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| Cabinet 31 July 2019 |  TOWER HAMLETS |
| Report of: Ann Sutcliffe, Corporate Director of Place | Classification: Unrestricted |
| Land to the West of Virginia Street - London Dock School | |

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| Lead Member | Mayor John Biggs |
| Originating Officer(s) | Alan McCarthy |
| Wards affected | St Kathrine's & Wapping |
| Key Decision? | Yes |
| Forward Plan Notice Published | 11 June 2019 |
| Reason for Key Decision | Financial Threshold |
| Strategic Plan Priority / Outcome | 1. People are aspirational, independent and have equal access to opportunities; 2. A borough that our residents are proud of and love to live in; 3. A dynamic outcomes-based Council using digital innovation and partnership working to respond to the changing needs of our borough. |

Executive Summary

Land to the west of Virginia Street formed part of the former News International site. Planning permission was granted for this site several years ago for the delivery of a mixed development comprising residential, offices, leisure uses, shops and a new secondary school. Under the terms of the Section 106, the Council is to enter into a long lease for the secondary school.

This report seeks approval to enter into a lease and sub-lease to enable the school to be built and occupied, and to approve the delegation of authority to the Corporate Director of Place to commence the procurement process, accept the tender price and let the construction contract for delivering the new school building.

Recommendations:

To enable a new school to be built and opened on the land to the west of Virginia Street, the Mayor in Cabinet is recommended to delegate authority to the Corporate Director of place:

1. the negotiation and completion of the lease between The Council and St George, the developer.
2. the negotiation and completion of the sublease between The Council and Mulberry Trust
3. to run an EU compliant procurement process and negotiate, agree and let the construction contract

1 REASONS FOR THE DECISIONS

- 1.1 Without approval the Council cannot enter into a long lease for the site and a new secondary school will not be built.

2 ALTERNATIVE OPTIONS

- 2.1 There are no other alternative options for entering into a lease. The requirement for the Council to enter into a lease was explicit in the Section 106 agreement and the appended documents.
- 2.2 The major projects team have looked at the various options for procuring construction services for delivering the school. The approach to this procurement is detailed further in this report.

3 DETAILS OF THE REPORT

- 3.1 This report relates to part of the broader News International site in Wapping. Several years ago planning permission was secured across this site for a substantial mixed development. Planning permission was granted for the demolition of the print works and associated buildings and the creation of 8 towers which will create nearly 2,000 homes, 20,816 sq metres of retail, restaurants and other non-residential uses, a new secondary school for 1,200 pupils and 2.2 hectares of open space. The development will be delivered in several phases and over 15 years. Phase 1, consisting of Blocks A, B and C have been completed. Block D will be completed later this year with occupation by tenants in Feb 2020 as most of the flats are already sold.
- 3.2 The section 106 entered into as part of the planning permission required the developer to set aside land for a new secondary school. The Council was required to notify the developer of the intention to exercise the option to take up the site for a new school and complete a 125 year lease.
- 3.3 On 18 November 2018, Cabinet approved the development of a new secondary school at the land to the West of Virginia Street as part of the

report covering 'Planning for School Places'. The November Cabinet report also approved the budget for the new school project of £52m. This budget will cover the build contract, fitting out the space and professional fees.

3.4 The Children's Services department has confirmed that they are definitely taking this site up to create a new school. Children's services, in accordance with DfE guidelines have identified Mulberry Trust to run the school. Following the analysis of primary school pupils in the Borough, they anticipate this new secondary school will need to open in September 2022. The 2022 date has dictated the timescales for whole project.

