

APPENDIX C

WAVERLEY BOROUGH COUNCIL

EXECUTIVE – 13 APRIL 2010

Title:

GODALMING LEISURE CENTRE

[Portfolio Holders: Cllrs Mike Band and Roger Steel]

[Wards Affected: All]

Note pursuant to Section 100B(5) of the Local Government Act 1972

An Annexe to this report contains exempt information by virtue of which the public is likely to be excluded during the item to which the report relates, as specified in paragraph 3 of the revised Part I of Schedule 12A to the Local Government Act 1972, namely:-

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

Summary and purpose:

This report updates Members on the current position of the new Godalming Leisure Centre project and recommends a change to the location of the tennis court site option. The report seeks Members' approval for the evaluation process for the tender and site options for the new Godalming Leisure Centre, and for the shortlist of contractor teams to invite to tender. The report also seeks a waiver to a technicality in Contract Procedure Rules (CPRs) to enable the unusual nature of the contract to be taken into account in the evaluation.

How this report relates to the Council's Corporate Priorities:

Improving leisure opportunities is one of the Council's key priorities and the refurbishment of the leisure centres supports the achievement of this aim.

Equality and Diversity Implications:

Contractors' policies across a range of subjects, including equality, are considered as part of the evaluation.

Resource/Value for Money implications:

Evaluation of the tenders must have regard to the overall value-for-money achieved by this major project. A waiver to CPRs is necessary to enable the design and build nature of the contract to be taken into account.

Legal Implications:

Evaluation of the tenders needs to be undertaken in a clear, consistent and evidenced manner.

Introduction

1. In December 2009, the Council agreed the following in relation to the tendering of the contract to build a new leisure centre at Godalming:
 - both the current leisure centre site and the adjacent tennis court site be short-listed as the preferred options for the new leisure centre location;
 - the site selection criteria, which would need to take careful account of the capital construction costs, revenue implications, social impact, planning considerations and constraints, and public opinion, be agreed by the Executive at its meeting in February 2010, in advance of construction tenders being invited;
 - the Deputy Chief Executive, in conjunction with the Finance and Leisure Portfolio Holders, hold discussions with the Godalming Lawn Tennis Club to enable potential development of the tennis court site, subject to these negotiations being concluded by 31st January 2010 and the outcome being reported to the Executive in February 2010.
2. The tender documents for the design and build contract for the new Godalming leisure centre will be dispatched in July 2010. The completed tenders are then due back in Sept 2010. They must be evaluated according to criteria that are agreed in advance, including a consistent scoring methodology.
3. Whereas CPRs permit the award of a contract to the tender offering the best value solution, they do not lend themselves to consideration of tenders where there is an element of variability and discretion based on alternative design proposals. A waiver is therefore sought.

Update on site-related issues

4. The alternative site option to the existing leisure centre site that the Council approved is the current hard-court area occupied by the Godalming Lawn Tennis Club under a lease from the Council. This site is also subject to restrictions enforced by the Fields In Trust organisation who oversee the requirements of the King George 5th covenant. Officers have been working with the relevant parties to seek to clarify the procedure to enable this alternative option to be pursued.
5. The primary focus has been to negotiate and reach agreement with the two key stakeholders, Godalming Lawn Tennis Club and Fields In Trust, to allow the option of building the new leisure centre on the adjacent tennis courts to be considered. General agreement, subject to Council, was achieved within the approved timescale of 31st January 2010 although the necessary legal issues have taken slightly longer but are now agreed.

Summary of officer negotiations with Godalming Lawn Tennis Club

6. Several meetings have taken place between Officers and the Board of Trustees for Godalming Lawn Tennis Club and the proposal for relocating the new leisure centre to the tennis court site was presented at the Club's AGM.

The members unanimously agreed to accept the proposal to allow the hard courts to be considered as a site for the new leisure centre, as long as the Club could continue to operate while the new leisure centre was being built and certain conditions were adhered to. The Club's conditions, which it stated as being necessary to allow the Council to break its lease agreement and allow building to commence on the hard court Tennis Club Site, are set out in Annexe 1. It must be noted that meeting these conditions would likely to impact of the project timetable and could delay the commencement of the leisure centre construction by a few months.

