

Committee: Cabinet

Date: 23 March 2020

Wards: West Barnes

Exempt or confidential report

The following paragraph of Part 4b Section 10 of the constitution applies in respect of information given in Appendix 3 and 4 comprising Confidential Appendix of this report and it is therefore exempt from publication. Members and officers are advised not to disclose the contents of this report:

Information relating to any individual

Information relating to the financial or business affairs of any particular person (including the Authority holding that information).

Subject: Sir Joseph Hood Memorial Playing Fields, Marina Avenue, Morden

To consider objections received under s123(2A) of the Local Government Act 1972 in respect of the Council's proposal to grant a 25 year lease at Sir Joseph Hood Memorial Playing Fields, Marina Avenue, Morden for a Telecoms Mast and other Electronic Communications Apparatus to be placed on part of the Park comprising the Site .

Lead officer: Chris Lee, Director of Environment and Regeneration

Lead member: Mark Allison, Deputy Leader and Cabinet Member for Finance and Caroline Cooper Marbiah, Cabinet Member for Commerce, Leisure and Culture.

Forward Plan reference number:

Contact officer: Howard Joy

Recommendations:

1. To consider objections raised in response to the Council's advertisement under section 123 (2A) of the Local Government Act 1972 of its intention to grant a lease at Sir Joseph Hood Memorial Playing Field.
2. To authorise the Director of Environment and Regeneration to authorise completion of the lease on the main terms identified within the confidential appendix to this report under his delegated authority.]

1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 Part of Sir Joseph Hood Memorial Playing Field comprising an area of 46.48 square metres or 500 square feet has been identified as a location for a Telecommunications mast and other electronic communications equipment initially providing 2G, 3G and 4G service plus an area of 6.76 square metres or 73 square feet for a cabinet housing EMC (remote testing) equipment and, subject to authority, terms for a lease of 25 years have been agreed. These main terms are contained within the confidential appendix to this report.
- 1.2 As Sir Joseph Hood Memorial Playing Field is Public Open Space the proposed disposal of the property or any part of it, whether the freehold or leasehold, must be advertised under section 123(2A) of the Local Government Act 1972 and any objections considered before the lease can be granted.
- 1.3 The proposed disposal has been advertised as the legislation requires. 24 objections were received and are summarised in Appendix 2 plus a petition of 77 signatures attached as Appendix 3. The purpose of this report is for Cabinet to consider the objections and to decide whether to support the proposed granting of the lease and if so to allow the Director of Environment and Regeneration to use his delegated authority to agree terms and complete the lease.

2. DETAILS

- 2.1 Sir Joseph Hood Memorial Playing Field comprises a Public Open Space of approximately 130,373 Square Metres.
- 2.2 Shared Access are an independent owner and operator of wireless communications infrastructure and with Everything Everywhere (EE Ltd) identified Sir Joseph Hood Memorial Playing Field as a site from which the telecommunications service to rail users could be improved in accordance with Government planning policy.
- 2.3 The specific location that has been identified (Appendix 1) is considered to minimise the impact of the installation on the playing field ground and its users while enabling the mast to provide an enhanced service to the users of the railway and local residents.
- 2.4 Independent of the proposed disposal and consideration of objections that are the subjects of this report prior approval under planning legislation was granted on 26th June 2019 to the siting and erection of a 20m monopole to support 3no. Telecommunications antennas for use by EE Ltd, together with the installation of dishes and ground based equipment cabinets to

provide 2G, 3G and 4G mobile electronic communication services from the installation.

- 2.5 Terms for a lease have been agreed subject to formal authority with Shared Access as listed in the Confidential Appendix 4 but section 123 (2A) of The Local Government Act 1972 requires the proposed disposal be advertised and any objections considered before any disposal of Public Open Space is completed (see paragraphs 4.1, 4.2 and 4.3 below).
- 2.6 Twenty four objections plus a petition with 77 signatures were received and are summarised in Appendix 2 and attached as Appendix 3 (exempt). As can be seen it is considered that none of the objections provide reason to abandon the proposed lease to Shared Access.
- 2.7 The Council must be able to show that they acted reasonably and that the decision it came to is fair and the process transparent and evidenced in writing. If the Council concludes that the objections would not prevent the proposed disposal to Shared Access, then the disposal by lease may proceed subject to the provision of formal authority.
- 2.8 It must be understood that the Government has awarded the telecommunications providers' significant powers to close the gaps in provision. This is explained in more detail in paragraph 7.4. Therefore, as explained in paragraph 3.3 if the council chose not to complete a lease with Shared Access on the terms contained within Confidential Appendix 4 the provider (EE Ltd) could apply to the court for an order compelling the Council to complete a Code Agreement to install and operate the apparatus.

