

## MACK TRADING AND UXBRIDGE GOLF COURSE - PETITION

<b>Cabinet Member</b>	Councillor Jonathan Bianco
<b>Cabinet Portfolio</b>	Finance, Property and Business Services
<b>Officer Contact</b>	Raj Alagh, Borough Solicitor, Central Services
<b>Papers with report</b>	None

### HEADLINE INFORMATION

<b>Purpose of report</b>	To provide background for the Cabinet Member to hear a petition submitted by Mr BF Cable of Harvil Road, Ickenham concerning the effect on residents of the dispute between the Council and Mack Trading (Hillingdon) Limited.
<b>Contribution to our plans and strategies</b>	None
<b>Financial Cost</b>	The annual budgeted income from the Golf Course lease with this operator consists of £280,000 for base rental of the courses and the driving range, plus £100,000 from the variable Top-up Turnover Rent, giving a total annual budgeted sum of £380,000.
<b>Relevant Policy Overview Committee</b>	Residents' and Environmental Services
<b>Ward(s) affected</b>	Ickenham

### RECOMMENDATIONS: That the Cabinet Member:

1. Meets the petitioners and considers their representations concerning the Council's dispute with Mack Trading (Hillingdon) Limited.
2. Decides on the appropriate course of action having met with the petitioners.

### INFORMATION

#### Reasons for recommendation

To allow the Cabinet Member to consider the petition with the petitioners.

#### Alternative options considered / risk management

These can be identified from the discussions with the petitioners.

## Comments of Policy Overview Committee(s)

None at this stage.

### Supporting Information

1. A petition with 48 signatures signed by Ickenham Ward residents, principally in Harvil Road and Swakeleys Road, was received by the Council on 16 August 2011 under the cover of a letter from Mr BF Cable, the petition organiser.
2. The residents have signed the following statement:  
  
*“We the undersigned, hereby petition Mr Hugh Dunnachie, the Chief Executive Officer of the London Borough of Hillingdon, to intervene immediately in the current dispute between Mack Trading (Hillingdon) Ltd and the Council that has led to Mack Trading (Hillingdon) Ltd being given notice of termination of their lease on the three Hillingdon Golf Courses from 12 September 2011. The dispute has arisen because the officers of the Council have refused to meet Mack Trading to discuss a number of serious concerns and as a consequence Mack Trading has withheld payments of rent. This was made public at the recent planning appeal hearing.”*
3. The petition is supported by a statement outlining the residents’ concerns about the potential impact on the local area and the restoration of Uxbridge Golf Course. The petitioners consider that there is a potential solution available which involves Mack Trading (Hillingdon) Ltd remaining as leaseholder of the Golf Course and working with the Council. The petitioners ask both parties to set aside their current standoff positions and work towards an acceptable compromise that will remove the threat of larger landfill operations and restore Uxbridge Golf Course as a public amenity.
4. The petition also makes reference to Mr M Gallagher, the tenant of the Uxbridge Golf Course Clubhouse, and the potential damage to his business as a result of the dispute.
5. Mr Gallagher has, however, contacted Democratic Services to state that he did not agree to his name and business being referred to in the petition text and does not, in fact, support the petition.

### Background

#### Rent Arrears

6. Following a comprehensive and legally compliant tendering process, the Council entered into a commercial lease with Mack Trading [Hillingdon] Limited ["Mack Trading"] on 9 September 2008 in respect of the three golf courses located in the Borough known as Harefield Place Golf Course The Drive Uxbridge, Ruislip Golf Course and Driving Range Ickenham Road Ruislip and Haste Hill Golf Course The Drive Northwood ["the golf courses"].
7. The lease, which commenced on 1 August 2008, is for a term of 45 years. The Council also entered into a Management Agreement with Mack Trading at the same time which governs the provision of management services at the golf courses.