Summary of officer negotiations with Fields in Trust

7. The Board of Trustees only meet four times a year and officers are awaiting the decision from the Board meeting of the 10th March 2010. However, we have been negotiating with their appointed consultant who has prepared the report for the Trustees to consider. In summary to allow the new leisure centre to be built on King George 5th land, Fields in Trust would require:
 - a. an amount of compensatory land approximately 3 – 4 times as large. (This can be accommodated on Broadwater Park and we have agreed a suitable site).
 - b. that the covenant should be extended to cover the existing site of the leisure centre. (Officers feel this is not acceptable as the compensatory land agreement should be sufficient to fulfil the obligations placed on the council by the King George 5th covenant).
8. Officers await the Board's decision but need to make the Council aware that further discussions, subsequent to the Fields In Trust Board Meeting, will need to take place before agreement can be reached. If agreement cannot be reached on terms that officers, in conjunction with the leisure and finance portfolio holders, are satisfied with, officers will report back to Members to consider the options.

Proposed Alternative Tennis Club Site Option

9. The project management team comprises of Waverley BC, Capita Symonds, DC Leisure Management, Press & Starkey, Mechanical and Electrical experts, Construction Engineers and Architects. At its first meeting, another potential Tennis Court site for the new leisure centre was suggested by DC Leisure. The proposal put forward for consideration was the grass courts, owner by Waverley, next to the Godalming Lawn Tennis Club's hard courts. Annexe 2 is an aerial view of the site showing an indicative building plan for a new leisure centre. This site had originally been discounted as a site because the revenue costs initially indicated by DC Leisure Management had made it less economic than the hard court option. DC Leisure Management have now had time to reconsider this option and have confirmed that the ongoing management fee would be equal to that proposed for the hard court site option.

10. Balancing the advantages and disadvantages identified below, officers consider that the grass court site is preferable to the hard court site as the tennis court option. A decision has to be made between these two options, as an alternative to the current site, as it would not be viable to ask contractors to look at three potential site options for the new centre.

Advantages of building on the Grass Courts as opposed to the Hard Courts:

- Commencement of construction on the new leisure centre will be quicker as there is no requirement to provide facilities for the tennis club first
- No disruption to Godalming Lawn Tennis Club
- Lower capital costs as there is no requirement to build new courts and pavilion for the tennis club (The Max Associates report considered by Members in December 2009 indicated this cost to be approximately £350,000)
- Nearer Summers Road so there will be a greater visual impact and therefore a higher profile
- Floodlit tennis courts will not be moved nearer to residents of Summers Road
- Equal management fee.
- More accessible by foot and bicycle
- Service connections could be easier

Disadvantages of building on the Grass Courts as opposed to the Hard Courts:

- Nearer to Summers Road so may generate greater number of complaints
- Noise during the construction phase for residents
- Proximity to junction will require work to access route from Summers Road
- Will impact upon Farncombe Wanderers Cricket Club; their Clubhouse will need to be relocated and Waverley will need to seek their agreement as they have a lease (There is likely to be a capital cost but it is not considered to be significant)
- Godalming Lawn Tennis Club may feel aggrieved, as they have worked hard to reach agreement to allow for the new leisure centre to be built on their site, the hard courts. However, the agreement is subject to a number of conditions.

11. Both of these options, the hard courts and the grass courts, will still require approval from Fields in Trust who oversee the requirements of the King George 5th covenant.

Response to OJEU Tender notice – Shortlisting of contractors

12. In response to an advertisement placed in the Official Journal of the European Union (OJEU), 38 expressions of interest were received from companies regarding this design and build contract. Of these, 11 completed and returned the preliminary qualifying questionnaire (PQQ). This PQQ was then scored by a team composed of Waverley officers, our managing agents, Press and Starkey and our advisors, Capita Symonds. The scoring was undertaken against a pre-agreed set of parameters using a weighted matrix, prepared in accordance with Waverley's Contract Procedure Rules. The assessment was

supplemented by a financial evaluation of the companies. The pre-agreed scoring framework was weighted to advantage companies with a background and experience of bringing contracts in on time and within budget, of working with leisure management companies, and of working on leisure centre construction or refurbishment.

13. Advice from Press and Starkey and from Capita Symonds was to invite no more than five companies to tender. Changes to OJEU rules for projects of this nature and scale require the Council to invite a minimum of five providing that at least five meet the qualifying criteria. The 5 companies scoring the highest number of points in the weighted PQQ matrix evaluation are set out in (Exempt) Annexe 3 to this report. Officers propose that these five companies be invited to tender for the new Godalming Leisure Centre design and build contract. After officers have held clarification meetings with these contractors, if one or more of these five withdraw their interest prior to being invited to tender, it is proposed that officers invite the next highest ranked contractor on the list. Officers will continue this approach up to the date when tenders are invited.

