



**Report of: Executive Member for Finance and Resources**

Meeting of	Date	Ward(s)
Executive	27 November 2014	Hillrise
Delete as appropriate		Non-exempt

**SUBJECT: Disposal of surplus land in Hillrise Ward for Housing**

Appendix 2 of this Report is exempt and not for publication as it contains exempt information under paragraph 96.4, category 3, of Access to Information Procedure Rules, namely information relating to the financial or business affairs.

## 1 Synopsis

- 1.1 By increasing the supply of genuinely affordable housing, including homes for social rent, we can help more of our residents tackle the cost of living crisis and increase job and training opportunities for local people within the construction industry.
- 1.2 This report seeks approval for the disposal of the retained part of the site of the former Ashmount School to Islington and Shoreditch Housing Association (ISHA) as the most advantageous option for the Council to secure an at least 80% affordable housing scheme, provide certainty over funding for the redevelopment of the New River PRU at Dowrey Street and provide a capital receipt which can be invested in meeting council priorities in the financial year 2015/16.

## 2 Recommendations

- 2.1 To agree to dispose of that part of the former Ashmount School Site (shown edged blue on the attached plan at Appendix 1) to ISHA.
- 2.2 To delegate to the Corporate Director of Finance and Resources, in consultation with the Executive Member for Children and Families, the Corporate Directors of Children's

Services, Housing and Adult Social Services and the Assistant Chief Executive (Governance & HR), authority to agree the terms of the disposal to ISHA.

- 2.3 To authorise the Corporate Director of Finance and Resources to dispose of the freehold of the retained land on the terms agreed and to instruct the Assistant Chief Executive (Governance & HR) to enter into all necessary legal documentation to give effect to the agreed terms.
- 2.4 To note that the above recommendations are subject to the following:
- i) the outcome of a judicial review on the application of the Ashmount Site Action Group of the Secretary of State's decision to give the Council consent under section 77 of the 1998 Act and Schedule 1 of the 2010 Act to dispose of the former Ashmount School and;
  - ii) an exchange of contracts by 31<sup>st</sup> December 2014 to grant a 125 year lease in respect of space in the New River PRU development at Dowrey Street to the Bridge Integrated Learning Space Free School (BILS).

### **3 Background**

- 3.1 Ashmount School has been rebuilt on the Crouch Hill Park site. Following an extensive development, the school opened on its new site in January 2013.
- 3.2 The Executive has received and approved previous reports on the site of the former Ashmount School including:
- 13 September 2012: to dispose of the whole of the former Ashmount School site to a Registered Provider (RP) through the Land Disposal Framework for Affordable Housing (the Framework);
  - 11 July 2013: to award a contract for the disposal and development for affordable housing of the whole of the former Ashmount site to ISHA following the selection of the most advantageous tender under the Framework and;
  - 6 February 2014: to rescind its decisions of 13 September 2012 and 11 July 2013 and to approve a disposal of that part of the former Ashmount site shown hatched red on the plan attached at Appendix 1 to the Secretary of State for use by Whitehall Park Free School.
- 3.3 The decisions of 13 September 2012 and 11 July 2013 had been contingent on the Council obtaining approval for the disposal of the site from the Secretary of State for Education under Schedule 1 of the Academies Act 2010 and Section 77 of the Schools Standards and Framework Act 2006. The Secretary of State, however, indicated that consent would not be granted for the planned disposal as the site was needed by the Whitehall Park Free School and Bridge Integrated Learning Space Free School (BILS).
- 3.4 Following extensive negotiations between the Council and Education Funding Authority (EFA) agreement was reached to transfer part of the former Ashmount School Site to the Secretary of State for use by Whitehall Park Free School and for BILS to share new premises to be constructed at Dowrey Street with the New River PRU. It was subsequently agreed that the Secretary of State would take a transfer of that part of the site shown edged red on the plan at Appendix 1 and that transfer took place on 18<sup>th</sup> July 2014.