3.5 The Children's Services department has worked closely with Mulberry Trust to design the new secondary school and submitted a planning application in April with the expectation of obtaining planning approval late summer. In the meanwhile, to comply with the terms of the Section 106 agreement, the Council will need to enter into a lease for the site. The main heads of terms for the lease are as follows:

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| Landlord: | St George |
| Head lessees: | LB Tower Hamlets |
| Subtenant: | Mulberry Trust |
| Period: | 125 years |
| Rent: | Peppercorn |
| Alienation: | Draft silent as to subletting/assignment |
| Use: | For a secondary school only |
| Insurance: | The council to insure |
| Repair: | Tenants responsibility |
| Special conditions: | The landlord has the right to terminate in the event that the works to build the school not started within a year of the lease completion date, incomplete within 3 years of the lease completion and if the building is not occupied as a school for 3 years |

3.6 Whilst a standard form of lease was appended to the Section 106, Asset Management and Legal Services will need to finalise the lease with St George and insure the documents reflect current standards, legislation and Tower Hamlets current needs.

3.7 The Council will also need to enter into a sub-lease with Mulberry Trust as the school provider. The sublease will mirror the Council's lease so there is a consistent approach and minimal liabilities for the Council.

3.8 In leading the project the Major Projects team have selected an architect who has designed the school to meet the Council's brief and the DfE BB103 guidance. Regular progress meetings were held with the Design Team to monitor progress of work.

3.9 The Major Projects team intend to use the LHC framework for procuring a contractor. The LHC framework was adopted after looking into various

options of procuring the work. The benefit of using an established Framework is that the all of the requirements of OJEU have already been complied with and shortlists of competent contractors already signed up. This eliminates the need for contractors to complete a first stage Pre-Qualification Questionnaire (PQQ) which would involve the client, consultants and constructors in a protracted and time consuming process. The stage 1 tender process will commence on 14th June with the contractors that have expressed interest.

3.10 The programme for the procurement is as follows:

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| Stage 1 | Tender process starts | 7 th June 2019 |
| | Return date for stage 1 | August 2019 |
| | Tender evaluation and report to procurement board | 16 th Aug to 20 th Sep 2019 |
| | Enter in to PCSA with successful contractor | 1 st November 2019 |
| Stage 2 | Final tender report to be taken through Tollgate 2 and presented to Procurement board. | 25th April to 13th May 2020 |
| | TH to enter into a fixed price contract with the contractor | 14th May to 25th June 2020. |
| | Contractor to start on site | July 2020 |
| | Targeted completion date | July 2022 |
| | School open | September 2022 |

3.11 This report seeks approval of the Mayor to delegate authority to the Corporate Director to:

- Run an EU compliant procurement process
- Report to Procurement Board
- Agree and enter into construction contract and other associated agreements

4 EQUALITIES IMPLICATIONS

4.1 Access to good quality schooling is essential to meet the changing demands of the workplace and in the long term will have a main role to play in terms of lifting poverty and inequality.

5 OTHER STATUTORY IMPLICATIONS

5.1 **Consultations** – The Education department have undertaken consultation as part of taking this site forward for education purposes. There will be further work with stakeholders as the works are progressed and open date draws closer. There is also statutory consultation as part of the planning process.

5.2 **Best Value Implications** – As part of the tender process, the major projects team will need to satisfy the procurement board in terms of value for money etc. They intend to report to the procurement board twice before awarding the full contract.

5.3 **Risk Management Implication – Lease completion and Project delivery**

| Risk | Mitigation |
|--|--|
| The developer reneging on delivering a school as lease not completed | For project team to formally engage with developer so there is no doubts as to TH's intentions. For engagement with the developer on matters like the access plan and boundary arrangement. |
| Some of the terms of the lease no longer suit either party | AM with Legal services to make sure the lease meet current standards and is appropriate |
| Procurement timetable unrealistic meaning that the school will not be able to occupy the space in September. | The education department are looking at vacant buildings, and sites that may be able accommodate up to 150 pupils and staff for a few months. The project manager has also been asked to look if there could be a phased completion allowing some space to be ready and usable before the whole. |
| Contractor become financially unstable | The PM will need to carry out their due diligence on the contractors to sure there is financial capacity to deliver the works. |

6 COMMENTS OF THE CHIEF FINANCE OFFICER

6.1 The development of land to the West of Virginia Street which formed part of the former News International site was granted planning permission several years ago. As part of the s106 planning consent land was set aside and earmarked for a school to be built.

