

PETERBOROUGH



REPORT TITLE: PETERBOROUGH UNITED FOOTBALL CLUB GROUND
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CABINET MEMBER EXERCISING DELEGATED POWERS: Cllr M Cereste – Leader of the Council
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AUGUST 2013
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Cabinet portfolio holder: Responsible Director:	Cllr M Cereste – Leader of the Council and Cabinet Member for Growth, Strategic Planning, Housing, Economic Development and Business Engagement. Executive Director of Strategic Resources
Is this a Key Decision?	The decision relating to the works to the stadium at Moys End is a key decision. The other decisions are non-key decisions  Unique Key Decision reference from Forward Plan: KEY/03APR/12 ]
Is this decision eligible for call-in?	YES
Does this public report have any annex that contains exempt information?	YES Appendix 1 contains an exempt schedule because it contains information on tenders submitted in relation to the building of the new London Road (Moys End) stand and sustainable skills centre. The exempt annex is NOT FOR PUBLICATION by reason of paragraph of Schedule 12A of Part 1 of the Local Government Act 1972. This is because the information is considered to be commercially confidential as the contract has not yet been awarded. Once the contract has been awarded further information regarding the successful tenderer will be released into the public domain. The public interest test has been applied to the exempt information and it is considered that the need to retain the information as exempt at this stage outweighs the public interest in disclosing it.
Is this a project and if so has it been registered on Verto?	YES Verto number PR001779

## R E C O M M E N D A T I O N S

### Key decision

The Leader is recommended to approve the letting of a contract to Kier Construction Eastern for the building of a new integrated Sustainable Skills Centre and Moy's End away stand at the Peterborough United Football Ground owned by the Council

### Non-key decisions:

The Cabinet Member is also recommended to:

1. accept a surrender of part of the football ground currently demised under two leases to the Peterborough United Football Club in order to allow building work to commence for the redevelopment of the Moys End away terrace;
2. approve a rent abatement of £296,000 during the period of the construction works to reflect loss of income sustained by the football club;
3. approve a variation in the current rent from June 2012 until a new lease is granted to the Peterborough United Football Club to take account of the actual rental value of the land under lease;
4. enter into an Agreement to Lease with Peterborough United Football Club Ltd (PUFC) for the football areas of the new Moy's End and the remainder of the ground;
5. grant an interim lease from the end of June 2014 until the Council is in the position to grant a new lease for the whole area
6. grant a new lease for a term of 25 years at a rent of £380,000 pa and rising to £430,000 per annum on completion of the works to the Skills Centre, Moy's End and London Road;
7. to approve an option to be included within the new lease for the Peterborough United Football Club to apply to the Council to purchase the site at any time during the first 10 years of the lease;
8. to approve a right of pre-emption in favour of the Peterborough United Football Club to be included within the lease entitling the club first refusal to buy the freehold of the ground should the Council decide to sell the ground;
9. to approve a right of pre-emption in favour of the Council in perpetuity to be included within the lease entitling the Council first refusal to buy-back of the freehold of the ground should the Peterborough United Football Club decide to sell or lease the stadium;

## 1. SUMMARY OF MAIN ISSUES

- 1.1 This report is submitted to the Leader of the Council and Cabinet Member for Growth, Strategic Planning, Housing, Economic Development and Business Engagement to approve investment into the redevelopment of part of the football ground owned by the Council. This investment enables the Council to grant a new lease to the current tenant, the Peterborough United Football Club (PUFC) from completion of the works.

## 2. PURPOSE OF THIS REPORT

2.1 This report is for the Leader of the Council and Cabinet Member for Growth, Strategic Planning, Housing, Economic Development and Business Engagement to consider exercising delegated authority under paragraphs 3.3.8 and 3.3.3 of Part 3 of the constitution in accordance with his portfolio at Paragraph 3.4 (g) (f)

2.2 It has been necessary to retain one of the appendices to this decision notice as an exempt annex because it contains information on tenders submitted for the building of the Sustainable Skills Centre and new London Road (Moy's End) stand. The exempt annex is NOT FOR PUBLICATION by reason of paragraph of Schedule 12A of Part 1 of the Local Government Act 1972. The public interest test has been applied to the exempt information and it is considered that the need to retain the information as exempt at this stage outweighs the public interest in disclosing it. This is because the information is considered to be commercially confidential as the contract has not yet been awarded. Once the contract has been awarded further information regarding the successful tenderer can be released into the public domain.

