


<b>Cabinet</b>  26 July 2023	 <b>TOWER HAMLETS</b>
<b>Report of:</b> James Thomas, Corporate Director for Children & Culture	<b>Classification:</b> Unrestricted
<b>Land Option – Neptune Wharf School Development Site</b>	

<b>Lead Member</b>	<b>Councillor Maium Talukdar, Cabinet Member for Education and Lifelong Learning</b>
<b>Originating Officer(s)</b>	Terry Bryan, Service Head (Pupil Access & School Sufficiency) Catherine Grace, Head of School Admissions & Place Planning
<b>Wards affected</b>	Bow East Ward
<b>Key Decision?</b>	Yes
<b>Reason for Key Decision</b>	Significant impact on wards
<b>Forward Plan Notice Published</b>	08/06/2023
<b>Exempt information</b>	N/A
<b>Strategic Plan Priority / Outcome</b>	Accelerate Education

### Executive Summary

The ‘Neptune Wharf’ School site is within the London Legacy Development Corporation (LLDC) Development area that covers a small area of Tower Hamlets. The s106 development agreement stipulates that the site is for a three form entry primary school, and the Council is required to confirm whether it intends to take the site forward for development by September 2023.

This report is recommending that the Council does not take up the option to develop the school site for a new primary school for the reasons set out below.

Under the s106 agreement, in the event that the Council does not take the school site option the developer is required to pay the ‘school site sum’. The sum provides a fixed amount of money that could be spent on other education capital projects either in the LLDC area or Tower Hamlets as set out in clauses 2.8 – 2.10 of the agreement. Although the payment would initially be made to the LLDC, the Council is in active discussions with the LLDC regarding the sum, a potential variation to the agreement and the transfer of planning powers from LLDC back to Tower Hamlets in December 2024.

## Recommendations:

The Mayor in Cabinet is recommended to:

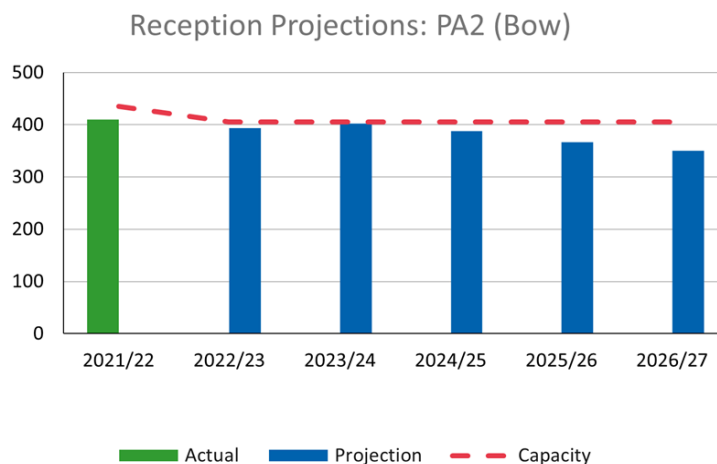
1. Agree that the Neptune Wharf site allocation is not taken forward for the development of a new three form entry primary school.

## 1 REASONS FOR THE DECISIONS

### School Roll Projections – Tower Hamlets

- 1.1 Current data on pupil migration, housing, cross border movement and school roll projections does not demonstrate there will be sufficient school place demand in the planning area to support the development of a new school at this time.
- 1.2 Neptune Wharf is located in the Northeast of the Tower Hamlets Bow Planning Area (PA2). There are currently seven schools in PA2 providing a total of 405 reception places. In the last two years there has been a significant drop in the demand for reception places and this expected to continue over the next few years as shown below.

Planning Area 2 - Bow		2021/22	2022/23	2023/24	2024/25	2025/26	2026/27
Actual (Jan Census)		410	376				
Projection		416	394	402	388	367	350
Capacity		435	405	405	405	405	405
Surplus	Pupils	25	11	3	17	38	55
	FE	0.8	0.4	0.1	0.6	1.3	1.8
	%	6%	3%	1%	4%	9%	14%



- 1.3 Based on these projections the Borough will have 14% surplus reception places in the PA2. This would indicate that at the point when Neptune Wharf

is scheduled to be delivered (2026/27), there is unlikely to be need for a new school.

- 1.4 Neighbouring boroughs Hackney and Newham have expressed concern about the potential for a new school at Neptune Wharf, given that their analysis has also determined there will not be a need.

