

<b>Committee(s):</b>	<b>Date(s):</b>
Children and Community Services Education Board Policy and Resources Planning and Transportation	12 October 2018 8 November 2018 15 November 2018 30 October 2018
<b>Subject:</b> Land Transactions - Former Richard Cloudesley School Site	<b>Public</b>
<b>Report of:</b> Town Clerk	<b>For Decision</b>

### Summary

This report considers changes to the land transaction arrangements previously authorised by your Committees in order to ensure the land is held appropriately and to remove the risk of the scheme being impeded by injunction due to Right of Light infringements resulting from the scheme. The changes are identified in the report. The criteria for adopting the changed arrangements are evaluated and the report advises that the criteria are met. It is recommended that the resolutions in Recommendations 1,3 & 4 be reaffirmed on the basis of the changed arrangements outlined in the report, that the resolution in Recommendation 2 be agreed in the amended form shown below, and that the new Recommendation 5 be agreed to address the interests of affected rights holders.

### **Recommendations**

1. That **Policy and Resources Committee** authorise the acquisition of the freehold title in the LBI Land for the purpose of a new primary Academy and social housing, with workshops to be located beneath part of the social housing in accordance with the powers set out in this report.
2. That **Planning and Transportation Committee** authorise the appropriation of the City's Land from housing purposes to the planning purposes of facilitating the development of a new school and social housing.
3. That **Policy and Resources Committee** and **Education Board** authorise the grant of a leasehold interest of all the LBI Land and City Land on which the school is to be constructed to the City of London Academies Trust
4. That, in relation to functions within their respective Terms of Reference, **Policy and Resources Committee**, **Community and Children's Services Committee** and **Education Board** authorise the Director of Community and Children's Services to conclude negotiations and final terms of the acquisitions and disposal in accordance with the principles set out in this report, to take any other steps as required in connection with any related documentation and associated transactions as may be necessary to complete the steps at recommendations 1 to 3 and to implement the Development in accordance with the principles in this report, and to instruct the City Solicitor to enter into all necessary legal documents.
5. That **Community and Children's Services Committee** instructs the Rights of Light advisers acting for the City as developer of the site to proactively approach affected rights holders to offer appropriate compensation for release of their rights of light on the basis in paragraph 14 of Appendix 1 of this report.

## **Main Report**

### **Background**

1. The principle of developing the former Richard Cloudesley School Site, (“RCS”) and adjacent areas of the Golden Lane Estate (“GLE”) (together, “the Site”) for a new school and social housing (“the Scheme”) has been agreed by relevant Committees. The Site is made up of the RCS which is in the London Borough of Islington’s (“LBI’s”) freehold ownership (“the LBI Land”), and adjacent garages, adult education centre, and adjoining land that forms part of the GLE which are in the City’s ownership (“the City’s Land”) (and which Community and Children’s Services Committee has resolved is no longer required for housing purposes).
2. Planning permission for the Scheme was granted by both local planning authorities in whose area the Site is located (LBI and the City) on 19 July 2018. Workspace was required to be provided by LBI underneath part of the social housing to make the development acceptable in planning terms, by providing an active frontage to Golden Lane.
3. In order to rationalise the land to form the Site, amalgamate it within the City’s ownership for the purpose of the Scheme, and enable the Scheme to proceed, the following land transactions are required: (i) Transfer of the LBI Land to the City; (ii) the GLE Land to be appropriated for the purposes of the Scheme; (iii) A lease in the part of the Site to be occupied by the school to be granted by the City to the City of London Academies Trust (“COLAT”).
4. In June 2018 the transactions were authorised on the basis that the LBI Land and was to be acquired by the City in its general corporate capacity and the appropriation of the City’s Land was to be for education. The transactions have not taken place. Since June 2018 it has been clarified that the proposed uses of the land and terms and conditions of the transfer of the LBI Land and funding make it appropriate for acquisition to be under education and housing powers.
5. In addition, the City’s Rights of Light (“RoL”) advisers identified that the Scheme will result in some actionable Rights of Light infringements which will mean that affected rights holders could seek injunctions to prevent or remove any structures causing the infringements, unless the statutory protection from injunction under Section 203 of the Housing and Planning Act 2016 (“S203”) is engaged.
6. However, the arrangements authorised in June do not engage S203 because this would require (i) the LBI land to be acquired by a local authority that could compulsorily acquire it (rather than acquired by the City in its general corporate capacity, as previously proposed); and (ii) the appropriation of adjacent GLE Land to be for planning purposes (rather than for education purposes).