### 3. **TIMESCALE**

Is this a Major Policy Item/Statutory Plan?	<b>NO</b>
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### 4. **BACKGROUND**

4.1 Council purchased the London Road stadium in December 2009, for the purposes of preserving professional football at London Road, creating a community stadium, opening up adjacent land for development and kick-starting the regeneration of the South Bank area. Details regarding the original purchase of the ground and progress since that point are fully set out within the Council report for the Extraordinary Meeting held on 31 July 2013.

4.2 On completing the purchase of the football ground, Council had also agreed to lease the stadium to Peterborough United Football Club Limited (PUFC) until June 2014 at a rent of £500K pa.

4.3 In 2009 the Council was awarded a Target Capital Funded grant from the Government. Of this, £5.5million was initially set aside to develop a specialist city centre based specialist education facility for 14 to 19-year-olds concentrating on science, technology, engineering and maths subjects (STEM Centre). Following the change in Government in 2010, greater freedoms were available to use this grant for wider education and training purposes, which is the essence of the proposed Peterborough Sustainable Skills Centre. It is intended that the Skills Centre will deliver high added value courses aimed at sustainable skills, both practical and academic. The courses will be delivered by both educational and professional bodies. In addition the Centre will be able to deliver both small scale and larger scale (up to 200 delegates) for courses on related subjects. The Council has also secured a £1.74million short-term interest-free loan, repayable over three years from the Local Enterprise Partnership (LEP), which will assist with the fit-out and start-up costs of the Skills Centre.

4.4 One key question for Council was the location of the Sustainable Skills Centre. A city centre location would have clear advantages. A study has indicated the stadium to be an ideal location for a new Sustainable Skills Centre and this location would also prove to have other key advantages. It offers Council the opportunity to improve its asset by development of the Moys End stand and creates a research facility to work in conjunction with the development of the Carbon Challenge site.

## **5. DETAILS OF DECISIONS REQUIRED**

### **5.1 Letting a contract for the construction of the Sustainable Skills Centre**

The Executive Decision required is for the award of contract for the demolition and reconstruction of the Moy's End stand and its replacement with a combined stand and Sustainable Skills Centre to Kier Construction Eastern, the recommended contractor following the tender of the contract in accordance with the OJEU procedure. The value of this contract is up to £7.569 million.

The Council originally tendered the contract to a short-list of six contractors, with the intention that work should start on site in May 2012. Due to the need for further detailed negotiations between the Council and PUFC this did not prove possible.

The decision was taken to re-tender the contract in January 2013. The original six tenderers were all invited to submit a revised price. Of those six contractors, three firms – GB Building, ISG Jackson and Wimott Dixon – chose not to tender on this occasion.

The three firms that tendered were ranked as follows (the score being a 70/30 blend between cost and quality) as follows:-

1. Kier Eastern – 91.00%
2. Barr Ltd - 88.05%
3. Buckingham Group Contracting Ltd – 80.41%

Further details of the contract process are contained within the Exempt Annex.

### **5.2. Surrender of the current lease with PUFC**

In order to be able to construct the new Moy's End stand and skills centre, PUFC will have to surrender part of the existing leases to the Council and the Council will need to accept the part surrender of these leases. The parts of the ground to be surrendered comprise of the Moys End Stand, car park and access road. Alternative car parking provision is to be made available to PUFC on the former 7-23 London Road site during the period of the Moys construction works.