#### **School Roll Projections – Hackney**

- 1.5 The LB of Hackney is located to the north of Neptune Wharf. The proposed school site is close to the Kings Park/Hackney Wick area, which already has a total of six primary schools. In Hackney's most recently published 'School Organisation Plan' (2021) it shows that this area had 28% surplus reception places. Hackney is now embarking on a number of school organisational changes, including school closures/mergers of primary schools in its area. There are currently no plans to add new primary provision.

#### **School Roll Projections - Newham**

- 1.6 Neptune Wharf is situated close to the Stratford East Village planning area in Newham. This planning area has six primary schools that provide a total of 435 places for reception. In January 2023 there were 22% surplus reception places. Although pupils numbers in this area are projected to increase over the next few years, there will still be a 15% surplus by 2026/27.
- 1.7 In view of the current position in Tower Hamlets and the neighbouring boroughs adjacent to the Neptune Wharf development, it is evident that the pupil population projections do not support the need for a new primary school in this area.

## **2 ALTERNATIVE OPTIONS**

- 2.1 The alternative option is to take the school, however, as set out in this report, there is currently no evidence to support the need for a new school in this part of the borough. In addition, the delivery and timing of the school is linked to the delivery and timing of the overall scheme and s106 agreement and therefore not within the full control of the Council should a school be required at a later date.
- 2.2 Under the agreement and to secure the site, the Council and LLDC must provide the Developer of the Neptune Wharf site with 'written notice' by 9 September 2023. The Council had enquired with the LLDC whether it was possible for an extension to this deadline. The LLDC has confirmed that the school site is currently being sold and the new owner is very unlikely to agree to extending the current time limit in the s106 agreement.
- 2.3 If the Council and LLDC were to do nothing the September deadline will pass and the default in the agreement is that the developer pays the s106 'School Site Sum' i.e. the financial contribution.
- 2.4 The Council has asked the LLDC to negotiate a Deed of Variation to s106, which would enable the financial contribution to be spent across the borough (rather than in the LLDC area) and on a range of education provisions, including nursery and special education. This is still to be agreed with the developer.

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

- 3.1 Tower Hamlets planning allocates development sites for both primary and secondary schools, informed by the infrastructure evidence base presented within the Council's Local Plan. The Local Plan allocates more school sites than required as this enables the Council to have flexibility in meeting its future school place planning needs. The Council, therefore, does not envisage that all allocated development sites will result in the construction of a new school.
- 3.2 The Neptune Wharf site was secured in March 2014 as part of the separate LLDC area infrastructure planning processes. Neptune Wharf is therefore outside of the Tower Hamlets planning area. The current LLDC plan states that "while uncertainty exists as to the precise number of new school places that will be required within and around the LLDC area within the lifetime of its plan, evidence indicates that there will be a general deficit in the capacity of existing and currently planned schools, particularly for primary-age pupils." There was a similar policy in the LLDC's previous local plan 2015-2031. However, this view is not evidenced by the current school roll projections for Tower Hamlets or the adjacent boroughs (Newham and Hackney) that make up the LLDC area.
- 3.3 The Neptune Wharf school site is part of the larger Fish Island development scheme which also includes housing, commercial, community and open space. The delivery and timing of a school on the site is linked to the delivery and timing of the overall scheme and s106 agreement, and therefore not within the control of the Council.

#### **Provisions of the s106 agreement**

- 3.4 Under the s106 agreement and to secure the site, the Council and LLDC must provide the Developer of the Neptune Wharf site with 'written notice,' by 9 September 2023 which must be accompanied by:
- i. evidence of approval to construct the school through the appropriate governance route (i.e., cabinet approval); and
  - ii. a programme of implementation and opening of the school including the anticipated appointment of the principal contractor.
- 3.5 Currently under the s106 agreement, if the council opts not to take the site the Developer must pay the 'School Site Sum' (circa £2.68m), ringfenced for three years for the provision of primary or secondary education facilities within the LLDC area.
- 3.6 After three years from receipt, there is a further year for the money to be spent on affordable housing in either the LLDC area or Tower Hamlets (100% nominations). Then a further year for the funding to be spent on affordable housing in the LLDC area (50% nominations). There are no further references in the s106 agreement to what happens then, although the Developer could and would likely argue that the funds should be returned at the end of the stated period.

