

AGENDA ITEM: 5 Pages 1 - 7

Meeting	Cabinet Resources Committee
Date	21 February 2011
Subject	Wyevale Garden Centre, Daws Lane, Mill Hill NW7
Report of	Cabinet Member for Resources and Performance Deputy Leader of the Council and Cabinet Member for Education, Children and Families
Summary	<p>To note:</p> <ol style="list-style-type: none"> 1) The assignment of the lease from Wyevale Garden Centre to Etz Chaim Jewish Primary School Trust. 2) The temporary letting of vacant space at adjoining Council owned building known as the former civil defence building, during the refurbishment period <p>To approve the:</p> <ol style="list-style-type: none"> 1) Deed of variation being granted on receipt of planning permission for the amendment of the user clause from a Garden Centre to a school/provision of education services and services ancillary to the same, and other amendments to the lease to provide appropriate terms for a school use. 2) Delivery of a one-form entry Primary Free School to be known as Etz Chaim utilising Barnet's existing Strategic Partnering Agreement with Kier London Limited on behalf of Partnerships for Schools, the Department for Education's delivery agency on school building programmes.

Officer Contributors	Judith Ellis – Valuation Manager (Property Services) James Wills-Fleming – Corporate Programmes Manager (Commercial Services)
Status (public or exempt)	Public (with a separate exempt report)
Wards affected	Mill Hill
Enclosures	Plan
For decision by	Cabinet Resources Committee
Function of	Executive
Reason for urgency / exemption from call-in (if appropriate)	Not applicable
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1. RECOMMENDATIONS

- 1.1 That a deed of variation for the change of use and additional variations to the lease detailed in the accompanying exempt report be granted, subject to the grant of planning permission and/or completion of the assignment of the lease from Wyeval to Etz Chaim. This recommendation includes the Council entering into a binding agreement with Etz Chaim to grant the requisite variations.**
- 1.2 That the construction works required to provide a one-form entry Primary Free School to be known as Etz Chaim be delivered by utilising the Council's existing Strategic Partnering Agreement with Kier London Limited on behalf of Partnerships for Schools, the Department for Education's delivery agency on school building programmes.**

2. RELEVANT PREVIOUS DECISIONS

- 2.1 Cabinet, 5 December 2005 (Decision item 6) – approved the Building a future for Barnet's Children: the Primary School Capital Investment Strategy.
- 2.2 Cabinet, 3 April 2008 (Decision item 13 and 17) – approved the selection of Kier London Limited as the Council's strategic construction partner.
- 2.3 Cabinet Resources Committee, 5 March 2009 (Decision item 12) – approved the re-build of Colindale Primary School and the addition of the project to the Strategic Partnership Agreement with Kier London Limited.
- 2.4 On 12 April 2010, the Leader of the Council and Cabinet Member for Resources approved under delegated powers (DPR 1057) the acceptance of a tender contract sum from Kier London Limited for works at Childs Hill Primary School.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 Ensuring every school is a good school for every child is a priority in the Barnet Children and Young People Plan 2010-2013 and supports the corporate priority of 'a successful London suburb'. Approving the assignment of the lease and change of use to Etz Chaim will help to increase parental choice of school in Barnet. It will also contribute towards ensuring there are sufficient school places in the local area, which is a statutory duty of the local authority under section 14 of the Education Act 1996. Supporting those who wish to set up free schools also contributes towards the Council's priority of 'sharing opportunities and sharing responsibilities'.

4. RISK MANAGEMENT ISSUES

- 4.1 If the Council does not agree this proposal the school will be unable to pursue the provision of a free school in this location, as the Etz Chaim Jewish Primary School Trust require exchange of contracts being subject to confirmation that the subsequent deed of variation will be issued by the council at the appropriate time. This requirement avoids significant investment by PfS into a project that may not reach fruition.
- 4.2 A project risk register is maintained by the Corporate Programmes Team and there are no risks which are considered to be significant.
- 4.3 To ensure accurate costs the project budget has been rigorously reviewed by the project team including the project's technical advisors, Gardiner & Theobald LLP (G&T). The

project team will monitor all aspects of the build to ensure continued assessment of the finances from construction start to completion.

- 4.4 The Council has a Strategic Partnering Agreement (SPA) with Kier London Limited. The SPA has successfully delivered or is in the process of delivering multiple school projects including: Whittings Hill, Broadfields, Northway/Fairway, Colindale and Childs Hill Schools.
- 4.5 Depending on how the transaction is structured there may be a risk of judicial review of the planning permission resulting in delay and/or the school not being constructed.

5. EQUALITIES AND DIVERSITY ISSUES

- 5.1 While conducting this project officers have complied with the Council's statutory duties to:
- promote equality of opportunity;
 - eliminate unlawful discrimination and harassment; and
 - promote good relations between people.
- 5.2 Schedule 8 of the SPA outlines Kier's Race Equality Requirements and states that Kier, including agent's/contractors working on behalf of Kier, will comply with race relations legislation, shall not discriminate and will promote equality in performing its obligations under this agreement.