8. Under the terms of the lease, Mack Trading is required to pay to the Council Annual Group Base Rent which means a group base rent of £210,000 for operating the three 18-hole golf courses and the Driving Range Base Rent which means £70,000 based on operating the driving range. This rent has been discounted for a period of two years, with the agreement of the Leader of the Council, following the 2010 rating revaluation. The current yearly rent payable by Mack Trading is therefore £274,225.77 instead of £280,000. It is payable by way of equal quarterly payments in advance on the Rent Days which are 25 March, 24 June, 29 September and 25 December.
9. The lease also prescribes that Mack Trading is required to pay Top-Up Turnover Rent to the Council which is to be calculated annually on the receipt of a turnover certificate from Mack Trading. This certificate is required to be delivered within 30 days of 31 March each year and payment is then to be made within 2 months of this date. However, Mack Trading have failed to deliver a turnover certificate for 2010/11 to the Council having provided one for the prior year of 2009/10, so the Council has been unable to calculate and invoice for Turnover Rent for this period.
10. Mack Trading is currently in significant arrears with its Annual Group Base and Driving Range Base Rent payments. The total arrears currently stand at £211,691.11 which includes a figure of £4,578.23 in respect of contractual interest payable on the arrears. The arrears relate to the following three quarters:
  - 25/12/2010 to 24/3/2011;
  - 25/3/2011 to 23/6/2011; and
  - 24/6/2011 to 28/9/2011.
11. A further quarter's rent of £68,556.44 is due on 29 September 2011.
12. The Council has expressly reserved the right in the lease to forfeit it in the event that any of the covenants, including the covenant to pay rent, within it are breached by Mack Trading. Given the level of the current rent arrears and the fact that Mack Trading has failed to put forward any proposals to pay them off, the Borough Solicitor has recently issued legal proceedings against Mack Trading in Uxbridge County Court, claiming possession of the golf courses and also seeking a money judgment for the outstanding arrears. The claim is likely to be heard before the end of the year and there is no certainty at this stage as to when the legal process will be concluded. Mack Trading has the right to apply to the Court for relief from forfeiture but such relief is only likely to be granted if this company puts forward firm proposals to pay off the arrears.
13. The Council has not been in a position to commence forfeiture proceedings earlier than September 2011 as it is required, under the terms of the lease, to give Mack Trading's mortgagee 60 days notice in writing of its intention to forfeit the lease. The Borough Solicitor served this notice on the mortgagee on 13 July 2011.

### **The Reinstatement Works at Uxbridge Golf Course**

14. National Grid installed a 1220mm gas pipeline, running from Harefield to Southall with part of the installation running through Uxbridge Golf Course. The construction works started in August 2008 and were fully completed in February 2009. The construction

works affected the 9th, 10th, 12th and 13th holes and they also caused considerable disruption and damage to the grass sward, top and subsoil, drainage, irrigation system, greens, tees and bunkers of these holes.

15. The Council is aware that National Grid entered into a legal agreement with Mack Trading in relation to the reinstatement works and gave Mack Trading the necessary funding to undertake them. However, the Council has not had sight of this agreement despite having made a number of unsuccessful requests to National Grid for a copy of it.
16. Mack Trading delayed in commencing the reinstatement works and therefore the Council felt compelled to serve a Repair Notice on Mack Trading on 16 July 2010 pursuant to the lease, requiring them be undertaken. The Notice stipulated that if Mack Trading had not commenced the works within one month of the date of the Notice or failed to complete them within a reasonable period not exceeding three months, Mack Trading would be obliged to permit the Council to undertake the works itself and then recover the costs of doing so directly from this company.
17. Although Mack Trading started to undertake the works following the service of the Notice, it has not made satisfactory progress towards completing them and a significant proportion of them currently remain outstanding. Coupled with the fact that the general maintenance of the course falls short of the required standards, this has rendered certain parts of it to be unplayable. The Greens and irrigation systems appear to require further work combined with significant grounds maintenance to bring it up to a playable standard. Works promised to the golfers at a site visit in terms of re-shaping bunkers and expanding green sizes have not been completed. Only twelve holes remain open as at September 2011.

### **The Planning History relating to Uxbridge Golf Course**

18. Mack Trading has submitted three separate planning applications to the Council in respect of Uxbridge Golf Course which are summarised below.
19. The first such application was submitted on 9 July 2009 for remodelling works to the course, consisting of the re-contouring of the existing land form using 580,000m<sup>3</sup> of imported inert soils. Mack Trading also asked for permission for extensive landscaping and associated drainage works. 148 individual letters of objection and 6 petitions were received by the Council, objecting to the planning application. In addition to this, objections were also received by the Council from Ickenham Residents Association and The Drive Residents Association. On this basis, the application was withdrawn by Mack Trading on 8 September 2009.
20. On 3 December 2009, a second planning application was submitted to the Council by Mack Trading. The main change to the previous scheme was a reduction in the volume of inert soils to be imported from 580,000m<sup>3</sup> to 375,665m<sup>3</sup>. In May 2010, the Council's North Planning Committee refused this planning application for five reasons, which included concerns relating to highways, ecology, site access, protection of the adjoining nature reserve and accessibility for disabled persons on the redesigned golf course itself. Mack Trading subsequently lodged an appeal against this decision to the Secretary of State. On 14 April 2011, the appeal was dismissed by the Planning Inspector on the basis that the scheme would impair the landscape and pose an adverse risk to important nature conservation interests.