- 3.7 Initially the 'School Site Sum' would be paid to the LLDC, as the planning powers for the area and responsibility for monitoring and enforcing the s106 agreement remain with LLDC until the 30 November 2024. The LLDC has confirmed that they have no immediate plans for the funding and that it is likely that the payment would be transferred to the council as part of the 'transfer of powers' in December 2024.
- 3.8 In the event that the 2.68m 'School Site Sum' payment is transferred to the council this funding would then be used to support education capital projects in the surrounding area, including key priorities for the provision of education facilities to support children and young people with special educational needs, as there is a particular need in the borough going forward.

#### **4 EQUALITIES IMPLICATIONS**

- 4.1 The Local Authority has a responsibility to ensure that every child in its area has equality of access to a school place. It is evident from the map in Appendix 1, showing the existing primary schools in Tower Hamlets and the surrounding areas (i.e., Newham and Hackney) that there is sufficient provision (including options to expand schools) to meet the needs of children in the Neptune Wharf locality, without any adverse impact.
- 4.2 The Local Authority also has a duty to ensure that every child in its relevant area has equality of access to a suitable school place at a reasonable safe walking distance. This can be further qualified as:
- up to two miles/ (if below the age of 8); or
  - up to three miles (if aged between 8 and 16).
- 4.3 The Neptune Wharf development is located within the Bow East Council Ward. The development is within the statutory 'reasonable' safe walking distances from existing primary schools within PA2. The three nearest primary schools being Old Ford, Chisenhale and Old Palace.

##### **Distances from Neptune Wharf (E3 2RX) to Tower Hamlets Primary Schools**

<b>School</b>	<b>Distance (Metres)</b>	<b>Distance (Miles)</b>
Old Ford Primary Academy	1596	0.99
Chisenhale Primary	1853	1.15
Old Palace Primary	1879	1.17

##### **Distances from Neptune Wharf (E3 2RX) to Other Nearby Tower Hamlets Primary Schools:**

<b>School</b>	<b>Distance (Metres)</b>	<b>Distance (Miles)</b>
Olga Primary School	2009	1.25
St Agnes RC Primary School	2023	1.26
Malmesbury Primary School	2185	1.36
Wellington Primary School	2359	1.47
Bonner Primary School (Mile End)	2976	1.85

- 4.4 Appendix 2 is for illustrative purposes only, but further demonstrates that there are accessible and reasonable public transport/walking routes and links to support journeys to the above schools.

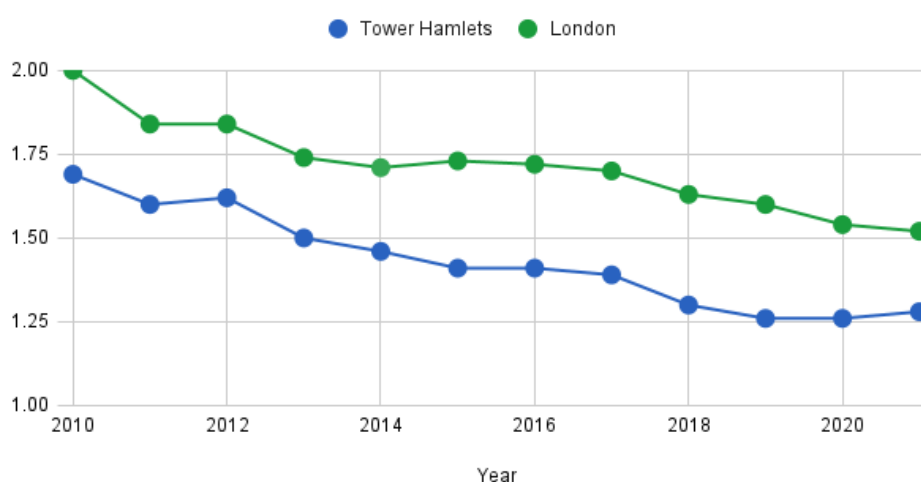
- 4.5 Statutory guidance<sup>1</sup>, preventing local authorities from giving priority school admission to their own residents, will also ensure that schools in Newham and Hackney are equally accessible to ‘Neptune Wharf’ residents.

## 5 OTHER STATUTORY IMPLICATIONS

### Risk Management

- 5.1 The ‘fertility rate’<sup>2</sup> for Tower Hamlets has steadily decreased over the last two decades. When looking specifically at the last 10 years, Tower Hamlets fertility rates continued to decline, but stabilised and even increased slightly in 2021.

