


<p style="text-align: center;">Cabinet</p> <p style="text-align: center;">29th July, 2020</p>	
Report of: James Thomas, Corporate Director Children's and Culture and Ann Sutcliffe, Corporate Director of Place	Classification: Part restricted
Oaklands School – Use of Raine's Foundation School Lower Site	

Lead Member	Councillor Danny Hassell, Cabinet Member for Children's and Culture Services Councillor Rachel Blake, Cabinet Member for Capital Delivery
Originating Officer(s)	Christine McInnes, Divisional Director, Education and Partnership Michael Rourke, Divisional Director, Property and Major Programmes
Wards affected	St Peter's
Key Decision?	Yes
Forward Plan Notice Published	4 th June 2020
Reason for Key Decision	Financial Threshold
Strategic Plan Priority / Outcome	People are aspirational, independent and have equal access to opportunities;

Executive Summary

Due to increasing pressure for secondary pupil places, Cabinet agreed to expand Oaklands Community Secondary School at its meeting on 26 February 2020. This expansion requires additional accommodation, as the additional places cannot all be provided on their existing site.

The Raine's Foundation School is located on 2 sites, the main school site on Approach Road, E2 ('Main Site') and the former Lower School site in Old Bethnal Green Road, E2 ('Lower Site'). The school is due to close on 31 August 2020. As Raine's Foundation School is closing, the Lower Site will potentially be available for leasing or acquisition.

The Lower Site is shown in the Land Registry as having separate elements of the land owned by The London Diocesan Board for Schools ('the Diocese') and the trustees of the Raine's Foundation ('the Trust'), with a small area to the rear of the site owned by the Council (see site plan Appendix 1). However, the Trust has now challenged the Diocese's ownership of the site. The validity of their claim is not clear and is being established.

The Council is proposing to enter into an initial licence agreement with the Diocesan Board from 1st September 2020 to 31st December 2020, with an intention to then negotiate a lease and seek to secure terms to conclude the Rain's Lower Site with the registered owner. The Trust has recently indicated a willingness to enter into discussions with the Council regarding their part of the Lower Site and this negotiation will be progressed.

The funding for the purchase of the Lower Site will be subject to the review of the Council's capital programme, to be reported to Cabinet in September 2020.

The licence, lease and subsequent purchase of the Lower Site will enable the LA to ensure it meets its sufficiency duty. It will enable the planned increase in school places for the Oaklands Community Secondary School and in much needed additional educational facilities becoming available to the school and community.

Recommendations:

The Mayor in Cabinet is recommended to:

1. Authorise the Corporate Director of Place to undertake negotiations with the London Diocesan Board for Schools and/or Raine's Foundation Trust for a licence agreement (see Exempt Appendix 3) followed by a lease (see Exempt Appendix 4) for the Lower Site in Old Bethnal Green Road, E2. It is intended the license will commence on 1st September 2020 for four months for a peppercorn rent, to enable the expansion in school places in the Oaklands Community Secondary School and ensure the LA meets its duty to provide sufficient school places;
2. Authorise that the Corporate Director of Place to agree a rent (see Exempt Appendix 2a), for the larger portion of the site (76%), for a two-year lease period with suitable break clauses, conditional on the negotiated valuation of the Lower Site that will be agreed by September 2020. If the purchase concludes sooner with the authorised owner of the Lower Site;
3. Authorise the Corporate Director of Place to undertake negotiations with the London Diocesan Board for Schools and/or Raine's Foundation Trust for the purchase of the Raine's Foundation School Lower Site in Old Bethnal Green Road, E2 based on a joint valuation between LBTH and the Diocesan Board (see Exempt Appendix 2 b); and
4. Authorise the Corporate Director of Place to undertake negotiations with the Raines Foundation Trust to agree a lease for their part of the Lower Site for a two-year period and also to agree a suitable purchase price.

1 REASONS FOR THE DECISIONS

- 1.1 With the gradual increase in applications to secondary schools in Tower Hamlets, Cabinet agreed at its meeting in February to increase the PAN of

Oaklands Community Secondary School ('Oaklands') from 120 to 180 for the start of the 2020/21 school year as part of a wider plan to ensure there are sufficient secondary school places to meet demand. The school is rated as Good and is a popular school.

