

## PEMBROKE PARK COMMUNITY BUILDING, EASTCOTE

<b>Cabinet Member</b>	Councillor Jonathan Bianco
<b>Cabinet Portfolio</b>	Finance, Property and Business Services
<b>Officer Contact</b>	Mike Paterson, Residents Services James Rodger, Residents Services
<b>Papers with report</b>	None

### HEADLINE INFORMATION

<b>Purpose of report</b>	To inform the Cabinet Member that a petition was received on 9 <sup>th</sup> April 2015 from Mr Gawain Cox (on behalf of Pembroke Park Residents Association) with 22 signatories requesting that the Council rejects A2 Dominion's claim to run the community centre at Pembroke Park, Eastcote (known as Enigma Hall). This is eligible for consideration at a Petition Hearing with the Cabinet Member for Finance, Property and Business Services.
<b>Contribution to our plans and strategies</b>	None
<b>Financial Cost</b>	If the Council chose to exercise its right to accept the transfer of the building from Taylor Wimpey, the Council would be required to find additional resources for the additional costs that would arise through holding the responsibility for the management of the building.
<b>Relevant Policy Overview Committee</b>	Corporate Services and Partnerships Policy Overview Committee
<b>Ward(s) affected</b>	Eastcote and East Ruislip

### RECOMMENDATION

That the Cabinet Member :

- 1. Meets the petitioners and considers their request that the Council rejects A2 Dominion's claim to run the community centre at Pembroke Park, Eastcote (known as Enigma Hall).**
- 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**

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 was received on 9<sup>th</sup> April 2015 from Mr Gawain Cox (on behalf of Pembroke Park Residents Association) with 22 signatories requesting that the Council rejects A2 Dominion's claim to run the community centre at Pembroke Park, Eastcote (known as Enigma Hall). This is eligible for consideration at a Petition Hearing with the Cabinet Member for Finance, Property and Business Services.
2. The residents have signed the following statement :-  
  
*"We the undersigned, are concerned residents who urge our leaders to act now to reject A2 Dominion's claim to run this facility."*
3. The justification for the petition states that "when planning permission was sought for Pembroke Park, the Council insisted on a community centre being built for the use of the entire local community. A2 Dominion has recently indicated that they would like to run the centre, but their appalling record of putting profit above the needs of residents means this is not in the interests of the local community."

### **Background**

4. Outline permission (with detailed access) was granted in March 2006 (Council ref: 10189/APP/2004/1781) for the redevelopment of the site for residential purposes at a density of up to 50 no. dwellings per hectare, including affordable housing, live-work units, a community facility and open space. Condition 11 of this consent stated: "Prior to the commencement of development, details of the community facility are to be submitted to and approved in writing by the Local Planning Authority. The community facility is to comprise a minimum of 170m of gross floor space, falling within class D1 of the Town and Country Planning Act. The community facility is to serve local needs. The community facility shall be provided in accordance with the approved details prior to the occupation of the last dwelling of the development and after full consultation with local residents and relevant stakeholders, and thereafter be permanently retained on site."
5. The community facility was approved as an open plan space. It was, however, built with 9 columns that subdivide the space. The applicant maintained that this was because if it had been built as per the approved plan, the necessary use of a concrete transfer slab as part of the building works would have raised the building ridge height. To avoid this raised ridge height, the engineers built the building with the internal structural columns.