Tender Evaluation process and criteria

14. The two site options makes the evaluation of the proposals more complicated than a standard tender evaluation. The site evaluation is considered in the next section of this report. It is proposed to undertake the evaluation in three stages, or gateways, and a flowchart setting out the process is included at Annexe 4. In summary the key stages and estimated dates are as follows:

Gateway 1 - Pre-qualification

Stage 1 - Pre-qualification questionnaires received following OJEU notice (March 2010)

Stage 2 - Shortlist of tenders prepared based on financial strength, relevant experience and technical ability (March 2010)

Stage 3 - Shortlist of up to five approved by Council (April 2010)

Stage 4 - Officers hold clarification meetings with shortlisted contractors

Stage 5 - Invite to tender (May 2010)

Gateway 2 - Tender evaluation

Stage 1 - Receive tenders from up to 5 contractor teams, each submitting 2 design proposals and tendered sums, one for the current site and one for the preferred tennis court site (August 2010)

Stage 2 - Evaluate tenders based on approved matrix to identify the best tender for each site (Oct 2010)

Gateway 3 - Site evaluation and contract award

Stage 1 - Determine best overall solution by evaluating best tender for each site against pre-agreed financial and non-financial factors (Oct 2010)

Stage 2 - Report to Members on best contractor, best site choice and overall affordability (Nov 2010)

Stage 3 - Contract award (Dec 2010)

15. Members are asked to consider and approve the tender evaluation matrix which is attached at Annexe 5. This stage of the evaluation will determine the most advantageous contractor proposals for each site. The tenders for each site, current and tennis court, will be evaluated separately as they are likely to have a different cost base and design characteristics. The matrix balances the financial and non-financial considerations that are important to Waverley in this important project. The process will also involve interviews with the tenderers and only after the interviews are held can the scoring be finalised.

Site Evaluation process and criteria

16. The evaluation between the current site and the tennis court site, whether hard court or grass court site, is a critical stage and a range of factors will need to be taken into account. One of the most significant issues is the potential cost differential that was identified in the report to Members in December 2009. The site evaluation process must enable the Council to balance this against non-financial factors such as service continuity and potential planning considerations.
17. As the flowchart at Annexe 4 shows, it is proposed that the top ranked tender submissions for each of the sites are evaluated against a further pre-approved matrix to secure the most advantageous outcome for the Council, the leisure users and for Godalming residents. Members are asked to consider and approve the site evaluation matrix which is attached at Annexe 6.

Evaluation team

18. The evaluation team, it is proposed, is divided into two sections as follows:

Strategic team

Portfolio Holder (finance)

Portfolio Holder (leisure)

Chief Executive (Mary Orton)

Deputy Chief Executive (Paul Wenham)

Strategic Director (Steve Thwaites)

Technical team

Strategic Director (Steve Thwaites)

Head of Leisure (Kelvin Mills)

Head of Finance and Performance (Graeme Clark)

Head of Internal Audit (Mark Hill)

Senior Accountant (Malcolm Bookham)

Assistant Sports Manager (Tamsin McLeod)

Capita Symonds (Matt Fyffe)

Press and Starkey (Rob Baker)

DC Leisure (Peter Kirkham)

Green consultant

19. In addition to the formal members of the team, the advice of other specialist officers and advisors will be sought as appropriate.

Waiver to Contract Procedure Rules for Tender Evaluation

20. The tender is on a design and build basis. This will allow the tenderers to develop their own solutions to the works, and this element of flexibility means that there is no fixed point of reference against which the price can be assessed.
21. Contract Procedure Rules (CPRs) are written in such a way that, with the best value solution (which is to be applied in this instance), there is a two-stage process. The first stage is to assess the quality or non-financial aspects and determine which tenders meet with the Council's pre-determined quality standard and eliminate those that do not reach that standard. The second stage is to award the contract on a lowest-price basis.
22. The traditional approach is based around a situation where the design of the building has been agreed in advance and consequently there is a defined schedule of works or Bill of Quantities. In this instance there is no such schedule or Bill as tenderers are being asked to provide proposals that involve both an element of design and the costs of construction, and as the assessment will involve comparison against the Council's stated objectives for the project.
23. Therefore a waiver of CPRs under CPR 3.1 to allow price evaluation to be considered alongside quality and time criteria to identify the overall best value solution is considered necessary because the proposed method of tendering and tender assessment cannot conform to the model indicated in CPRs. The proposed methodology would not compromise the ability to achieve value for money, but would allow the overall qualities of tenders to be assessed, taking account of the overall evaluation rather than evaluating quality separately to price. The recommendation at the end of this report therefore recommends a waiver of CPRs to allow such an approach to be taken.
24. Quality and price evaluations will take equal status i.e. 50/50. The financial status of each tenderer was undertaken at the application stage and will be checked again during the evaluation of tenders.