Tower Hamlets and London Fertility Numbers (TFR2)



- 5.2 This has been alongside a downward trend in the number of live births in Tower Hamlets, falling by almost 500 between 2012 – 2020. However, the latest figures from the ONS (Provisional Births using NHS Birth Notifications) indicates an increase in Tower Hamlets births, for the first time since 2017. This 4,381 figure brings borough births back to the 2018 level, and is significantly higher than the 4,115 live births the GLA projected for 2021.

LBTH Births Actual Births 2012 to 2021 (ONS)

Area	2012	2013	2014	2015	2016	2017	2018	2019	2020 <sup>3</sup>	2021 <sup>4</sup>
LBTH	4,784	4,608	4,622	4,560	4,592	4,604	4,381	4,307	4,291	4,381
London	134,186	128,332	127,399	129,615	128,803	126,308	120,673	117,897	111,688	110,961

- 5.3 It is still too early to draw any firm conclusions on a possible upward trend in relation to fertility and/or birth rates. Although, given the unexpected increases in 2021, we anticipate that the GLA will revise up its birth projections for Tower Hamlets in this year’s release, due late summer 2023. This could impact on the current pupil projection figures in Bow PA.

<sup>1</sup> School Admissions Code (2021) Section1, para.14

<sup>2</sup> Average number of children that would be born to a female over their lifetime

<sup>3</sup> ONS available data is until 2020

<sup>4</sup> ONS Provisional Births using NHS Birth Notifications

- 5.4 There is confidence that in the medium term there will be sufficient capacity within existing Tower Hamlets schools. Analysis below has established that schools in Bow PA are not currently full, and forecasts indicate an increasing surplus of primary places across all year groups.

**Current Total Occupancy Rates for Primary Schools in PA2 (Bow)**

<b>Planning Area 2 - Bow</b>				
	<b>Net Capacity</b>	<b>Max Number</b>	<b>Numbers on Roll</b>	<b>Occupancy</b>
<b>Malmesbury</b>	563	525	431	82%
<b>Old Ford</b>	618	630	584	93%
<b>Old Palace School</b>	417	420	407	97%
<b>Olga Primary School</b>	427	420	495	118%
<b>St Agnes</b>	210	235	180	77%
<b>St Paul with St Luke CE Primary School</b>	240	240	174	73%
<b>Wellington</b>	283	450	371	82%

- 5.5 If the Council were to take the Neptune Wharf site and develop out a three form entry primary school, this would likely lead to an increase in surplus places. Such a position would be detrimental to existing schools in the Bow planning area as well as in neighbouring boroughs. In turn, this would lead to reduce school's Published Admission Numbers and potentially place existing schools at risk of closure and or a lead to the new school building needing to be repurposed.

- 5.6 To mitigate against a longer-term risk of an increase in pupil numbers (i.e. from 2026 onwards), contingencies are in place to enable the expansion of existing Tower Hamlets schools. In summary, the Council would review the schools' building capacities and to determine options for expansion, in the form of temporary 'bulge' classes or permanent enlargement. It should be noted here that the creation of 'bulge' classes is a more flexible and cost-effective way to manage any significant, short term rises in the pupil population.

- 5.7 When considered alongside the projected surplus places and/or opportunities for the expansion of existing primary schools in Tower Hamlets and elsewhere, the Council is satisfied that it will continue to meet its duty to provide sufficient places and enable choice for families in the Neptune Wharf area.

5.8 Best Value

For the Council to invest substantial capital funds in a new primary school, that current analysis is indicating is very unlikely to be required, would not be a good use of the public purse. The alternative of using the school site sum to invest in other capital projects in areas of need, including housing, will provide best value for the Borough.

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

- 6.1 The report recommends that the Council does not take up the option to develop the school site for a new primary school. In the event that the Council does not take the school site option the developer is required to pay the 'school site sum,' circa £2.68m, which would be ringfenced for 3 years for the provision of primary and secondary facilities within the LLDC area. Initially this 'School Site Sum' would be paid to the LLDC, as the planning powers for the area and responsibility for monitoring and enforcing the s106 agreement remain with the LLDC until the 30 November 2024 - when the payment would be transferred back to the borough as part of the 'transfer of powers' in December 2024.
- 6.2 As stated in the body of the report, there is already an excess of places in the proposed planning area and it is not envisaged that there will be an additional demand in the foreseeable future. Not proceeding with the development will support the sustainability of those existing schools, who would otherwise have to compete with the new school to fill their places.
- 6.3 The project relates to capital budgets for a future School development which would be required to be opened as a Free School. Whilst there would be no Council ownership of the site, it should be noted that recent capital investment in opening free schools has put a strain on Capital budgets, with the increased costs associated with the build. This has led to project expenditure exceeding their initial budgets.