### **Next Steps/Evaluation of Criteria**

7. The proposed transactions can proceed so as to ensure the land is held appropriately and so as to engage the S203 protection from injunction, as follows: (i) that part of the LBI Land to be occupied by the school to be acquired by the City under Section 7 of the City of London (Various Powers) Act 1958 (ii)

that part of the LBI Land to be occupied by social housing to be acquired by the City under Section 17 Housing Act 1985; (iii) the City's Land to be appropriated for planning purposes<sup>1</sup>; (iv) the lease of the new school premises to COLAT to be granted under Section 9 of the City of London (Various Powers) Act 1958.

8. The use of the statutory powers outlined in paragraph 6 require the relevant statutory criteria to be met. These are considered under "Legal Implications" below. In deciding whether or not to engage S203 the City must be satisfied that there is a compelling case in the public interest. The tests to be applied in deciding whether there is such a compelling case are explained under "Legal Implications" and evaluated at **Appendix 1**. The conclusion is that it is considered the tests are met and the powers should be engaged.

### **The Transactions & Terms**

#### The Transfer of the LBI Land to the City

9. It is proposed that the freehold interest in that part of the LBI Land on which the school is to be located (shown edged in bold black on the **Proposed Site Breakdown Plan** annexed) be acquired by the City for the purposes of the new school under Section 7 of the City of London (Various Powers) Act 1958.
10. It is proposed that the freehold interest in all that part of the LBI Land on which the housing is to be located (shown hatched – and in respect of airspace, shown stippled - on the **Proposed Site Breakdown Plan** annexed) be acquired by the City in its capacity as housing authority for housing purposes under Section 17 Housing Act 1985.
11. The key terms on which the LBI Land is to be transferred to the City, and the covenants to which the City will be bound, are broadly as follows:
  - Nil consideration to be paid by the City to LBI for the LBI Land.
  - Amalgamation of the City's Land and the LBI Land is required, to allow for optimum use of the Site
  - The City to pay for development of the social housing using S.106 affordable housing contributions and Right to Buy receipts and to be responsible for construction of the social housing (with a contribution being made by LBI)
  - The City to be responsible for construction of the school (with an agreed estimated construction cost to be funded by the Education and Skills Funding Agency). LBI to have nomination rights to 50% of the new social housing units

#### Appropriation

12. The City's Land is part of the GLE and was acquired and is held for housing purposes. (See two areas shown shaded grey on **Existing Site Breakdown Plan** annexed). The majority is within LBI's administrative area, and part is in the City's. Children and Community Services Committee resolved in June 2018

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<sup>1</sup> Court of Common Council 8/12/2016 delegated to Planning and Transportation Committee authority to determine whether appropriations for planning purposes in order to engage S203 should be authorised

that the City's Land was not required for housing purposes. It is proposed that the City's Land be appropriated to planning purposes. Given the provision of replacement housing land as part of the Scheme the Chamberlain is satisfied no payments are required to account for the appropriation.

#### Grant of Lease to COLAT

13. It is proposed that following its acquisition of the LBI Land and the appropriation of the City's Land for planning purposes, the City will grant a leasehold interest in all that land on which the school is to be constructed (to exclude the airspace to be occupied by the new social housing) to COLAT under its powers in Section 9 City of London (Various Powers) Act 1958.
14. The key terms on which the City will assign the lease are as follows:
  - The lease is for a term of 125 years
  - Nominal annual rent
  - Tenant's right to break every 25 years with SoS approval
  - Premises to be used for education and ancillary uses
  - Tenant to insure

