and to operate within the window of the interest accrued from its investment to support the site's annual support costs. The financial projections for the first 6 operational years are outlined in Appendix 2 - exempt from disclosure.

- 8.2 The site enjoys the benefit of a substantial dowry of £360k as a financial cushion and also will enjoy the benefit of revenue income from the on-site cottage and from sports and other ground and pavilion lettings.
- 8.3 A brand new pavilion of some 403 square metres and a two-bedroom cottage will be the most significant additional assets acquired on a freehold basis by the local authority arising from this development.

## **9 LEGAL AND STATUTORY IMPLICATIONS**

### **9.1 Disposal of land**

- (i) Pursuant to S.123 of the Local Government Act 1972 the Council has the power to dispose of land without the consent of the Secretary of State provided that such disposal is at the best consideration reasonably obtainable.
- (ii) There is no assumption in preparing this report that any consideration would be paid by any trust for the land and if this is the case then the following provision can be considered.
- (iii) Pursuant to the Local Government Act 197: General Disposal Consent (England) 2003 a local authority can dispose of land by transfer or freehold or by lease at less than market value provided that:
  - a. the local authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of the following objects in respect of the whole or any part of its area, or all or any persons resident or present in its area;
    - A. the promotion or improvement of economic well-being;
    - B. the promotion or improvement of social well-being;
    - C. the promotion or improvement of environmental well-being; and
  - b. the difference between the unrestricted value of the land to be disposed of and the consideration for the

disposal does not exceed £2,000,000 (two million pounds).

- (iv) Where land is held as public open space a local authority are required under Section .123 (2A) of the Local Government Act 1972 to advertise their intentions to dispose of the land for two consecutive weeks in a newspaper circulating in the area in which the land is situated, and consider any objections to the proposed disposal which may be made to them. For the purposes of this section a disposal would include the transfer of the freehold or granting a lease for a period exceeding seven years.
- (v) It should also be noted that the conditions attaching to the payment by the developer of £360,000 to the Council is subject to terms and conditions contained in the S.106 agreement and that 50% of the said sum only becomes payable when occupation of 40 residential units has taken place.
- (vi) The land, the subject of this report, will be transferred to the Council subject to all rights covenants easements and other matters contained or referred to in the registered title of the land at the Land Registry together with any over-riding interests, which the Council's Legal Services will investigate when the transfer takes place.

## 9.2 Localism Act

9.2.1 Under The Localism Act, local voluntary and community groups, charities, parish councils and council employees are given the right to express an interest in running or assisting in the running of a service provide by a Council in the exercise of its functions. This is called a Community Right to Challenge. The Council must consider the challenge and if the challenge is accepted this triggers a procurement exercise in which the challenging organisation can make this bid.

9.2.2 However, the provisions concerning the Right to Challenge are not in force at the time of this report and the Act provides that these provisions will come into force by way of Regulation. The date of when these Regulations will be made is not known at this time and so the actual details with regards to these provisions, including the specific grounds for rejection, are not known.

## **10 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS**

10.1 A full equalities impact assessment will be undertaken on any specific proposal as it is developed.

10.2 Any proposal will need to be inclusive insofar as possible.

## **11 CRIME AND DISORDER IMPLICATIONS**

11.1 There are no specific crime and disorder implications arising from this proposal.

## **12 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS**

12.1 Amongst the principal risks allied to any proposed option to manage this site is its ongoing financial viability, including the risk that the site could potentially become an additional financial burden upon the local authority. These might include a failure to secure anticipated levels of income, or, under a community trust model, the failure of that trust, and pressure thereupon for the Council to step in to manage the facility.

12.2 Under a community trust management model, the local authority will need ensure that the trust is sufficiently competent to manage complex open space and their allied infrastructure and assets including technical, health and safety, insurance, and financial matters, amongst others. Sports pavilions, public toilets, paddling pools and children's playgrounds, for example, present some very specific and also some general risk and health and safety challenges. The Council will need to be satisfied that any trust either has, or has access to, systems or professional expertise to be able to deal adequately with those matters.

## **13 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT**

- Site Plan
- Operational Financial Projections. This appendix is exempt from disclosure on the grounds that it involves the disclosure of exempt information falling within Category 3 of Paragraph 10.4 of Part 4B of the Constitution.

## **14 BACKGROUND PAPERS**

14.1 Minutes of Planning Application Committee, 21 July 2011

14.2 *Community Trusts*, Report to Corporate Management Team, 4<sup>th</sup> January 2011

**APPENDIX 1: SITE PLAN (SPORTS PITCHES & ENVIRONS)**



**APPENDIX 2:**

Appendix 2 is exempt from disclosure on the grounds that it involves the disclosure of exempt information falling within Category 3 of Paragraph 10.4 of Part 4B of the Constitution.