

DECISION-MAKER:	CABINET		
SUBJECT:	APPLICATION TO PLACE PLAY EQUIPMENT ON COMMON LAND AT FREEMANTLE COMMON AND PEARTREE GREEN		
DATE OF DECISION:	15 MARCH 2010		
REPORT OF:	CABINET MEMBER FOR CHILDREN'S SERVICES AND LEARNING		
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STATEMENT OF CONFIDENTIALITY

Not Applicable

SUMMARY

The City Council approved in 2006 the Play builder programme. This involves the development of 23 play areas within the city over three years. The builder funding is matched where applicable with Section 106 funds. The third year of the Play builder programme which is 2010/11 involves the development of nine play areas including Freemantle Common. Peartree Green is also being developed but using Section 106 monies.

In order to place play equipment on Freemantle Common and Peartree Green permission has to be obtained from the Secretary of State to carry out restrictive works on registered common land under section 38 of the Commons Act 2006. This report seeks agreement from Cabinet to go ahead with the application

RECOMMENDATIONS:

- (i) To delegate authority to the Executive Director of Children's Services and Learning following consultation with the Solicitor to the Council, to make an application under section 38 of the Commons Act 2006, for the installation of play equipment on Freemantle Common and Peartree Green.
- (ii) Subject to the successful application, to approve the installation of equipment on Freemantle Common and Peartree Green.
- (iii) To delegate authority to the Solicitor to the Council to take any action necessary to give effect to, ancillary to or likely to facilitate the recommendations set out in this report, including participation in any application, appeal or enquiry process required.

REASONS FOR REPORT RECOMMENDATIONS

1. Approval was given at Cabinet in June 2008 to accept the Department for Children, Schools and Families (DCSF) offer for the Council to be a Play Builder authority and to delegate authority to the Executive Director of Children's Services and Learning, following consultation with the Cabinet Member for Children's Services, Play Partnership, local school Councils and the Youth Parliament to make all necessary decisions on / take all necessary action to deliver specific projects within the Play Builder programme.

2. This involves the development of 23 play areas within the city over three years. The Play Builder funding is matched where applicable with Section 106 funds. The third year of the Playbuilder programme involves the development of nine play areas including Freemantle Common. Peartree Green is being developed using Section 106 monies.
3. In order to place new or enhanced play equipment on Freemantle Common and Peartree Green permission has to be obtained from the Secretary of State to carry out restrictive works on registered common land under section 38 of the Commons Act 2006. Application is not required for new equipment provided on a strictly like for like basis and occupying an identical footprint to any existing equipment and which does not require new or additional surfacing of any kind beneath the equipment (including new or increased / enhanced footings).

CONSULTATION

4. A number of consultations took place in the summer of 2009 with local communities on the proposal to place play equipment on Freemantle Common and Peartree Green. Designs were on display and officers were present to answer any queries from the public. Councillors were also present at both consultations to lend their support to these projects.
5. There is strong public support on both sites, recognising that there is a need for play equipment to be installed, as children and young people do not have local play facilities.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

6. Do not make the application under section 38. The Council would not be complying with the Commons Act 2006 legislation. This would leave the Council open to challenge from the public and could result in a public hearing/ enquiry and the order of restitution of the land.
7. Do not construct the play facilities on either site depriving local children and young people of the opportunity to participate in play activities.

DETAIL

8. The Play audit carried out in 2008 prior to the Play builder programme highlighted the need for play facilities in the Freemantle Common area and as a result of the successful bid a total of £50,000 has been allocated in year three (2010/2011) with an additional £13,000 in Section 106 funding. Peartree Green has £17,000 allocated to it in Section 106 funding. Both sites have had play equipment on them prior to the Commons Act 2006 and if the application is successful then these new facilities would be repaired and maintained within the current maintenance programme.
9. On both sites the initial consultation identified a range of play equipment such as slides, swings, ariel runways, climbing rock and planting of shrubs to enhance the play environment. The procurement of the proposed works will be undertaken by Open Spaces who work with local contractors to install the equipment. Open Spaces ensures that the play equipment complies with all relevant European Health and Safety legislation.

FINANCIAL/RESOURCE IMPLICATIONS

Capital

10. The cost of the projects are detailed in the table below:

Estimated cost	
Freemantle Common:	
Capital Costs	
Equipment costs	£57,000
Revenue Costs	
Design Costs	£3,500
Consultation Costs	£2,500
Peartree Green:	
Equipment Costs	£17,000
Total	£80,000

11. The proposed projects are funded as follows:

Source of Funding	
DCSF Play Builder Grant	£50,000
Section 106	£30,000
Total	£80,000

Revenue

12. If the application is successful then these new facilities would be repaired and maintained within the current maintenance programme.

Property

13. The proposal will revitalise an otherwise underused area in both parks.

Other

14. None

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

15. Under s.38 Commons Act 2006, a person may not, except with the consent of the Secretary of State, or unless a general exemption applies, carry out any restricted works on common land. “Restricted works” are—
 - (a) works which have the effect of preventing or impeding access to or over any land to which this section applies;
 - (b) works for the resurfacing of land.

(3) The reference to includes (but is not limited to) the erection of fencing, the construction of buildings and other structures, the digging of ditches and trenches and the building of embankments. Play equipment will fall within the definition of ‘other structures’. Works are for the resurfacing of land includes the laying of concrete, tarmacadam, coated roadstone or similar material on the land (but not repair of an existing surface).
16. In determining an application for consent the Secretary of State will take into account the interests of persons having rights in relation to, or occupying, the Land (and in particular persons exercising rights of common over it), the interests of the neighbourhood, the public interest and any other matter considered to be relevant. In considering the public interest regard will be had to nature conservation, the conservation of the landscape, the protection of public rights of access to any area of land, and the protection of archaeological remains and features of historic Interest.
17. If there are any objections to the application, the Secretary of State may cause a public inquiry to be held before reaching his / her decision.

Other Legal Implications:

18. Any equipment provided in accordance with this report will have to be constructed, placed and maintained having regard to equalities legislation (including Disability Discrimination Act 1995 implications) and the need to ensure that such equipment / the location of equipment is designed having regard to the Council’s duties under s.17 Crime & Disorder Act 1998, to exercise all functions having regard to the need to reduce or eliminate crime or anti-social behaviour.

POLICY FRAMEWORK IMPLICATIONS

19. The proposal within this report is in accordance with the objectives of the Children and Young People’s Plan where engagement in play activities contributes to all five outcomes of the Every Child Matters agenda. The planned development also contributes to the outcomes within the Community Strategy. For example, Objective 1.2 play promotes health and wellbeing for children and families and Objective 4.3 the planned development enhances the open environment by providing attractive, safe and welcoming open spaces for everyone.

SUPPORTING DOCUMENTATION

Non-confidential appendices are in the Members' Rooms and can be accessed on-line

Appendices

1.	None
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Documents In Members' Rooms

1.	None
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Background Documents

Title of Background Paper(s)

Relevant Paragraph of the
Access to Information
Procedure Rules / Schedule
12A allowing document to be
Exempt/Confidential (if
applicable)

1.	None	
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Background document available for inspection at: n/a

KEY DECISION No

WARDS/COMMUNITIES AFFECTED:	Peartree Ward
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