

<b>Cabinet</b>  27 October 2021	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Ann Sutcliffe Corporate Director of Place	<b>Classification:</b> Unrestricted
<b>Canon Barnett Primary School, Gunthorpe Street, E1 7RQ – Land Swap Agreement</b>	

<b>Lead Member</b>	<b>Councillor Bustin, Cabinet Member for Planning and Social Inclusion</b>
<b>Originating Officer(s)</b>	Stephen Shapiro, Head of Asset Management Thomas Parsonage, Interim Asset Manager
<b>Wards affected</b>	Spitalfields and Banglatown
<b>Key Decision?</b>	Yes
<b>Reason for Key Decision</b>	Financial threshold
<b>Forward Plan Notice Published</b>	12 July 2021
<b>Strategic Plan Priority / Outcome</b>	<b>People are aspirational, independent and have equal access to opportunities</b> <b>1. People access a range of education, training, and employment opportunities.</b>

### **Executive Summary**

Canon Barnett is a Victorian Primary School situated along Gunthorpe Street and within close proximity to Aldgate East underground station. The land to be disposed of (light blue on accompanying plan fronting Commercial Street) is currently designated as a school playing field and will be included as part of a land swap with Alliance in exchange for £8.8m plus the green land on the accompanying plan.

Alliance Asia Property Incorporated (Alliance) have agreed to purchase the Canon Barnett School Playground (light blue area on plan) for £8.8m plus overage. Alliance have further agreed to transfer a piece of land for nil value which will be the new school playground (which is the green area on plan). The area being transferred is valued at circa £3m. The total consideration to be received is therefore £8.8m (in respect of the sale of the playing field) plus £3m (in respect of the value of the land to be acquired for the new playground) which equates to a total of £11.8m. Alliance Asia Property Incorporated are incorporated and domiciled in Panama City, Republic of Panama.

## **Recommendations:**

The Cabinet is recommended to:

1. Authorise a S.77 application to be made by LBTH regarding the disposal of the current playground.
2. Approve the freehold disposal of the section of playground (shown as light blue on the plan) to Alliance Property Asia Incorporated for £8.8m plus acquisition of the section of land coloured green on the plan.
3. Authorise the Divisional Director, Legal to enter into any legal agreements considered necessary or desirable for the council to put into effect the recommendations in this report

## **1 REASONS FOR THE DECISIONS**

- 1.1 The land to be disposed of (light blue on accompanying plan) is currently designated as a school playing field and will be included as part of a land swap with Alliance in exchange for £8.8m plus the green land on the accompanying plan.
- 1.2 It is considered that this will not cause detriment to the school as the land swap and associated receipt provide opportunity to make improvements to the accommodation and facilities for the school community, including a new block, classroom refurbishments and a play area less exposed to traffic pollution.
- 1.3 At the same time, this transaction is conditional upon receiving consent from the Department of Education from submitting a Section 77 Application under School Standards and Framework Act, 1998 and Schedule 1 of the Academies Act 2010 which is required when disposing of playing fields.
- 1.4 The Council has advised that it will consult with the public and that this is expected to take place towards the end of 2021 for a 6-week period. The DfE guidance indicated consultation is required, unless the DfE advise otherwise. The Council can submit the Section 77 application prior to any consultation.
- 1.5 Due to the value of the land, it is beyond Delegated Threshold levels of officers and Cabinet approval is therefore required.

## **2 ALTERNATIVE OPTIONS**

- 2.1 The land swap has been proposed by Alliance is in order to facilitate a major new office development by consolidating and rationalising their development site.
- 2.2 Alliance have recognised the value which this swap creates for them in offering £8.8m consideration plus an equivalent sized land parcel for school playground use.
- 2.3 The reconfiguration of the site and the financial receipt will also support other

improvements to the school including a new nursery block, refurbishments to other classrooms, and the reorientation of the playground reducing children's exposure to traffic pollution.

- 2.4 The alternative option would be not to progress the land swap. This would maintain the established layout for the school but would require redesign of the office scheme and would also mean foregoing the capital receipt and associated improvements.

### **3 DETAILS OF THE REPORT**

- 3.1 Canon Barnett School is situated along Gunthorpe Street and within close proximity to the Aldgate East underground station. The land to be disposed of (light blue on accompanying plan) is currently designated as school playing fields. The land coloured green on the accompanying plan is owned by Alliance Property Asia Incorporated. It is envisaged that the council will dispose of the land coloured light blue on the plan to Alliance Property Asia Incorporated and acquire the land coloured green plus £8.8m.
- 3.2 The proposed land to be exchanged can be seen in the accompanying plan, which illustrates that the sites are of equal size.
- 3.3 The proposed sale price of the current playground (blue land) is £8.8m plus overage. The current value of the green land to be received is approximately £3m although this will be transferred at nil value to LBTH. The future use of the land as school playing fields will depress its value and this lower value will be reflected in the Land Registry record of the transaction.
- 3.4 In addition to the £8.8m payment, Alliance has offered a capital or revenue overage payable to the council if certain financial thresholds are met. If Alliance sells on the development site for over £60M within the next five years, up to a £1m additional capital payment will be paid to the council. Revenue overage of up to £3m will apply if the completed scheme sells for over £400M in the first 3 years after completion.
- 3.5 The land swap proposal is dependent upon Alliance receiving planning consent for the development of plot 1 on the plan.
- 3.6 External lawyers (Anthony Collins Solicitors) and Surveyors (Gerald Eve) have been appointed at Alliance's expense. Legal advice will consist of educational law, property law and tax advice (SDLT) surrounding the transaction. A letter of opinion will be provided by Alliance which confirms that Alliance Property Asia Incorporated can enter into this transaction.
- 3.7 Gerald Eve have confirmed that this transaction meets best consideration in line with Section 123 of the Local Government Act.
- 3.8 An element of the legal advice will be surrounding the application to the DfE for a Section 77 Application under School Standards and Framework Act,

