

<b>Cabinet</b>  27 October 2021	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Ann Sutcliffe – Corporate Director for Place	<b>Classification:</b> Partly exempt
<b>St Matthias Sports Hall Letting</b>	

<b>Lead Member</b>	<b>Councillor Mufeedah Bustin, Cabinet Member for Social Inclusion – (Job Share post as part of Social Inclusion and Public Realm portfolio)</b>  <b>Cllr Asma Begum – (Deputy Mayor and Cabinet Member for Children, Youth Services, Education and Equalities (Statutory Deputy Mayor))</b>
<b>Originating Officer(s)</b>	Vicky Clark, Director Property & Major Programmes
<b>Wards affected</b>	Weavers
<b>Key Decision?</b>	Yes
<b>Reason for Key Decision</b>	Financial threshold
<b>Forward Plan Notice Published</b>	16 September 2021
<b>Strategic Plan Priority / Outcome</b>	People are aspirational, independent and have equal access to opportunities.

### Executive Summary

With the closure of St Matthias VA School at the end of August 2021, the adjacent sports hall is now back under the Council's control. The London Diocesan Board for Schools ('Diocese') would like to rent the hall so it is available for their tenant who will be taking over the former school. The use of the hall by local schools has been protected.

Should the letting not proceed for any reason then the sports hall at St Matthias should be deemed surplus to requirements.

There is a restrictive covenant on St Matthias School site in the Council's favour which needs to be removed if no longer valid.

### Recommendations:

The Cabinet is recommended to:

1. Note the terms for the proposed lease with the Diocese and delegate authority to the Corporate Director of Place to obtain any necessary consents required to the letting to the Diocese.

2. Delegate authority to the Corporate Director of Place to enter and complete the lease.
3. Should the lease not complete for any reason, delegate authority to the Corporate Director of Place to be able to declare the site as surplus to requirements and marketed.
4. Subject to receiving further legal advice, delegate authority to the Corporate Director of Place to approve the removal of the restrictive covenant running across the School site if appropriate.

## **1 REASONS FOR THE DECISIONS**

- 1.1 Under the Council constitution, we are required to seek authority for entering a tenancy over a £100k threshold. This transaction falls within this category as rent is over £121k per annum over 21 years.

## **2 ALTERNATIVE OPTIONS**

- 2.1 **Use by another school** - There are other non-private schools that access this sport hall, but they may not have the financial capacity to pay the rent we have secured on this site.
- 2.2 **Seek a private leisure provider** - The sports hall is accessible via St Matthias School. Whilst the hall may be rented to a non-school user, access and other matters may need to be reviewed so fully independent and to reduce any child protection concerns. Additionally, local primary schools use the sports hall, if this arrangement was required for the private leisure provider, the rental income is likely to be impacted. Use by of the site by a non -neighbour would require creating an additional access route to the building which is currently accessed via the school site.
- 2.3 **Disposal** - Whilst disposal on the open market is always an option, it is understood that Sports Lottery Funds may have been used to build this facility and disposal may contravene the terms of the funding.

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

- 3.1 The St Matthias sports hall is adjacent to the Church of England owned St Matthias School which formally closed at the end of August 2021. The sports hall site is owned by the Council. The sports hall is accessed through St Matthias School site and comprises 4,084 sq ft made up of a main hall and a suite of toilets. St Matthias managed the hall on the Council's behalf and maintain access for two local primary schools. With the closure of St Matthias School, the management of the sports hall has reverted to the Council.
- 3.2 The Diocese has now secured a private educational provider to take over the site of St Matthias School who intends to open the site as a private school at the end of the year following a programme of works. The programme of works is between the Diocese and their private tenant. The Diocese has approached the Council with the view of the new school leasing the sports hall. To protect the Council's asset, it has been agreed that the lease will be directly with the Diocese who will then sublet to the new tenant. The Diocese has made sure that local schools can continue to access the sports hall twice a week. The Diocese is the better covenant for taking the lease for the sports hall as it is an established institution and unlikely to fail. If the private school fails, the Diocese will remain the tenant, which is advantageous to the Council and less risky in terms of securing an income stream,
- 3.3 The key terms agreed in principle are (see Appendix 1 for the full terms):

The Parties:	LBTH and The Diocese
Period:	21 Years from 1st November 2021
Break Clause:	Tenant break clause after year 10
Rent:	Commencing at £112k pa
Rent reviews:	Stepped rent for first 5 years then upwards only rent reviews
Alienation:	The tenant may sublet the hall to the occupier of the adjacent school. The tenant may assign the hall to a similar organisation
Use:	For sports and leisure activities
Community use:	Hall to be available to the local primary school for 5 hours a week
Repairs:	The tenant is responsible for all repairs and maintenance

- 3.4 There is a restrictive covenant running across the St Matthias school site linked to the former GLC and now in the Council's favour. The Covenant ties to use of the school site to industrial use. With the continued use of the site as a school, it is likely that the restrictive covenant is no longer enforceable. The restrictive covenant should be removed if no longer valid. The Diocese would like to refer the matter to the Upper Tribunal if the Council is not able to agree to remove the covenant.