### **5.3 Abatement of rent during construction period**

During the build period, expected to be from September 2013 to September 2014, the Council have agreed a variation in the rent to be paid under the current leases to take into account the loss of revenue to the club as a result of the loss of stand during the playing season. This will take the form of rent abatement in the amount of £296,000. This amount has been agreed with PUFC following submission of a loss of income projection that PUFC estimate they will incur and includes the loss of ticket sales, additional stewarding due to part of the site being a building site, additional policing within the North Stand, where away fans will be housed, and loss of catering and advertising revenue from the Moy's End.

### **5.4 Variation of rent under current leases**

Under the Heads of Terms agreed on the 6 September 2012 an independent valuation of rental values was undertaken by expert property advisors Lambert Smith Hampton. This valuation demonstrated that rent under the current lease should be £300,000pa.

In order to document the rental levels of £300,000 a variation of the existing leases will be required which will backdate the rent payable from the 24<sup>th</sup> June 2012.

### **5.5 Agreement for Lease**

Before a new lease of the ground and the football areas of the new Moys End is granted on completion of the works to the Moy's End stand, the Council will enter into an agreement

for lease with PUFC. This agreement will obligate the Council to carry out the works to Moy's End and on completion will obligate PUFC to take a new long-term lease.

## 5.6 Interim Lease

From June 2014 to the end of the period of construction, an interim lease will be entered into, excluding the Moy's End stand, when a new lease will begin. The rent for that lease will be £300,000pa in accordance with the independent valuation. It is intended that this will take the form of a supplemental lease based on the existing terms of the current leases. On completion of the works this lease will end on the date of completion of the new lease referred to below.

All rental sums during these periods have been agreed based on the independent valuation of the ground and its assets by Lambert Smith Hampton.

## 5.7 New Lease

On completion of the works to the Moys End Stand a new lease for the period of 25 years at a rent of £380,000pa to represent the increase in value to PUFC of the new stand will be entered into. The demise under the lease will comprise of the existing north, south and London Road stands, the pitch and the football areas of the new Moys End Stand (concourse, stand and related concession areas). The lease will exclude the skills centre which will be leased separately to the operator of the facility. The Council will retain the management of the car park to the rear of the Moys End Stand and the access road which will be used jointly with the Skills Centre.

The lease will have provisions to:

- grant an option to PUFC, in its capacity as tenant, to purchase the London Road stadium at any time during the first 10 years of the new lease. If PUFC exercises this option the decision to sell and the price will be subject to the Council's decision making processes;
- grant a pre-emption right for PUFC which will allow it first refusal if the Council chooses to sell its freehold interest in the ground within the first 10 years of the new lease. In return the Council will have a similar pre-emption right, which has no end date, in the event PUFC acquires the ground but chooses to dispose of its interest. The decisions in any of these cases on sale and price will be subject to the Council's decision making processes;
- allow the Council to take from PUFC a 150-year lease at a peppercorn rent for the skills centre, if PUFC acquires the freehold interest.

Additional terms of the lease are in accordance with the Heads of Terms signed on the 18<sup>th</sup> July 2013.

## 6. CONSULTATION

6.1 Consultation has been held with Cabinet Members, the Leader of the Council and Ward Members. In relation to the design of the Moy's End itself, a public open day was held and presentations have been made to supporter groups and the Safety Advisory Group for the stadium. Consultation on London Road will commence once the Council moves forward with the submission of a planning application for these works.

6.2 A Members Briefing has also been held to update Members on the proposed recommendation contained in the Council Report and the recommended decisions contained here.

6.3 It is considered that all necessary consultations have now been undertaken.

## 7. ANTICIPATED OUTCOMES

If the Cabinet Member agrees to the recommendations before it will allow the Council to proceed with the development of the new Skills Centre and football stand and provide a long term commitment by PUFC to the ground and an income flow to the Council for the next 25 years. The development will also produce an up-lift in the value of the land and asset owned by the Council and, along with the retro-fitting of London Road, make the stadium attractive to a tenant who has aspirations to move to higher league football through the granting of a long-term lease. Finally, it will make the stadium attractive to visitors and users of the stadium through the Council's investment in facilities.