- 1.2 The current accommodation at Oaklands does not have capacity to take the additional 60 pupils per year group and a separate site is required. With the closure of the Raine's Foundation School on the 31st August, the Lower Site would provide the additional accommodation required as is very close to Oaklands.
- 1.3 The Lower Site was recently refurbished for use by Raine's 6th form, it is proposed that the site is used for Oaklands' pupils in Years 11, 12 and 13.

2 ALTERNATIVE OPTIONS

- 2.1 The capacity of the existing Oaklands site provides for just over 4 forms of entry. The site is very compact, and it is not possible to increase its capacity to the model size of 6 forms of entry. The school has very limited external recreation space, which already includes the use of roof space, and even so is below that set out in the government's guidance (Building Bulletin 103) on school recreation play space. During the academic year 2019-20, the school has managed overcrowding of existing pupils by making use of the school hall as a base for the sixth form.
- 2.2 Three options were considered for the expansion and two were not deemed suitable. There are currently no other suitable buildings or sites nearby, other than the Raine's Lower Site which can provide for the additional 420 secondary school places needed.
- 2.3 The use of the Professional Development Centre ('PDC') was considered, but the school would not initially have exclusive use and this could create Safeguarding risks. The PDC would need significant capital investment to be usable as a secondary school building, for example to install science laboratories and sports facilities. There is also very limited outdoor space. It is not possible to make adaptations by September 2020 and uncertainty about the future use of the PDC building is also a risk.
- 2.4 The potential for using other existing sites has been explored. School sites that might become available for use in the future are not likely to be available before September 2021, but would require significant capital investment to adapt them for use as a secondary school.
- 2.5 In contrast, the Raine's Lower Site already has already benefitted from capital investment and refurbishment so is a functional school building.
- 2.6 The distance of any new site from the Oaklands main site is also a key issue. It would be difficult for Oaklands leadership team to manage a site that was not within walking distance of the main site, both with regard to enabling student's use of the main school facilities and the added staffing costs. For

this reason, potential sites further away from Oaklands were not considered.

- 2.7 Primary school sites which do become available can, when disposed of, be used as a capital contribution towards the purchase of the Raine's Lower site.
- 2.8 Since 60 additional year 7 pupils have been offered and accepted a place at Oaklands school for the 1st of September, provision will need to be made for these pupils by Oaklands. The Local Authority cannot lawfully withdraw the offers or disperse the pupils to other secondary schools which have vacancies. The School Admissions Code paragraph 2.12 states 'An admission authority **must not** withdraw an offer unless it has been offered in error, a parent has not responded within a reasonable period of time, or it is established that the offer was obtained through a fraudulent or intentionally misleading application.' The Local Authority, in order to meet its statutory duties, must provide temporary accommodation nearby or on site if possible.

3 DETAILS OF THE REPORT

- 3.1 **Background** The report to Cabinet on 31 October 2019, explained that there would be an increasing demand for secondary school places until 2023 before levelling through to 2027. The LA's plans to meet the projected demand need to be flexible and able to provide sufficient additional capacity to allow for parental preference and to provide places for pupils who may choose to transfer from existing underperforming schools.
- 3.2 On 29 January 2020, Cabinet agreed to close Raine's Foundation School ('Raine's') concluding that it was not financial sustainable. The Schools Adjudicator subsequently upheld the Council's decision on the 20th April 2020 and confirmed that the school would therefore close on 31 August 2020. This meant that the Council's decision could not be challenged.
- 3.3 Raine's is located on 2 sites, the Main School site on in Approach Road, E2 ('Main Site') and the former Lower School site ('Lower Site') in Old Bethnal Green Road, E2. In 2018 the sum of £4m Section 106 funding was agreed to upgrade the accommodation at the Raine's Lower Site for the Raine's Sixth Form and to provide a MUGA and other sports facilities for the local community.
- 3.4 The process was managed by the Diocese via the provision of a s106 grant. During the first phase of this work, which was completed in August 2019, the Diocese upgraded the Raine's Lower Site for the school's 6th form and the cost of the works was circa £1.5m.
- 3.5 It was whilst these works were being carried out that the possibility of Raine's closing was raised and so planning was undertaken to scope where the displaced pupils could be accommodated.
- 3.6 A parallel expansion of Oaklands, the nearest secondary school to Raine's, would ensure sufficient secondary school places to accommodate Raine's pupils, as well as contribute to meeting the projected shortfall in secondary

school places. Discussions then took place between the LA and the Diocese regarding the potential use of the Raines Lower Site by Oaklands as the two sites are approximately 300m from each other.