6. A S73 application sought to vary Condition 11 of outline planning permission ref: 10189/APP/2007/3383 relating to the provision of a community facility on the former RAF Eastcote site. The application was refused and it was the subject of an Appeal. The appeal decision was that " Within three months of the date of this permission the alterations shown on drawing No 5585/WIM.W.L/M/P1 Rev H, which show the removal of the soil vent pipe column, the installation of sliding, folding partitions, kitchen and toilet facilities, shall be carried out in accordance with this approved plan." The date by which these works are to be carried out is the 24<sup>th</sup> July 2014.
7. Schedule 3 "Community Facility" of the original S106 Agreement dated 24<sup>th</sup> February 2006 states the following:
  1. The Applicant covenants with the Council:
    - 1.1 prior to the Substantial Completion of the last Housing Unit to construct and provide to a shell-finish only and in consultation with the Council the Community Building being a building of not less than 170 square metres to be used by the Development for the purpose of a community facility in accordance with the provisions of the Planning permission.
    - 1.2 to transfer good title to the Community Building to the Council or in the event that the Council should elect not to accept the building to a management company and any transfer of the Community Building to the Council or management company (as the case may be) ("the transferee") shall contain:
      - (i) covenants on the part of the transferee restricting the use of the Community Building to that of providing community facilities and (ii) clawback provisions in such form as shall be required by the First Secretary of State such clawback to subsist for a period of 25 years from date of such transfer and being triggered by the event that the Community Building is redeveloped and/or used for any other purpose other than for providing community facilities.
  2. It is agreed by the parties that each side shall be responsible for their own legal and other costs associated with such transfer.
8. In respect of the community building, it can only be transferred to A2 Dominion if they are a management company and only if the Council chooses not to have the building transferred to it. Essentially the Council has a first refusal on the community building under the section 106. The restriction on use of the community building will be contained within the land transfer of the building, which must also contain a claw back provision in case the use changes from community use in the initial period of 25 years. The requirement for the transfer to contain such provisions arises from the section 106 agreement and is enforceable by the Council as LPA. However, the actual covenants in the transfer i.e to use the building only as a community building would be enforceable by anyone who has the benefit of those covenants, such as the residents and possibly the Council (depending on the wording of the transfer). There are no standards for organisation or management of the community building governed by the section 106.
9. Taylor Wimpey and A2 Dominion are prepared to agree to a transfer from Taylor Wimpey to A2 Dominion of the community building. The Council can prevent this transfer by exercising the right under the s106 agreement of first refusal and accepting a transfer from Taylor Wimpey to the Council. If the Council does not exercise this option, it cannot then determine who Taylor Wimpey transfers the building to. Officers contacted Taylor Wimpey for Heads of Terms upon which Taylor Wimpey will transfer the building to the Council. In

a letter dated 8<sup>th</sup> May 2015, Taylor Wimpey offered to transfer the building to the Council by way of a 125 year lease at a nil rent, a user restricted to community use and a requirement to pay a service charge (estimated at an initial service charge of £1- £2k, plus insurance, plus heating if appropriate, plus a sinking fund charge during the term of the lease). These additional costs have not yet been quantified by Taylor Wimpey. The Heads of Terms are rather brief and leave a number of questions unanswered.

10. There are no terms regarding the following -

1. Alienation - There is no mention of the ability to assign sublet or for the sharing of occupation. If the Council was to take a long lease, under the present terms offered by Taylor Wimpey, there is no ability to assign or sublet to community organisations or any ability to charge rent. As it stands, the Council would be responsible for the management of the building.
2. Repairs and Decoration - There is no mention of the tenant's responsibility for repairs and decoration but presumably there will be some responsibility in addition to the service charge and this will give rise to additional (as yet unknown) costs.
3. Insurance - Whilst this appears to be a landlord responsibility to insure with the premium recoverable from the tenant through the service charge, there is no estimate given of the cost.
4. Alterations - There is no indication on whether alterations would be permitted.
5. Break options - There is no mention of landlord or tenant breaks and so if the Council was to take a transfer of the building it would be entering into a commitment for 125 years without any ability to determine this under the terms of the lease.
6. Outgoings - Presumably the tenant will be responsible for outgoings but no estimates of annual costs have been provided.

11. It should also be noted that Taylor Wimpey need to provide the building to a shell-finish only. If the Council was to accept a transfer of the building it would be responsible for fitting out works. An assessment would need to be made to determine the full extent of the fitting out works required and the costs involved.

12. It should also be noted that Taylor Wimpey has given the Council an ultimatum to accept their terms for the transfer of the building. Initially Taylor Wimpey wrote to the Council on 15<sup>th</sup> June 2015 stating that if they did not receive a decision from the Council by the end of the week they would "look to dispose of this to a third party". Following an exchange of correspondence Taylor Wimpey have now set a deadline of the "close of play on 17<sup>th</sup> July 2015"

### **Financial Implications**

If the Council chose to exercise its right to accept the transfer of the building from Taylor Wimpey, the Council would be required to find additional resources for the additional costs that would arise through holding the responsibility for the management of the building.

Further work would be required should this option be exercised to quantify the full financial impact of the decision.

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

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

The recommendation will enable the Cabinet Member to discuss with the petitioners their concerns, and allow him to consider whether or not to agree to their requests.

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

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

## **CORPORATE IMPLICATIONS**

### **Corporate Finance**

Corporate Finance has reviewed this report and the financial implications outlined above, noting that a decision to exercise the Council's right to take on the community centre lease would require resources to be set aside to support on-going management and maintenance costs.

### **Legal**

The Borough Solicitor confirms that the terms of the Section 106 Agreement are as stated in paragraph 8 and 9 of the report. Taylor Wimpey are required to offer the Council a transfer of the land. If the Council decides not to accept the transfer, Taylor Wimpey are then required to offer the transfer to a Management Company. Taylor Wimpey are not required to consult the Council before choosing such a Management Company.

## **BACKGROUND PAPERS**

NIL.