- 3.5 During the negotiations the Secretary of State required assurances and conditions in relation to the timing and type of housing development that would take place on the retained part of the site in order to make a decision on the Council's s77 and Schedule 1 applications. ISHA having advanced a scheme for the site were willing, at their own risk, to amend their proposals and to confirm terms for an acquisition of the reduced site which accommodated the Secretary of State's requirements and remained advantageous to the Council
- 3.6 On 17<sup>th</sup> July this year the Secretary of State issued a consent under Schedule 1 of the 2010 Act and section 77 of the 1998 Act for the Council to dispose of that part of the former Ashmount School site shown edged blue on Appendix 1 to a third party for housing development. This consent was conditional on the disposal to the Secretary of State of part of the site for the use of Whitehall Park Free School and an exchange of contracts for the grant a long lease of part of the building to be constructed at Dowrey Street to the BILS by 31<sup>st</sup> December 2014.
- 3.7 The Whitehall Park Free School opened in September 2014 and is currently occupying temporary buildings on the site whilst a planning application is submitted for a proposed new school building. The retained land edged in blue on the plan is currently leased to the Secretary of State for use by the Whitehall Park Free School until September 2015 to facilitate the development of a new school, subject to planning, after which time it is proposed that this land is released for development of affordable housing.
- 3.8 The decision to dispose of the retained portion of the site is subject to the outcome of any Judicial Review and a linked proposal to redevelop the Dowrey Street site to accommodate BILS and the New River Pupil Referral Unit (PRU). The EFA have agreed to make a financial contribution towards the cost of a new building as part of the agreement to share the site.
- 3.9 In early October the Ashmount Site Action Group (ASAG) applied for a judicial review of the Secretary of State decision to grant the Council consent to dispose of the former Ashmount School site under section 77 of the 1998 Act. The Council were named as an Interested Party in the application by ASAG. The Secretary of State and the Council filed summary grounds for opposing the ASAG application in mid-October and it is anticipated that a decision on whether or not ASAG can have the decision reviewed should be made before the end of this year.
- 3.10 In February 2014 the Executive approved the redevelopment of the Council's Dowrey Street site to provide a new building for the PRU and BILS. The council has procured a design and build contractor for the Dowrey Street site and are in negotiation with the EFA to grant BILS a lease of part of the building on completion of the redevelopment.
- 3.11 The Council cannot therefore complete a sale of the retained land for affordable housing until the outcome of the ASAG judicial review is known and contracts have been exchanged on the grant of a long lease of premises at Dowrey Street to BILS.

### **Selection of an affordable housing provider**

- 3.12 Following a competitive tendering process amongst Registered Providers (RPs) appointed to the Land Disposals Framework for Affordable Housing in 2013 the successful tender was submitted by ISHA. They have since worked with Council officers at risk during negotiations with the EFA to provide the comfort required by the Secretary of State in terms of proposals for the development of affordable housing on

the retained part of the site in the timeframe allowed by the Secretary of State before the whole site was schemed for the use of the Whitehall Park Free School and BILS.

- 3.13 The revised housing proposals that are being worked up in more detail by ISHA for the retained portion of the site suggest that up to 51 new homes could be built on the site, subject to the necessary planning and other consents. The majority of these new homes would be affordable with a mix of homes for social rent and shared ownership. The anticipated capital receipt would be apportioned from their original offer of an 80% affordable housing scheme on the whole site.
- 3.14 The option to proceed with a disposal of the retained portion of the site to ISHA, provides certainty over the funding for the redevelopment of the PRU at Dowrey Street and secures a capital receipt and delivery of an at least 80% affordable housing scheme.

## **4. Implications**

### **4.1 Financial Implications**

The proposed transfer of the retained proportion of the site to ISHA will generate a capital receipt for the Council as well as new provision of affordable housing. Appendix 2 sets out valuation assessments.

The cost of redeveloping the PRU site at Dowry Street is estimated at £3.64m and is included in the Children's Services capital programme. The Council has been provisionally allocated £3.77m by the EFA for the build cost in relation to BILS on the same site.