1998 and Schedule 1 of the Academies Act 2010 which is required when disposing of playing fields.

- 3.9 A recent complication has occurred with the school proposing to become an Academy, and they have been briefed accordingly, and are happy to continue to progress with the land swap proposal.
- 3.10 The Council will cover a set of to be agreed school building works associated with the land swap. The exact building details are to be determined by a feasibility study.

#### **4 EQUALITIES IMPLICATIONS**

- 4.1 The school community includes a high proportion of people with protected characteristics, as would be expected in a primary school in a highly diverse area.
- 4.2 The school leadership have been consulted about the proposed playground swap and associated improvements and believe they are of benefit to the school community.
- 4.3 The Heads of Terms agreed with Alliance provides assurance that the development will be sequenced to ensure continuity of playspace provision throughout.
- 4.4 A consultation in line with our obligations under Section 77 will take place during the 21/22 academic year

#### **5 OTHER STATUTORY IMPLICATIONS**

- 5.1 This section of the report is used to highlight further specific statutory implications that are either not covered in the main body of the report or are required to be highlighted to ensure decision makers give them proper consideration. Examples of other implications may be:
- Best Value Implications,
  - Consultations,
  - Environmental (including air quality),
  - Risk Management,
  - Crime Reduction,
  - Safeguarding.
  - Data Protection / Privacy Impact Assessment.
- 5.2 S.77 Consent under School Standards and Framework Act, 1998 and Schedule 1 of the Academies Act 2010 which is required when disposing of playing fields from the DfE is required before this matter can conclude

## **6 COMMENTS OF THE CHIEF FINANCE OFFICER**

- 6.1 The transaction will be subject to Department of Education (DfE) approval will result in a capital receipt of £8.8m and or overage depending on the financial threshold attained by the Alliance.
- 6.2 The timing of the conversion of the school to an academy is currently unknown and there will be differing Stamp Duty Land Tax Liabilities (SDLT) depending on whether the conversion occurs before or after the land swap. The council will seek to minimise the impact of SDLT where possible.
- 6.3 There are no VAT implications pertaining to this transaction.

## **7 COMMENTS OF LEGAL SERVICES**

- 7.1 Section 1 of the Localism Act 2011 grants councils a general power of competence whereby a local authority has the power to do anything that individuals generally may. However, that power does not enable a local authority to do anything which it is unable to do by virtue of a pre-commencement limitation.
- 7.2 Section 123 of the Local Government Act 1972 is a pre-commencement statute that imposes limitations on the council's power to dispose of property. Section 123 of the Local Government Act 1972 provides that a council shall not (save where the consent of the Secretary of State has been obtained) dispose land for anything less than the best consideration that can reasonably be obtained. It is noted in this report that professional advice has been sought from Gerald Eve and that they have confirmed that this transaction represents best consideration for the council. It is also note that the council will benefit from overage which an agreement that Alliance will pay extra, on top of the original price, if and when certain events happen.
- 7.3 The property will be acquired pursuant to s120 of the Local Government Act 1972 which gives the council power to acquire land by agreement for the purposes of (a) any of the council's functions under the Local Government Act or (b) the benefit, improvement or development of the area.

The council also has an obligation under section 3 of the Local Government Act 1999 to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness (the best value duty).

- 7.4 The council has a Public Sector Equality Duty under the Equality Act (2010) to have due regard to the need to:
- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act
  - Advance equality of opportunity between people who share those protected characteristics and those people who do not

- Foster good relations between people who share those characteristics and people who do not

The report details that school's leadership have been consulted regarding the proposed transaction and that there will be continuity of playspace provision throughout.

- 7.5 Moreover, the report details that as part of the S.77 application process there is a consultation (the public consultation period is expected to be no less than 6 weeks, 4 of which should be in term time). It is also noted that the council will obtain a letter of opinion from a lawyer qualified in the relevant jurisdiction confirming that the Alliance Property Asia Incorporated can enter into the proposed transaction. A letter of opinion is used in cross-border transactions to provide reassurance of the validity of the company in question and its ability to enter into the transaction.

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## **Linked Reports, Appendices and Background Documents**

### **Linked Report**

- NONE.

### **Appendices**

- Appendix 1 - Site Plan

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

- NONE.

### **Officer contact details for documents:**

N/A