- 3.7 Before any agreement was made to formally take on the site the issue of the Trust owning part of the Lower Site was raised and they objected to the arrangement.
- 3.8 Due to increasing pressure for secondary places demonstrated in the October 2019 Cabinet report, the proposed expansion of Oaklands was agreed by Cabinet on 26 February 2020.
- 3.9 The expansion of Oaklands requires accommodation for additional student places and this cannot all be provided on the existing school site, even if the proposed capital works on the Oaklands site are undertaken. With the closure of Raine's agreed it is proposed to seek the purchase of the Raine's Lower School Site, and that a lease is agreed in the meantime, ready for the beginning of the academic year 2020-21.
- 3.10 The acquisition of the Raine's Lower Site for the expansion of Oaklands School provides the Council with the opportunity to provide up to 420 additional secondary school places. This is necessary to meet its 'basic need' obligations to ensure sufficient school places and avoid having to look immediately at the development of further new school sites, which would be more costly. The building is already set up for use as a 6th form in terms of the accommodation and equipment, so Oaklands could move in as soon as an agreement is in place.
- 3.11 **Ownership and use of the Raine's Lower Site** The Land Registry title register shows that the Lower Site has a split ownership with The London Diocesan Board for Schools ('the Diocese') and the Trustees of the Raines Foundation ('the Trust'), owning 2 separate adjoined parcels of the sit with a small area to the rear of the site owned by the Council. The Diocese land is shown edged red on the plan, the Trust land is shown blue on the plan and the Council's land is shown green on the plan, please see Appendix 1.
- 3.12 The Council had already undertaken initial discussions with the Diocese, and the Diocese have indicated that they would consider selling their portion of the Lower Site. The Trust has also recently engaged in discussions with the Council with regard to their part of the Lower Site.
- 3.13 However, the Trust wrote to the Diocese on 23 June 2020 claiming that they should have transferred the section of the Lower Site registered to the Diocese to the Trust so that both areas would come under the ownership of the Trust. This dispute is being taken forward by the Diocese legal team.
- 3.14 Whilst the negotiations between the three parties (the Trust, the Diocese and the Council) continue, officers have agreed with the Diocese and the Oaklands leadership team that the school can operate effectively by accessing only the part of the Lower Site registered to the Diocese.

- 3.15 As an interim solution, the Diocese portion of the Lower Site can be used, operating independently from the Trust owned portion through the installation of a partition, fencing and adaption of the services which will require the agreement of the Trust for access to undertake these works. This provides adequate accommodation to meet the needs of Oaklands school for the time being and it is intended to proceed on this basis to make the site useable for the academic year 2020-21. The cost to undertake these works is estimated to cost £30,000 and can be met from existing budgets.
- 3.16 Whilst the current situation is complex, we have been advised by Counsel the DfE would have a role in supporting resolution in the medium to longer term. Under Part II of Schedule 22 to the Schools Standards Framework Act 1998, when a school is to close, the owners of the site must write to Secretary of State to advise him of the closure and to confirm their proposals for the site, particularly if there has been significant investment using public funds, as is the case in the Raine's Lower Site. The Diocese have confirmed that they have prepared and are sending a letter to the Secretary of State advising of their intention to agree a lease with the Council for two years.
- 3.17 As the Raine's Lower Site is required for educational use by the Council, if the Diocese or Trust were being unreasonable the Council can apply to the Secretary of State to consider whether or not the land could be transferred to the Council. Specialist legal advice has been sought to confirm if this case meets the relevant criteria. The Council will propose to the Secretary of State the need for the Lower Site for the use by Oaklands School, to enable the agreed expansion. Our legal team have prepared this letter, which will be sent to the Secretary of State within the next week.
- 3.18 **The value of the Raine's Lower Site** Both the Council and Diocese have carried out valuations of the Raine's Lower School. There is a disparity between the assessment of the open market value of the Lower Site in terms of the rental and capital value. It has been agreed between the two parties that a joint independent valuation be undertaken within six months of the commencement of the licence and that the outcome will be adhered to; the lease will include the conditional purchase terms.
- 3.19 As the process for agreeing the valuation and then purchase of the Lower Site cannot be completed by September, it is proposed to negotiate an initial short term licence from 1st September to 31st December 2020 at a peppercorn rent, followed by a two years, at an annual rental . It has been agreed the rental cost would be off set against any agreed purchase price with the registered owner but would be cash flowed in agreement with Resources Directorate. The purchase costs would be met from the Council's capital programme.
- 3.20 The Capital programme is currently being reviewed and recommendations will be reported to Cabinet in September.
- 3.21 The ongoing revenue costs for managing and maintaining the building would be the responsibility of Oaklands School, which they would fund from their