## 8. REASONS FOR RECOMMENDATIONS AND ANY RELEVANT BACKGROUND INFORMATION

The decisions contained in this report will enable the Council to provide a first class community stadium and skills centre which will bring about wider benefits to the South Bank area and the city as a whole. The decisions will:

- Allow the Council to progress its aspiration to create a Sustainable Skills Centre which will support the aim of giving every young person the best start in life and to up-skill the city's workforce.
- Allow the Council to use its £5.5million Government grant to provide a new form of educational facility for the city.
- Allow the Council to progress its aspiration to create an all-seater community stadium.
- Allow the Council to enter into a new long-term lease with the football club which will provide a rental income for the Council over the next 25 years.
- Allow the football club the right to buy-back the football stadium in time will allow the Council to recoup its investment in the stadium in whole or part in the future.
- Ensure a footballing presence can continue in the city.
- Ensure that Championship level football can be played in the city with a ground that is compliant with Championship rules.
- Through a rental settlement, allow the Council and the football club to agree on a rental value that is consistent with an independent valuation. It also ensures a new contract is in place for a 25 year period which will include annual rental for the Council.
- Create a community stadium which will form a key part of the wider South Bank Opportunity Area, helping to regenerate this key area of the city.
- Ensure the Council will not need to secure an alternative site on which to construct the Sustainable Skills Centre.

## 9. ALTERNATIVE OPTIONS CONSIDERED

The alternative options have been considered:

- With PUFC's lease due to expire in June 2014 and with no automatic right to renew, the Council could have simply allowed the lease to run down and taken vacant possession at that time. It is considered that this would have led to too greater uncertainty and have adversely affected the Council's ability to deliver the Skills

Centre until late 2015 at the earliest. In the event of the Club leaving the ground at the end of its lease in June 2014, the Council would be left without the benefit of rentals being received and would also be required to cover all liabilities including all rates and other outgoings such as security.

- Let the lease run down and then re-negotiate a new lease with the club at that time. The risk is that there is no guarantee at all that the Council could negotiate better terms and the Council may also need to go to court at that stage to seek to recover outstanding rental payments which could prove very costly.
- Simply grant PUFC a lease now or at termination and not carry out any improvement works, at a proposed rent of £300K pa, in line with Lambert Smith Hampton's recommendation for the value of an unimproved stadium.
- Grant PUFC a new lease and spend the budgeted £2m on retro-fitting both terraces to all seater. Based on the independent valuation provided by Lambert Smith Hampton it is anticipated that the correct rent would be in the region of £375K pa following completion of work on both stands.
- Grant PUFC a lease at £300K, carry out no improvement works to the ground and build the Skills Centre elsewhere.
- Grant PUFC a new lease and carry out the retro-fitting as well as developing the Skills Centre on an alternative site.
- Source an alternative site for the Skills Centre.

None of the above options were considered to have either met the Council's originally stated aims of preserving professional football at London Road and creating a community stadium, which would in turn contribute towards the overall regeneration of the South Bank area.

## 10. IMPLICATIONS

### 10.1 Constitutional issues

10.1.1 The Council's ability to deal with land under executive powers arises from sections 120 to 123 of the Local Government Act 1972. In addition there is already provision in the budget for the above decisions to be made.

### 10.2 Property implications

10.2.1 In summary, the Council will be entering into a Deed of Surrender for surrender of part of the ground, an Agreement for Lease with PUFC and a lease of the football areas of the Moy's End stand and the remainder of the ground save for the Skills Centre and a contract for the works to be carried out on the Moy's End stand.

10.2.2 Statutory authority for the new lease of the ground which is to be granted in accordance with the executive decision contained in the attached CMDN is given by section 123 of the Local Government Act 1972. Section 123 permits the Council to dispose of Property, which includes leasing, in any manner they wish subject to obtaining best value. As referred to in the body of this report, the rent payable under the new lease is in line with the independent valuation carried out by Lambert Smith Hampton.

### 10.3 State Aid

10.3.1 The Council have considered whether the decisions recommended in the body of this report would constitute state aid.

10.3.2 There are four transactions to which state aid may apply:

- The variation of the lease to reduce the rent payable from 24 June 2012 to £300,000;
- Rental levels under the new lease
- Reduction of the rent during the construction phase by £296k; and

- The construction costs of the Moys End Stand.