Financial Implications

25. Clearly the new Godalming Leisure Centre has to be affordable. The Council has approved funding based on the estimated total costs of delivering a new centre on the current site. Normal practice is that, if tenders received are significantly above the budgeted figures, officers present options to Members to decide how to move forward. Specifically for the Godalming leisure centre project, if the total cost of the preferred tennis court site proposal is significantly above the cost of the current site tenders, regardless of the outcome of the evaluation process described above, Members will need to consider its affordability. This is important as, with finite resources, the decision to proceed could impact on other key projects and services.

26. The site evaluation matrix at Annexe 6 takes account of financial and non-financial factors and agreeing this now will help Members make the decision when the tenders have been received. Officers will work with the Finance Portfolio Holder to develop an outline financing proposal for this project, in the context of Waverley's overall financial position.

Risk

27. Any major procurement, particularly one which involves a large building project, has risks associated with it. Officers have identified and analysed these risks throughout the project. When officers report to Members to seek approval to award the contract later in the year, a full risk analysis will be presented.

Recommendation

It is recommended that:

1. the negotiated position with the Tennis Club and Fields in Trust be noted and that the Council reaffirm its requirement to tender on the basis of the current site and a tennis court site;
2. Council change the location of its tennis court site option from the current hard court site to the adjacent grass court site as indicated in Annexe 2;
3. the Council endorse the proposed 5 contractors to be invited to tender for the design and build contract for the new Godalming Leisure Centre, as listed in (Exempt) Annexe 3;
4. in the event that one or more of the 5 contractors referred to in recommendation 3 above withdraw prior to being invited to tender, then the Deputy Chief Executive in conjunction with the Finance and Leisure Portfolio Holders be given delegated authority to invite the next highest ranked contractor(s) to tender;
5. the approach and matrix for evaluation of the tenders as set out in this report be approved;
6. the approach and matrix for the evaluation of the site as set out in this report be approved;
7. the Deputy Chief Executive and Finance Portfolio Holder develop an outline financing proposal for this capital project;
8. the officers report to a future meeting on the final site and contractor selection to enable the Council to decide on awarding the contract following the evaluation of tenders, site location and affordability in accordance with the process agreed in 5 and 6 above; and
9. CPR L105 be amended for this tender evaluation so that quality can be considered alongside price to enable an overall best value solution to be identified.

Background Papers (DCEX)

There are no background papers (as defined by Section 100D(5) of the Local Government Act 1972) relating to this report.

CONTACT OFFICERS:

Name:	Kelvin Mills	Telephone:	01483 523432
	Graeme Clark		01483 523236
		E-mail:	kelvin.mills@waverley.gov.uk
			graeme.clark@waverley.gov.uk

G:\bureau\comms\executive\2009-10\2010 13 April\007 godalming leisure.doc

Summary of the Godalming Lawn Tennis Club's conditions, which are necessary to allow the Council to break its lease agreement and allow building to commence on the hard court Tennis Club Site:

- a. that the Club requires 4 floodlit hard tennis courts to be available for the Club during the construction phase of the new leisure centre. These Tennis Courts must be laid to agreed Lawn Tennis Association specifications and size the length to be 36.58m and the width (for the four courts) to be 60.96m
- b. that a temporary pavilion, 70 metre square, is provided to last the duration of the construction period of the new leisure centre as detailed in the Deed of Variation
- c. that these facilities must be in place before the Club vacates its current site.

And, that at the end of the construction period of the leisure centre the Club will have:

- d. a new pavilion, size circa 218 sq m, with the agreed areas as detailed in the Deed of Variation.
- e. a further two hard tennis courts will be created for the Club, taking the total number of hard courts to six. The final two courts are currently hard courts but during construction are proposed to be the site compound and therefore at the end of the project will be resurfaced.