## **7 COMMENTS OF LEGAL SERVICES**

- 7.1 The s106 Agreement in question is dated 27 March 2014 in respect of land at Neptune Wharf, Fish Island. The application was determined by the London Legacy Development Corporation ("LLDC") as the local planning authority under application number 12/00210/OUT. The Council entered into the agreement as a local authority with responsibility for matters such as housing and education, amongst others. The local planning authority for the purposes of the s106 Agreement is currently the LLDC.
- 7.2 As stated in the body of the report, the s106 Agreement contains specific provisions relating to education. These may briefly be summarised as requiring the provision of a school site for a new school facility to be provided or, in default, the payment of a financial contribution. There are, inevitably, various procedural requirements surrounding these provisions which govern how and when they take effect.
- 7.3 The s106 Agreement looks first to provide a school site by allowing for the grant to the Council of a lease over the school site and an easement granting access rights to the school across the development site. The Council had a period of 5 years from the date development commenced to exercise this right by serving a notice containing various pieces of information (for example, evidence of approval to construct the school in accordance with the Council's governance requirements and a build programme). If the Council has not served notice, the s106 Agreement allows time for the LLDC to serve notice requesting the school lease and access rights. Development commenced on 10 September 2015.



- 7.4 The Council did not serve notice in the 5-year period permitted by the s106 Agreement. To date, the LLDC has not served notice and has until no later than 9 September 2023 to do so. A School Site Contribution will become payable by the developer should notice calling for the lease of the school and access rights to be granted not be served by no later than 9 September 2023. Both the amount of the contribution and its calculation as well as how it may be spent are detailed in the body of the Report. At present, the s106 Agreement requires the contribution to be paid to the LLDC as the local planning authority, and not to LBTH.
- 7.5 However, as from midnight on 30 November 2024, the LLDC will cease to be the local planning authority for the area and its powers will transfer back to LBTH. Until this time, the powers of the local planning authority including and rights and obligations under the s106 Agreement are exercisable by the LLDC. After this date, they will transfer to and be exercisable by LBTH as the local planning authority.
- 7.6 Paragraph 2.8 of the Education Schedule states that the local planning authority shall use the School Site Contribution for a period of 3 years from receipt towards educational purposes within its area. There is therefore a remote possibility that should the School Site Contribution be paid to the LLDC prior to the transfer of planning responsibility back to LBTH that the LLDC may choose to allocate that money in accordance with the terms of the s106 Agreement which allow for it to be spent on educational purposes within its area. The area of the LLDC as a planning authority also incorporates parts of Hackney, Newham and Waltham Forest. If the School Site Contribution is received after planning responsibility has transferred back to LBTH, the responsibility for overseeing the spend will rest with LBTH.
- 7.7 If this contribution or any part of it remains unspent after 3 years from receipt, the contribution shall exclusively be used for a period of one year for the provision of affordable housing that falls exclusively within the area that falls within both the LLDC's and LBTH's area – in other words that portion of LBTH which falls within the LLDC area.
- 7.8 Once this one-year period has expired, any unspent contribution remaining shall be used for the provision of affordable housing within the area of the LLDC so, theoretically, it may be suggested that this will include the 3 other boroughs forming part of the LLDC area, the reality is that when this sum falls to be spent, the LLDC will not exist and the spend will occur in LBTH's area as the successor planning authority.
- 7.9 The s106 agreement does not say what will happen to any unspent School Site Contribution once this final one-year period has passed. It is reasonable to assume, as contemplated by the Report, that the payee may request it be refunded to it, although there is no express provision to do so.
- 7.10 The effect of not providing a school on the school land in accordance with the requirements of the s106 Agreement will be that the school site land identified by the s106 Agreement will no longer be safeguarded as a school site and, therefore, may well attract a planning application for development.
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## **Linked Reports, Appendices and Background Documents**

### **Linked Report**

None

### **Appendices**

- Appendix 1 - Maps of Existing Primary Schools in Tower Hamlets, Hackney and Newham
- Appendix 2 - Bus Routes from Neptune Wharf to Nearest LBTH Primary Schools

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

NONE

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

N/A