6.2 Budget approval for this mixed development was approved on 18 November 2018 and included the provision of a new secondary school complex. Budget for this project totalled £52m and forms part of the current pipeline capital programme.

- 6.3 Funding for building the school has been identified within the capital programme from a variety of sources including existing uncommitted grant £0.345m, s106 income £2.8m, CIL £8m and the remaining £40.9m from borrowing. The revenue implications of this additional borrowing have been considered as part of the medium term financial planning process.
- 6.4 Both s106 and CIL monies that can be assigned to education build programmes is limited. There is £8.3m of s106 monies available for education facilities that have not been committed to date. However there are competing priorities for this money and utilising £2.8m for this scheme will leave a reduced balance of £5.5m for future projects.
- 6.5 The Education team are currently in negotiation with the Department for Education regarding any government funding that may be available for the project. A number of documents have been requested and provided in support of the application and a decision around grant funding is expected shortly.
- 6.6 As the funding has been built without significant assumptions around using Department for Education grant monies, any amounts received will reduce the Council's requirement for borrowing and ease future pressures on the General Fund revenue position.

7 COMMENTS OF LEGAL SERVICES

- 7.1 This report seeks a delegation to the Corporate Director, Place, pursuant to s106 agreement as set out in 3.5 and 3.6 of this report to acquire and dispose of the property.
- 7.2 The Council, as a Local Education Authority, has a duty under Section 14(1) of the Education Act 1996 to secure that sufficient schools for providing primary education are available in its area. Section 14(2) clarifies that "sufficient" means that they must be sufficient in number, character and equipment to provide for all pupils the opportunity of appropriate education. The proposal to build additional primary school provision seems to be consistent with, and in pursuit of, that duty.
- 7.3 In deciding what provision to make in respect of primary and secondary schools, the Council is required to consider the need to secure diversity in the provision of schools and increasing opportunities for parental choice. This sits alongside the Council's general equality duty, which requires it to have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who don't. Equalities analysis will need to be carried out alongside the development of proposals.

- 7.4 The Localism Act 2011 gives Local authority's the general power of competence (Part 1, chapter 1) states "A local authority has power to do anything that individuals generally may do".
- 7.5 The Council's powers in relation to disposal of property (which includes the granting of leases) are set out in legislation. Having regard to the extended scope of the policy, section 123 of the Local Government Act 1972 (the "1972 Act"). .
- 7.6 The 1972 Act provides that the Council may dispose of land for a consideration not less than the best that can reasonably be obtained, failing which the consent of the Secretary of State is required. However, the requirement for best consideration does not apply in respect to buildings held in the General Fund and the Council can therefore lawfully grant the sublease on the terms set out in the report.
- 7.7 The Council is obliged as a best value authority under section 3 of the Local Government Act 1999 to "make arrangements to secure continuous improvement in the way in which its functions are exercised having regard to a combination of economy, efficiency and effectiveness'. The information within the report suggests that the proposed acquisition and disposal will secure the objectives set out in the 1999 Act.
- 7.8 The Council will complete a European Law compliant tendering exercise in order to determine the identity of the Construction contractor and other associated contractors / consultants for the completion of the project.
- 7.9 Not only is the Council required to follow the European law when tendering opportunities of the likely values stated in the report, such tendering will also demonstrate compliance with the Best Value duty as the tendering will be on a Most Economically Advantageous basis having been evaluated on a blend of quality and price.

Linked Reports, Appendices and Background Documents

Linked Report

- **Cabinet Report - November 2018 School places report**

Appendices

- None

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

- None

Officer contact details for documents:

Or state N/A