

Streatham Area Committee**28 June 2006****Streatham Ice and Leisure Centre Funding and Construction** **Item 5**

St Leonards ward / Streatham area

Report authorised by: Robert Overall: Executive Director, Environment and Culture.**Executive summary**

This report provides the Streatham Area Committee with a progress report on the current proposals to procure the new Streatham Ice & Leisure Centre in conjunction with Tesco. The report follows from the draft Executive report of 21 December 2005 that obtained approval to progress and conclude negotiations with Tesco to secure the development subject to certain criteria being met and subject to approval of an appropriate budget for an agreed development.

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 Application 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 £17,920,000 as its contribution towards the Streatham Ice and Leisure Centre. The financial model for the scheme is being finalised.

Recommendations

- (1) That the Streatham Area Committee notes the status of the negotiations with Tesco and note the key issues that require resolution prior to final agreement.

Consultation

Name of consultee	Directorate or Organisation	Date sent to consultee	Date response received from consultee	Comments appear in report para:
Owen Barclay	Legal Services	14.6.06	15.6.06	
Tony Otokito	Finance	14.6.06	15.6.06	
Jo Negrini	Revitalise – Interim Director	14.6.06	13.6.06	
Cllr Lib Peck	Cabinet Member (Environment and Culture)	14.6.06		
Cllr Paul McGlone	Cabinet Member (Regeneration and Enterprise)	14.6.06		
Entered in Consultation and Events Diary?				
No				

Report history

Date report drafted:	Report deadline:	Date report sent:	Report no.:
13.06.06	15.06.06	16.06.06	20/06-07
Report author and contact for queries:			
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Background documents

Delivery of Leisure in Lambeth – Executive Committee – September 2004
Streatham Sports Hub Construction and Leisure Operations Contract – Officer Delegated Decision Report – March 05
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
Streatham Hub – Counsel’s Opinion – Nigel Giffin QC – October 2005
Draft Executive Report – Streatham Leisure Centre and Ice Arena Construction and Funding – 21 December 2005

Appendices

None

Streatham Ice and Leisure Centre Funding and Construction

1. Context

1.1 During 2005, significant concerns were raised on the outline scheme that had achieved planning permission in February 2003 (the Tesco scheme). These related to the innovative and untested 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 Council'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 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, it is believed 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 being sought where necessary.

2.7 Legal position

The Public Works Contracts Regulations 1991, which adopted the Works directive 93/37/EEC applied to any agreement between the Council and Tesco for the works to Streatham. The regulations permitted 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.

Tesco owned the only land suitable for the building of the Streatham leisure facilities. Accordingly the Council were entitled under the Regulations to negotiate a contract with them to arrange the building of the centre.

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 exiting footprint.

3. Comments from Executive Director of Finance

3.1 The financial model for the scheme is being finalised and will be included in a future report to Cabinet.

4. Comments from Director of Legal and Democratic Services

4.1 Comment on the Legal position is contained in paragraph 2.7 of this report.

4.2 Advice from Queens Counsel providing a firm and unambiguous argument on the legality of the Council's position under public procurement law was received on 27 October 2005.

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 Connection / Fusion / Parkwood / Sharpe Pritchard / Nigel Giffin QC

6. Organisational implications

6.1 Risk management:

Current key risks are as follows:

Risk	Score	Action
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
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
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

Risk	Score	Action
Scope and design base position – council must ensure that its Output Specification is appropriately detailed and comprehensive	Low risk	The council is reviewing and amending the original Output Specification to ensure it incorporates full details of its requirements so that there is no dispute over design quality required
Warrantees – currently it is proposed that Tesco provides a single ‘wrapped warrantee’ for the performance of the building, services and major equipment	High risk	Council to ensure that the proposal is accepted by Tesco
Compliance with tendering process – Council must ensure that Tesco follows the correct EU procurement 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.
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
Phasing of funding is not possible – the proposed accelerated programme means that the contribution to the project needs to be found in years 06/07 and 07/08	High risk	Council to review and investigate how funding can be allocated within these years

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.

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 06 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