delegated budget as this will increase due to the additional pupil numbers. Any future capital costs for condition works would come from the Council's capital programme, although the building is currently in good condition.

3.22 A summary of the potential costs and funding are as follows:

- Land purchase – The independent valuation on the whole site is yet to report and the actual cost is subject to negotiation. The Council will expect a reduction in the purchase price to reflect the existing capital investment of £1.5m as well as the commitment by the Diocese that the cost of any rental costs arising from the lease agreement
- The four-month licence – this will be charged as a peppercorn rent (attached terms)
- Short term lease – agreement has been reached with the Diocese on a rental for the 2 year lease.
- Separation works - £30k (School Condition & Improvement Prog.).
- Annual expected running costs and budget (School Budget).
- Budget for repairs and maintenance (School Budget).
- Letting costs and budget - £100,000 per annum (Revenue Budget).
- Works to expand Oaklands School - £8m(funding)

3.23 The nature reserve at the rear of the Lower Site is mainly owned by the Council but managed by another local trust.

3.24 **Summary** the Council has a statutory duty to provide sufficient school places and in order to meet growing demand in the secondary sector Cabinet agreed an expansion of Oaklands school at the February 2020 meeting.

3.25 Oaklands school has experienced significant overcrowding during the academic year 2019-20 and is expecting an additional 60 pupils on the 1st of September 2020. It is not possible to accommodate these pupils on the existing restricted site of the school and the Local Authority cannot withdraw the offer made to families of a place at the school.

3.26 This means arrangements must be put in place to accommodate the additional pupils. Several alternative options to using the Raine's Lower Site have been considered, but these are not viable as they would all require additional capital investment and could not be ready for a 1st of September start.

3.27 The Raines Lower Site has been refurbished and is ready to use as a school building; it is located 300m from Oaklands school. The issue is identifying funding for the rental costs as an interim solution as ownership of the Lower Site is established, the cost of purchase is still to be finalised and subject to the capital programme being endorsed in September and the potential to seek the Secretary of State to intervene over the use of the Lower Site is explored.

4 EQUALITIES IMPLICATIONS

- 4.1 The Council aims to establish school access arrangements that seek to eradicate inequality and maximise the availability of school places. These policies are circumscribed by law and statutory guidance. They comply with equalities legislation and, as far as possible, are inclusive of the community.
- 4.2 The Council is also mindful of its duty to ensure that its decisions enable parental preference, where possible. It monitors outcomes to ensure that any proposed policy changes explain the background, identifies the issues of concern and highlights the potential benefits. These factors were assessed as part of the report to Cabinet on 26 February 2020. The outcomes recognised that an increased PAN would enable Oaklands, as a popular school, to meet the likely pupil demand and improve the quality and sustainability of its provision going forward. We therefore consider that there is no negative impact.