10.3.3 The Council have taken legal advice and an independent valuation from Lambert Smith Hampton in respect of each of the three transactions as follows:

- (i) Reducing the rent payable for the remainder of the term of the existing leases.

An independent valuation has been undertaken by Lambert Smith Hampton which concluded that the current rental value is £300,000. The Council have agreed that the variation of the rent shall take effect from 24 June 2012. The decision to reduce the rent was made in order to secure PUFC's commitment to a new lease of 25 years which would provide the Council with income security going forward.

The Council are satisfied that this is not state aid but are taking further independent advice on this.

- (ii) Rental levels under a new lease

The rental under the new lease will initially be £380,000 pa increasing to £430,000 on completion of the London Road retro-fit. The new rental is also in accordance with the Lambert Smith Hampton valuation and benchmarking has demonstrated that this rental sits at the higher end of the spectrum and is less likely to be successfully challenged.

- (iii) Reduction of the rent during the construction phases by £296,000.

The Council are satisfied that the reduction is not state aid but we are taking further independent advice.

- (iv) Construction costs of the Moys End Stand

The construction costs of the Moys End Stand would not amount to state aid if it can be shown that a private investor would have provided the same funding to cover the costs of the improvements to the grounds under the same terms and conditions and would have agreed an equivalent rental income under the same terms and conditions. In order to demonstrate this, an independent assessment is being obtained.

An independent valuation of the rental income for the ground in its current condition, and, following completion of the Moys construction works, has been carried out by Lambert Smith Hampton. The valuation has shown that the rental income will increase to £380,000 pa on completion of the works to the Moys End Stand and Skills Centre and will increase further to £430,000 pa on completion of the retro-fit of the London Road stand.

The risk of state aid is reduced as PUFC will be paying a rent under the terms of the new lease to be granted at the levels set out in the Lambert Smith Hampton report.

## 10.3 Financial Implications

10.3.1 The financial analysis outlined in this section is dependent upon the following timelines:

- Lease surrendered by the end of August 2013
- Works on Moy's starts end of September 2013
- Works on Moy's and London Road completed by October 2014

Changes in these timelines would impact on the financial analysis e.g. a delay in works being completed would increase costs.



10.3.2. Under the current lease, the rental income is £500k per annum. If the current lease expired, and the Council was left with no tenant, then there would be a shortfall in income of this level. The Council would have to look at other options to offset this loss.

#### 10.3.3 Current rent and lease

The rent under the current leases will be reduced to £300k per annum from 24 June 2012, in line with the independent valuation. This will last until June 2014, when the leases expire. Also, during September 2013, assuming the lease is surrendered at the end of August to enable preparatory work to start on Moy's End, the rent abatement period will commence. The financial impact of this is as follows:

	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18
	£k	£k	£k	£k	£k	£k
Existing Lease	150	225	50			

#### 10.3.4 Rent arrears

Whilst discussions have been taking place with the club, including the review of the rental position, rent has not been paid. These arrears date back to the period these negotiations started i.e. June 2012. These arrears will be paid off under a payment plan over 12 months as already commenced and payment received. Given current low interest rates, the financial impact of this cashflow is negligible. The rent payable from 24<sup>th</sup> June 2012 has been reduced to £300K pa in line with the independent valuation undertaken by Lambert Smith Hampton.

#### 10.3.5. Interim and new lease

Between June 2014 and the completion of works, an interim lease will be in place. This will continue to be at £300k per annum. Following completion of Moys construction works and commencement of the new 25 year lease, the rent will increase in line with the independent valuation. Given that it is expected that both Moy's and London Road will be completed in October 2014, then the financial impact of this is as follows:

	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18
	£k	£k	£k	£k	£k	£k
Interim and new lease			85	70	70	70

#### 10.3.6 Rent abatement during works

The Council will credit the club the sum of £296K towards the annual rent as rent abatement during the period of 53 weeks for the overall works on the Moy's End stand. The financial impact of this is as follows

	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18
	£k	£k	£k	£k	£k	£k
Rent abatement		148	148			

#### 10.3.7 Contract award for Moy's End

The contract for construction of Moy's and the skills centre is £7,569m. These costs, plus those incurred so far and the fit out costs of the skills centre are expected to be within the MTFS budget provision of £9.5m.