### **4.2 Legal Implications**

- 4.2.1 The Council's title to the site is registered at the Land Registry under various titles. The Council owns the freehold and holds it for education purposes. The title notes that a six inch sewer pipe runs under the land but not where and that this sewer is subject to the rights of the statutory undertaker. Part of the land is also subject to the terms of a lease to an electricity substation. A number of restrictive covenants are registered against the title from a document relating to the sale of the land in 1881. However, it is unlikely that these restrictive covenants could be enforced against the Council now or would inhibit the proposed disposal and development of the site.
- 4.2.2 The Council has previously declared the Ashmount site surplus to the Council's requirements with effect from January 2013 when Ashmount primary school relocated to its new building in Crouch Hill Park. The Council has obtained consent to dispose of the site under section 77 of the School Standards and Framework Act 1998 and Schedule 1 of the Academies Act 2010. The Consent is subject to the Council exchanging an agreement to grant BILS a lease of part of the proposed New River PRU to be built at the Council's Dowrey Street Site.
- 4.2.3 The Council must generally dispose of its land for the best consideration that can reasonably be obtained (s123 Local Government Act 1972). It may only dispose of the freehold in the site at less than best consideration with the consent of the Secretary of State.
- 4.2.4 The Secretary of State in 2003 issued a general consent specifying the circumstances in which the Council may dispose of land at less than the best

consideration that can reasonably be obtained. The function of the general consent is partly to assist or enable authorities to meet the objectives which they may consider are necessary or desirable, in the interests of the local electorate and Council tax payer.

- 4.2.5 The general consent permits a local authority to dispose of land freehold or by way of a lease exceeding 7 years at less than best consideration if the authority considers the disposal will help it secure the promotion or improvement of the economic, social or environmental wellbeing of its area provided that any undervalue does not exceed £2,000,000
- 4.2.6 If the terms finally agreed for the disposal of the site mean that the disposal is not covered by the general consent, then application would need to be made to the Secretary of State for a specific consent to dispose of the site to ISHA at less than best consideration.
- 4.2.7 Although the Council may have the necessary power (Section 123, Section 25 or a general or specific ministerial consent) to dispose of the site at less than best consideration, any decision to do so must be taken
- (i) reasonably
  - (ii) in the light of the market value of the land\building and the amount of the proposed undervalue
  - (iii) with due regard to the Council's fiduciary duty.
- 4.2.8 Accordingly in deciding whether or not to dispose of the site to ISHA at less than best consideration the Council must properly consider the benefits of doing so as set out in this report and weigh up and balance those benefits against accepting a lower receipt.

### **4.3 Environmental Implications**

There are no environmental implications arising from the recommendations in this report. Any subsequent affordable housing development would need to comply with the council's environmental policies.

### **4.4 Resident Impact Assessment**

- 4.4.1 The council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and encourage people to participate in public life. The council must have due regard to the need to tackle prejudice and promote understanding.
- 4.4.2 An initial screening Resident Impact Assessment has been carried out and indicates no potential differential impact through the implementation of this proposal. The development of affordable housing, including much needed homes for social rent would help meet council priorities to ensure all residents have access to a decent, secure and genuinely affordable homes, help tackle the cost of living crisis faced by many of our residents and help create more jobs for local people.

## 5. Conclusion and reasons for recommendations

- 5.1 Following extensive negotiations with the Education Funding Agency (EFA) it was agreed that the Whitehall Park Free School would take possession of approximately half the area of the site of the former Ashmount School. The retained land is currently leased to the Free School to facilitate the development of a new school building on their portion of the site until September 2015 at which time it is expected that it can be released for development of affordable housing.
- 5.2 The option to proceed with a disposal of the retained portion of the site to ISHA, who had submitted the most advantageous offer for the whole site, would help mitigate against the risk of the Secretary of State allocating the whole site under the Academies Act, provide certainty over the funding for the redevelopment of the PRU at Dowrey Street and secure a capital receipt and delivery of an at least 80% affordable housing scheme
- 5.3 In view of the need to progress the affordable housing proposals for the retained part of the former Ashmount School site it is, therefore, recommended that the council approve disposal to ISHA. This will deliver positive outcomes in terms of helping resident's access decent, secure and genuinely affordable homes and through the construction of the homes create more jobs and new apprenticeships and/or training opportunities for local people.

**Appendix 1 (Non-Exempt):** Site Location Plan

**Appendix 2 (Exempt):** Financial Summary and Review

Final report clearance:

**Signed by:**



19 November  
2014

**Executive Member for Finance and Resources**

Date:

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