5 OTHER STATUTORY IMPLICATIONS

- 5.1 Under Part II of Schedule 22 to the Schools Standards Framework Act 1998, when a school is to close the owners of the site must write to Secretary of State to advise him of the closure and to confirm what should happen to the site(s) and its buildings, particularly when there has been significant investment using public funds.

6 COMMENTS OF THE CHIEF FINANCE OFFICER

- 6.1 There is financial uncertainty and risk associated with meeting the accommodation needs of an expanded Oaklands School in time for a September 2020 opening.
- 7 Following Legal advice, the council could not propose the acquisition of the site until the future of Raine's School had been decided, the purchase of the Lower Raines school site has not previously been included in the Council's Capital Programme and as such there is currently no identified funding source for that purchase. Similarly, funding to support a lease payment of £100,000 per annum has not been provided for within the Council's revenue budget.
- 7.1 In relation to the anticipated capital purchase of the site the estimated cost can be included in the proposed capital programme being considered by members in September but Members will need to understand that committing to that purchase now will fetter their discretion on other capital expenditure at that time.
- 7.2 There is also currently uncertainty about the purchase price with disagreement between the Council and Diocese valuations and uncertainty over ownership of part of the site between the Diocese and the Trust; the extent of funding is therefore at this stage unknown but assumed to be in the order of £10m - £15m.
- 7.3 In terms of the availability of capital funding there is currently approximately £2.1m of S106 that references an Educational use, that has not been

allocated against a scheme; a review of decisions on other education schemes agreed but not contractually committed could provide additional scope for the Oaklands scheme. A further sum of Community Infrastructure Levy (CIL) is potentially available subject to other schemes being de-prioritised. This could be on the basis that future Educational Capital Receipts will be used on a substitution basis as suggested in para 2.7.

- 7.4 Whilst the disposal of Educational sites remains subject to the approval of the Secretary of State, the previous risk that the sites be allocated to their own free school and academy programme was mitigated through a change in DfE policy regarding the free schools programme which is now targeted at areas with the lowest educational standards and so excludes Tower Hamlets. A 'Free School presumption' does still exist where a new school is required to meet a need for additional places with an obligation for the Council to provide a site.
- 7.5 More generally capital receipts or borrowing could be used if Members agree that this scheme must be prioritised at this point. The use of borrowing would require additional revenue budget to be included in the 2021/22 budget setting process and would equate to an additional budget pressure of approximately £1m per annum.
- 7.6 It may be possible, subject to specific legal agreement, to utilise the CIL for the short-term leasing costs set out in the report. However, this would be an unusual approach as CIL is normally expected to be used for capital expenditure where an additional asset is created or enhanced – this would not be the case for leasing costs which are revenue in nature. However, the report does set out an expectation that the leasing costs will be offset against the eventual capital value alongside the funding already incurred on the Lower Raines site. (para 3.22 – first bullet point) and which might satisfy the requirement in that respect.

8 COMMENTS OF LEGAL SERVICES

8.1 Education

Councils have a legal duty to make sure there are enough school places available to local children and young people. Under section 14 (1) of the Education Act 1996 a local authority shall secure that sufficient schools for providing primary and secondary education are available for their area. Further, under section 14 (2) of the Education Act 1996 the schools available for an area shall not be regarded as sufficient unless they are sufficient in number, character and equipment to provide for all pupils the opportunity of appropriate education.

As noted in this report, increasing pressure for secondary school places led to a decision by Cabinet earlier this year to increase places at Oaklands, which is located very close to the Raines Lower Site.

8.2 **Power to acquire the Lower Site**

As set out in this report 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

8.3 **Best value consideration**

The Council 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).

Paragraph 3.18 and 3.19 of this report demonstrate the steps being taken by the Council to meet its best value obligations

8.4 **Equalities Implications**

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 expansion of Oaklands will maximise the accessibility of school places for the local community.

Linked Reports, Appendices and Background Documents

Linked Report

- Cabinet Reports of the 31 October 2019 and 29th January and 26th February 2020.

Appendices

- 1. Site Plan
- 2. Rental Cost and Site Value (Exempt)
- 3. Draft Licence terms (Exempt)
- 4. Draft Heads of Terms (Exempt)

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

- NONE.

Officer contact details for documents:

N/A