3. ALTERNATIVE OPTIONS

- 3.1 Do nothing and allow the proposed tenant and operator to find an alternative suitable site within the Borough. It should be noted that the site the subject of this report was identified by the proposed tenant and operator after an exhaustive search so this option might not conclude the matter.
- 3.2 Seek to re site on other land holdings of the council within the Borough provided that any suitable sites could be identified. The site the subject of this report was identified by the proposed tenant and operator after an exhaustive search so this option is not realistic.
- 3.3 The Operator (EE Ltd) could apply directly to the Upper Tribunal (Lands Chamber) for a Code Agreement and thereby remove the need for lease from the council. The consideration and compensation payable under the

Code may be less favourable than for the grant of a lease on the terms negotiated.

4. CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1 The Council has in accordance with the terms of section 123(2A) of the Local Government Act 1972 published notice of its intention to dispose specifying the land comprising the Site with the access and power routes shown by reference to the relevant excerpts of the Plans.
- 4.2 The notice has been advertised for two consecutive weeks in a newspaper circulating in the area in which the land is situated, in accordance with the statutory provisions. The Council advertised in the Wimbledon Times (on 30th August and 6th September respectively) inviting objections before 4th October 2019 allowing a period for objections in excess of a month from first advertising. The Council also advertised the notice in the Kingston Comet on the 29th August and the 5th September 2019 respectively as both circulations are available to local residents.
- 4.3 Shared Access and the Operator also consulted locally as part of their prior approvals application as confirmed within the pre planning statement prepared by Pegasus Group on behalf of Shared Access and EE Ltd and dated March 2019.

5. TIMETABLE

- 5.1 Should cabinet agree that the grant of a lease to Shared Access of the area identified in Appendix 1 and as advertised under section 123(A) Local Government Act 1972 may proceed then authority will be sought to the terms of the disposal and if secured the lease can be completed.

6. FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1 Property implications are contained within the report.

Finance implications

- 6.2 Total premium received from the disposal of shared access rights will be considered as capital receipts for accounting. This will not be immediately available for the funding purposes however; this will be released 1/25th each year of lease under capital financing and finance regulations.
- 6.3 If the lease is not granted then the premium for the lease and additional fees for additional operators over and above EE Ltd sharing the mast will be a lost opportunity for income

- 6.4 As mentioned in the paragraph 3.3, should the operator successfully apply to the court under code rights then an income received may not be at the same level as identified within the Confidential Appendix 4.

7. LEGAL AND STATUTORY IMPLICATIONS

- 7.1 The Council has power to dispose of its land by virtue of S.123 of the Local Government Act 1972 (“the Act”), subject to S.123(2) which stipulates that a council shall not dispose of land for a consideration less than the best that can reasonably be obtained.
- 7.2. Under section 123(2A) of the Act where a Local Authority intends to dispose of land held as public open space, they must first advertise their intention to do so in a newspaper circulating in the area where the land is situated and consider the objections received to the proposed disposal which may be made to them.
- 7.3 The Electronic Communications Code, which came into force on 28 December 2017, gives the providers of these networks rights to install and maintain apparatus in, over and under land, known as code rights. Should the proposed lease disposal not proceed, the operator may still be able to operate from the land by invoking these code rights.
- 7.4 A restrictive covenant on the title requires the land to be used for the purposes of playing fields and a recreation ground. Legal issues relating to the historic restrictive covenant are as identified in Confidential Appendix 4.

8. HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

The objectors have not raised any concerns on this front and officers are of the view that Community Cohesion and the continued use by all age groups for the playing of matches and sports will not be affected.

9 CRIME AND DISORDER IMPLICATIONS

9.1 None

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

10.1 The objections do not raise any issues in this regard

10.2 It should be noted that the Operator has complied with International Commission on Non-Iodizing Radiation Protection and has in force a certificate specific to the Site were the lease to be granted (pre planning statement prepared by Pegasus contains a copy of the ICNIRP Certificate within its appendices). Planning policy states that applications must be determined on planning grounds and should not question the need for the telecommunications system or determine health safeguards if the proposal meets International Commission Guidelines for public exposure

10.3 Shared Access and the operator are responsible for all risk with regard to the Site and for compliance with laws and guidelines in respect to the installation use and maintenance of the mast and Apparatus.

11 APPENDICES – the following documents are to be published with this report and form part of the report

APPENDIX 1 –LOCATION PLAN. SHOWING THE SITE DIMENSIONS AND APPARATUS AND THE APPROXIMATE POWER AND ACCESS ROUTES

APPENDIX 2. SCHEDULE OF THE OBJECTIONS.

APPENDIX 3 THE PETITION (EXEMPT)

APPENDIX 4- CONFIDENTIAL

12 BACKGROUND PAPERS

PRE-PLANNING STATEMENT PREPARED BY PEGASUS FOR SHARED ACCESS AND EE LTD DATED MAY 2019