#### 10.3.8 Combined impact

The combined impact of all decisions contained within this CMDN is outlined below:

	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18
	£k	£k	£k	£k	£k	£k
Existing lease	150	225	50			
Interim and new lease			85	70	70	70
Rent abatement		148	148			
<b>TOTAL financial impact of all cabinet member decisions</b>	<b>150</b>	<b>373</b>	<b>283</b>	<b>70</b>	<b>70</b>	<b>70</b>

These costs will need to be covered as follows:

- 2012/13 – As this financial year has now closed, no specific action can be taken to cover this, and the costs of £150k will need to be met from the capacity fund.
  - 2013/14 – The costs of £373k will need to be factored in the current year's budget position, and appropriate actions brought forward by Cabinet to ensure that the budget balances for the year.
- 2014/15 and beyond - These costs will need to be built into the next Medium Term Financial Strategy.

#### 10.3.9 Skills Centre tenant and LEP loan

The tenant for the Skills Centre is not yet confirmed. However potential income from a tenant was not included in the MTFs assumptions. The borrowing costs that the Council will face for this element of the project are built into the MTFs. The Council has managed to secure a loan from the LEP, which is due to be repaid by August 2017, that will help reduce some of these costs in that period.

#### 10.4 Procurement Implications

The contract for the demolition and re-construction of Moy's End to provide an integrated skills centre and football stand has been procured through a fully compliant Official Journal of the European Union (OJEU) process. London Road terrace works will be subject to a further compliant tender process and formal decision making by the Council.

### 11. DECLARATIONS/CONFLICTS OF INTEREST & DISPENSATIONS GRANTED

*Declarations by any Cabinet Member consulted by the decision maker and any dispensation granted by the audit Committee or Head of Paid Service (Chief Executive). Note, the Audit Committee grants dispensations where the member concerned has a pecuniary interest, whereas the Chief Executive may grant a dispensation for these purposes to any Cabinet Member consulted on these proposals whether by an officer or another individual Cabinet Member where there is a common law conflict of interest that may not amount to a pecuniary interest under the Regulations*

### 12. BACKGROUND DOCUMENTS

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985 and The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

Council report dated December 2009.

<b>Consultation (officers/Ward Councillors)</b>	<b>Section</b>	<b>Name</b>	<b>Outcome</b>	<b>Date</b>
<i>Legal and finance should be consulted regarding the proposals. Ward Councillors, other Cabinet Members and officers should be consulted if the proposals will have an impact on their service area/ward.</i>	<b>Ward Councillors</b> <i>(if decision is ward specific)</i>			
	<b>Legal</b>			
	<b>Finance</b>	Steven Pilsworth	Approved with amendments	18 <sup>th</sup> July 2013
	<b>Democratic Services</b>			
	<b>Procurement Project Director</b> <i>(if decision is contract/procurement related)</i>			
	<b>Head of Strategic Property</b> <i>(if decision is property related)</i>			
	<b>Other Officers/Members</b>			
<b>Director's approval</b> <i>Directors requested not to sign if the above section is incomplete</i>				<b>Date</b>
<b>Date sent to Cabinet Member if Key Decision</b>	To be inserted by Democratic Services			
<b>If Key Decision – date decision may be taken</b>	To be inserted by Democratic Services			
<b>Cabinet Member approval</b>				<b>Date</b>
<b>Reasons for making decision</b>	<b>Option 1</b> I agree with the officer's reasons for recommending the decision			
<b>Please tick one of the Options</b>	<b>Option 2</b> I agree with the officer's reasons for recommending the decision and have the following additional comments to make			
<b>Once signed by Director, please pass to Democratic Services. We will contact the Cabinet Member and arrange for signature.</b>				

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