## **4 EQUALITIES IMPLICATIONS**

- 4.1 It should be noted that as part of closing any school, Children's services would have undertaken substantial consultation and would have reviewed the impact of closure on equality. In respect of St Matthias School, the same process was undertaken. It is understood that the closure of St Matthias School did not give rise to any specific concern. The decision to close St Matthias School was approved on 3.3.2021. The Diocese has made sure access to the sports hall by local schools is maintained by making it part of the arrangement with the private school.

## **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 Best Value**

The rental income generated from the letting of this sport hall will be able to support the Council's other priorities. Whilst the sports hall was under the jurisdiction of the adjoining school no income was received.

### **5.3 Best Consideration**

This transaction needs to satisfy Sec 123 of the Local Government Act 1972. The rental value of the sports hall was independently assessed by external qualified and established valuers and is in line with the rent charged for this type of facility.

### **5.4 Consultations**

As part of the planning for closing St Matthias school site, there was substantial statutory consultation

### **5.5 Risk Management**

- The Diocese hope to sublet the sports hall to the organisation leasing St Matthias School site. If the Diocese letting of the school site falls through prior to completing the lease of the sports hall, it is debateable that the Diocese will proceed with leasing the sports hall.
- If, at a subsequent stage, after the lease has been signed, the new private school fails, the Diocese will remain liable for the rent under the terms of the lease.

- If the sports hall is not leased to the adjoining school, independent access would need to be secured so it may be used by another body.
- While the sports hall was managed by St Matthias School, there was a good relationship with the two local primary school who made use of the hall on a regular basis. With a new private educator leasing and looking after the facility, there is the risk of relationship break- down which will impact the local schools and the Council may have to step in which will be a pull on our resources.
- If this hall is not rented, the responsibility for this site will become a financial liability. There is not a budget for site security.
- In respect of the restrictive covenant, the Diocese has threatened to refer the matter to the Upper Tribunal if the matter cannot be dealt with by consensus. The Upper Tribunal route could be a lengthy and expensive process for both parties.

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

- 6.1 With the closure of St Matthias VA school at the end of August 2021, the adjacent sports hall has reverted to LBTH management. Under the Council constitution, this report is seeking approval to enter into a tenancy agreement over a £250k threshold
- 6.2 The Council has considered various options for the site, with the most financially viable being leasing it to the Diocese, allowing them to sub-lease to another school. The sports hall was built with sports lottery funding and disposal is considered a contravention of the funding agreement and therefore not an option.
- 6.3 The Council will receive a rent of £112k per annum at commencement in November 2021. There will be a stepped rent for first 5 years then upwards only rent reviews. This is deemed to represent the best consideration for this site, with other interested parties not having the financial capacity to meet this rent level.
- 6.4 The asset has transferred to the Place Directorate without any budget provision. There is a risk that void costs will be incurred until the asset is leased. Any such costs will result in a cost pressure, which will need to be contained within approved budgets.

## **7 COMMENTS OF LEGAL SERVICES**

- 7.1 S77 of School Standards Framework Act 1998 applies to all schools maintained by a local authority including voluntary schools, foundation schools and special schools. Where a school site is surplus to requirements, normally as a result of closure, amalgamation or consolidation, consent to dispose of the land is required under paragraph 12 of Schedule 1 to

Academies Act 2010. The grant of the lease is considered as a disposal and so consent will be required to grant the lease.

- 7.2 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.
- 7.3 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. Paragraph 5.2 of this reports provides that the rental value of the sports hall has been independently assessed.
- 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 addresses the equalities impact at paragraph 4.

- 7.5 If the lease is not granted the Council would like the land to be declared as surplus.
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## **Linked Reports, Appendices and Background Documents**

### **Linked Report**

- [Decision - Report on the outcome of public representations received in response to the statutory proposal to close St Matthias Primary School: Decision on Closure of St Matthias Primary School. \(towerhamlets.gov.uk\)](https://www.towerhamlets.gov.uk/decision-report-on-the-outcome-of-public-representations-received-in-response-to-the-statutory-proposal-to-close-st-matthias-primary-school/)

### **Appendices**

- Appendix 1 Exempt – Heads of Terms

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

- NONE

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

N/A