21. The third and final planning application was submitted by Mack Trading on 21 May 2010 for the remodelling and overhaul of the Golf Course. The main change to the previous two applications was a reduction in the volume of inert soil to be imported from 375,656m<sup>3</sup> to 134,942m<sup>3</sup> of clean, inert construction material and soil. The application stated that the imported material would be used for landscaping and re-contouring purposes including the construction of tees, greens and bunkers. At its meeting on 5 August 2010, the Council's North Planning Committee refused the application as Mack Trading was unable to demonstrate that it could provide an appropriate level of security in the form of a land restoration bond. A notice of refusal was issued by the Council on 10 August 2010 and Mack Trading once again decided to lodge an appeal against this decision to the Secretary of State.
22. On 16 September 2011, the Council received written notification from the Planning Inspector that Mack Trading's appeal has been allowed on the basis that *"all safeguards and ecological enhancements are now secured by a signed section 106 Agreement dated 29 July; the Agreement also secures a 'land restoration bond' of £788,000 and a 'monitoring sum' of £5,000"*.
23. There are also 24 separate conditions attached to the planning permission. In summary, a very significant number of pre-commencement technical reports and plans will be required before the permission can be implemented and there is also an express requirement that the development has to commence within three years from the date of the Inspector's decision.

### **Financial Implications**

24. The annual budgeted income from the Golf Course lease with this operator consists of £280,000 for base rental of the courses and the driving range, plus £100,000 from the variable Top-up Turnover Rent, giving a total budgeted sum of £380,000.
25. The rent arrears as outlined in this report present a significant financial risk for the Council. The current arrears total £211,691, with approximately £70,000 relating to the base rent from the previous financial year 2010/11. This arrears figure does not allow for the Top-Up Turnover rent for 2010/11, as the certification has not been received, as explained in paragraph 9 above. If this is considered it effectively adds an estimated £100,000 to the arrears.

### **EFFECT ON RESIDENTS, SERVICE USERS & COMMUNITIES**

#### **What will be the effect of the recommendation?**

26. The recommendations will enable the Cabinet Member to discuss with the petitioners their concerns and allow him to consider whether or not intervention is required.

#### **Consultation Carried Out or Required**

27. This Petition Hearing is part of the Council's consultation.

## CORPORATE IMPLICATIONS

### Legal

28. In addition to the legal implications which are already contained in the body of the report, the Borough Solicitor has the following comments to make in relation to the various issues which have been raised in the petition.

29. **The Chief Executive should intervene immediately in the current dispute between Mack Trading and the Council**

As is stated in the body of the report, the Council has commenced forfeiture proceeding against Mack Trading. If any Member or officer of the Council were to arrange to meet with Mack Trading's representatives, this would have the effect of waiving the Council's right to forfeit the lease as it would be acknowledging the existence of the lease. Consequently, the Council's action to recover the outstanding rent arrears would be negated.

30. **Mack Trading has been given notice of termination of its lease on the three Hillingdon Golf Courses from 12<sup>th</sup> September 2011**

Mack Trading's lease has not been terminated on this date. The legal process has recently commenced and the Council is unable to say with any certainty as to when it is likely to be concluded as this is not something which it has any direct control over.

31. **The Council has refused to meet with Mack Trading to discuss a number of concerns and as a consequence Mack Trading has withheld payments of rent.**

Mack Trading recently issued an open letter to the Leader of the Council, local residents, Golf Club Members, Golfers, Staff and Trade Unions dated September 2011 in which it has stated, inter alia, that *"Our Parent Company has offered to pay all rents due in return for the support of the Council in relation to the development at Uxbridge which is currently subject to a planning appeal"*.

It is not clear what Mack Trading means when it refers to in "return for the support of the Council". What is clear, however, is that the Council's position as local planning authority and Landlord are entirely separate and the withholding of rent by Mack Trading is not related to the outcome of the planning appeal and does not justify it any way. The Council, in its capacity as Landlord, has a fiduciary duty to the Council Tax payers in the Borough to recover the rent arrears.

Furthermore, it is a matter for Mack Trading to meet the conditions of the planning permission and to implement it within the stipulated three year period. The Council is unable to offer any support to Mack Trading during this process which is not recognised by planning law and practice.

32. **...the departure of Mack Trading Ltd would leave the residents of Ickenham faced with the worst of all worlds. It will be necessary for LBH to re-tender for a new company to take over the golf courses, possibly with planning permission to dump 140,000m<sup>3</sup> on Uxbridge... the bidders are more likely to be landfill companies and we will see more applications to landfill.**

The recent grant of planning permission to Mack Trading means that it is able to import 134,942m<sup>3</sup> of inert construction material and soil. This is to be solely used for landscaping and re-contouring purposes including the construction of tees, greens and bunkers. This constitutes less than one third of the amount of inert soil which was the subject of Mack Trading's first planning application submitted on 9 July 2009.

In the event that Mack Trading's lease is terminated, the Council will re tender but any such exercise will focus on finding a viable golf course operator and not a company whose sole interest is depositing landfill on Uxbridge Golf Course.

33. **The other consequence of Mack Trading's departure would be further and indefinite delay in restoration of Uxbridge Golf Course and the likelihood of further deterioration.**

It is Mack Trading's responsibility to undertake the reinstatement works at Uxbridge Golf Course to the required standard. If Mack Trading's lease is terminated, the reinstatement works will become the responsibility of the new operator.

### **BACKGROUND PAPERS**

None.