### **Legal Implications**

#### Powers for Land Transactions

15. Appropriation – Section 12 of the City of London (Various Powers) Act 1949 provides that where land is no longer required for the purpose for which it was originally acquired it may be appropriated for any other purpose for which the Corporation is authorised to acquire land, and the accounts of the Corporation shall be adjusted as may be necessary. The power conferred by section 12 of the 1949 Act applies to land within Greater London other than an outer London Borough and therefore applies to land in the City and in Islington. As noted above the Corporation (under section 7 of the City of London (Various Powers) Act 1958) may for the purpose of any of their functions acquire by agreement land whether situate within or without the City. Under section 226(5) of the Town and Country Planning Act 1990, subject to the consultation requirements in section 226(6), the Secretary of State may authorise a local authority to acquire land outside its area. The appropriation is therefore for a planning purpose as defined by section 246(1) of the Town and Country Planning Act 1990.
16. Acquisition of Land for Education Purposes - Section 531 of the Education Act 1996 clarifies that making land available for the purposes of a school which the local authority has the power to assist<sup>2</sup> is a local authority function which engages its land acquisition powers<sup>3</sup>. The City may acquire that part of the LBI Land required for the school under Section 7 of the City of London (Various Powers) Act 1958 ("1958 Act").

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<sup>2</sup> Section 530 of the Education Act 1996 authorises local authorities to compulsorily purchase land within or outside their area which is required for the purpose of an Academy

<sup>3</sup> In this case, under Section 7 of the City of London (Various Powers) Act 1958

17. Acquisition of land for Housing Purposes – Section 17(1) of the Housing Act 1985 empowers the City to acquire land for the erection of houses. The City has power to provide housing, including outside its area, under Section 14 of the Housing Act 1985.
18. Use of housing for Workspace – Section 15 of the Housing Act 1985 authorises the use of land acquired for housing for commercial purposes with the Secretary of State’s consent. (Consent has been sought and confirmation is awaited)
19. Grant of Lease to COLAT – Insofar as the land where the school is to be located has been acquired for education purposes under Section 7 of the 1958 Act, it may be leased to COLAT under Section 9 of the 1958 Act on such terms and conditions as the City thinks fit. Insofar as the land where the school is to be located has been appropriated from housing to planning purposes, it may be leased to COLAT under Section 233 of the Town and Country Planning Act 1990 in order to secure the best use of that land. The City may reasonably conclude that the grant of the lease to COLAT secures the best use of the land given the benefits of amalgamation of the Site and the proposed education use. The disposal must be at best consideration unless the Secretary of State’s consent is first obtained. (Consent has been sought and confirmation is awaited)
20. It is not considered that the grant of the lease would make CoLAT subject to the influence of the City Corporation in its local authority capacity<sup>4</sup>. Under the current Academies Financial Handbook, CoLAT will need to ensure the requirements for managing related party transactions are followed, including avoiding real and perceived conflicts and promoting integrity and openness in accordance with the seven principles of public life. CoLAT will need to obtain the relevant approvals from the ESFA to take up the lease. CoLAT will also need to ensure that any lease maintains the principles of value for money, regularity and propriety (para 3.6.4) and disclose the lease in its audited accounts (para 3.1.2).

### Engagement of S203

21. Statutory Conditions - Appendix 1 sets out the statutory conditions which must be fulfilled in order to engage the provisions of S203, allowing easements to be overridden, and confirms that the recommended arrangements fulfil the statutory conditions.
22. Other criteria - Where land acquisition takes place for the purpose of engaging S203, public interest criteria should be evaluated. In this case, the acquisition is required in order to assemble the site and enable the development to proceed. However, it is acknowledged that the basis of the acquisition and the appropriation will result in S203 being engaged and, insofar as relevant, the public interest criteria are set out and evaluated in Appendix 1.

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<sup>4</sup> S.69 Local Government and Housing Act 1989. The relevant conditions for a company to be subject to local authority influence are not all met.

### **Financial Implications**

23. The appropriate accounting adjustments will be required to reflect the fair value of any donated assets within the transactions.

### **Conclusion and Reasons for Recommendations**

24. The recommended basis of the land transactions the subject of this report are proposed to ensure the land is held appropriately and to remove the risk of injunction impeding the scheme. If the risk remains in place the prudence of expending public monies in implementation is in doubt and the scheme in jeopardy. The recommended resolutions are required to enable the Scheme to proceed and the social benefits of the new school and social housing to be realised.

### **Appendices**

- **Appendix 1** – S.203 Evaluation
- **Annexure** – Existing Site Breakdown Plan and Proposed Site Breakdown Plan

### **Background Papers**

*Land Transaction Report June 2018*

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