6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)

- 6.1 The SPA with Kier was the result of a rigorous procurement process and was structured to enable the addition of further building projects such as this and still ensure value for money.
- 6.2 The SPA, with Kier London Limited, relates to the carrying out of works in designated primary schools across the Borough. However, the SPA allows for additional projects to be included to give the Council full flexibility and control over the programme. Therefore, authority for this variation, including a waiver of the Contract Procedure Rules (to go out to tender), already exists.
- 6.3 The total construction cost including internal project and programme management resource and external technical and legal advisors will be funded by the Department for Education.
- 6.4 Funding will be delivered to the Council through Standards Fund to an agreed payment schedule that is aligned to the payment schedule agreed with Kier London Ltd.
- 6.5 The deed of variation is proposed on completion of the assignment which is subject to planning permission being granted. This will ensure that the variation is only granted to the school and does not benefit the existing lessee.
- 6.6 Future assignment provisions (to be one of the variations of the lease) may be more in accordance with what you would expect to find in a new academy lease but this will need consideration as to the detail restrictions.

- 6.7 If the school fails and the lease reverts to the Government, it is thought the asset will return to the Borough. However the relevant statutory provisions need consideration before this can be confirmed.
- 6.8 Other variations in the lease include: Amendment to the hours of use, playing of music, Floodlighting, Assignment to a corporate body, or charity with the minister's consent, subletting to organisations providing uses consistent with that of a school.
- 6.9 These variations are acceptable in principle and subject to planning and any other consents necessary, and make the lease more consistent with an Academies lease. Detailed negotiations on the proposed amendments will be concluded and reported under delegated powers.
- 6.10 It is anticipated that the school will open in September 2011, and the school have committed to parents and staff that this will happen. As a result should the conversion works not be completed in time will require temporary accommodation and have identified the adjoining building known as the former Civil Defence Building as being a suitable building.
- 6.11 The ground floor is currently empty following the relocation of the Drug and Alcohol project and the archive store, and totals approximately 4000 sq ft (400 sq m). The first floor is occupied by the Sea Cadets who are holding over under a lease.
- 6.12 The future of the building is currently under consideration, with legal and planning investigation being undertaken. It is not considered that a short-term letting of the property is likely to impinge on the Council's plans.
- 6.13 The short term agreement would in addition provide an opportunity to consider the future of the site and/or prepare for a subsequent letting while the school are in occupation.
- 6.14 Agreement to the detailed terms of the lease will be reported under delegated powers.
- 6.15 The adjoining car park, is in Council ownership, and consideration is currently being given to introducing charging. The lease to Wyevale Garden Centre affords rights to the lessee for pedestrian access, and to maintain the area as public car parking. These rights may be altered in the event of the Council granting a change of use.
- 6.16 In addition, the Council may redevelop the car park, but may be required to provide alternative parking in the vicinity.

7. LEGAL ISSUES

- 7.1 None except as mentioned in the exempt and public report.

8. CONSTITUTIONAL POWERS

- 8.1 The Council's Constitution in Part 3, Responsibility for Functions, states in paragraph 3.6 the functions delegated to the Cabinet Resources Committee including all matters relating to land and buildings owned, rented or proposed to be acquired or disposed of by the Council.

9. BACKGROUND INFORMATION

- 9.1 On 6 September 2010, Michael Gove MP, Secretary of State for Education announced that Mill Hill Jewish Primary School (now known as Etz Chaim) was among the first 16 free schools nationally to be granted permission to progress their application to open a free school in September 2011.
- 9.2 Free Schools are all-ability, state-funded schools, set up in response to parental demand. These new schools will be academies, which are publicly funded independent schools, free from local authority control. They will enjoy the same freedoms as traditional academies, which include setting their own pay and conditions for staff, freedom from following the National Curriculum and the ability to change the lengths of their terms and school days. All Free Schools will be accountable like other state schools via inspections and tests.
- 9.3 Etz Chaim Jewish Primary School Trust investigated various locations within the Borough and found Wyevale Garden Centre in Daws Lane provided the right size and location for their proposed School and pursued negotiations to secure ownership of the lease with 102 years unexpired term.
- 9.4 The Council owns the freehold reversion in the land and buildings shown outlined in black on the attached plan, which until closed in 1982 was a former swimming pool. The land was disposed of on a 125 year lease in 1988 to Country Gardens PLC with a restriction on use to a garden centre. The lease was granted for payment of a premium at a peppercorn rent throughout the term, and now has 102 years unexpired.
- 9.5 The lease was later assigned to Wyevale Garden Centre, who are now seeking to assign their interest to Etz Chaim Jewish Primary School Trust. Consent by the Council to the assignment will be carried out under delegated powers, and the Council have limited grounds to object.
- 9.6 Negotiations have taken place between Wyevale and the Etz Chaim Jewish Primary School Trust, in conjunction with PfS who are funding the acquisition and conversion works, and Heads of Terms have now been agreed.
- 9.7 In order for the building to be used as a school, planning permission for change of use and for alterations is required, and it is anticipated that the planning application this will be submitted by the beginning of March, and completion of the assignment will be subject to planning permission being granted.
- 9.8 PfS are anxious to be in a contractual position with the Garden Centre to ensure that if they achieve planning consent the transaction will complete and enable them to carry out the required works and open the school in September, although it is accepted that temporary accommodation may be required for a short period of time. Failure to achieve a binding agreement leaves Wyevale free to negotiate with an alternative purchaser.
- 9.9 In order for exchange of contracts to occur, PfS require comfort from the council as freeholders that a deed of variation will be issued for change of use, together with various alterations to the lease terms to provide a lease agreement that is more in keeping with appropriate for school/ educational use. This will not be issued until planning permission is granted and the assignment has completed, which is anticipated to take a minimum of 3 months to achieve.
- 9.10 Details of the financial implications are set out in the accompanying exempt report.

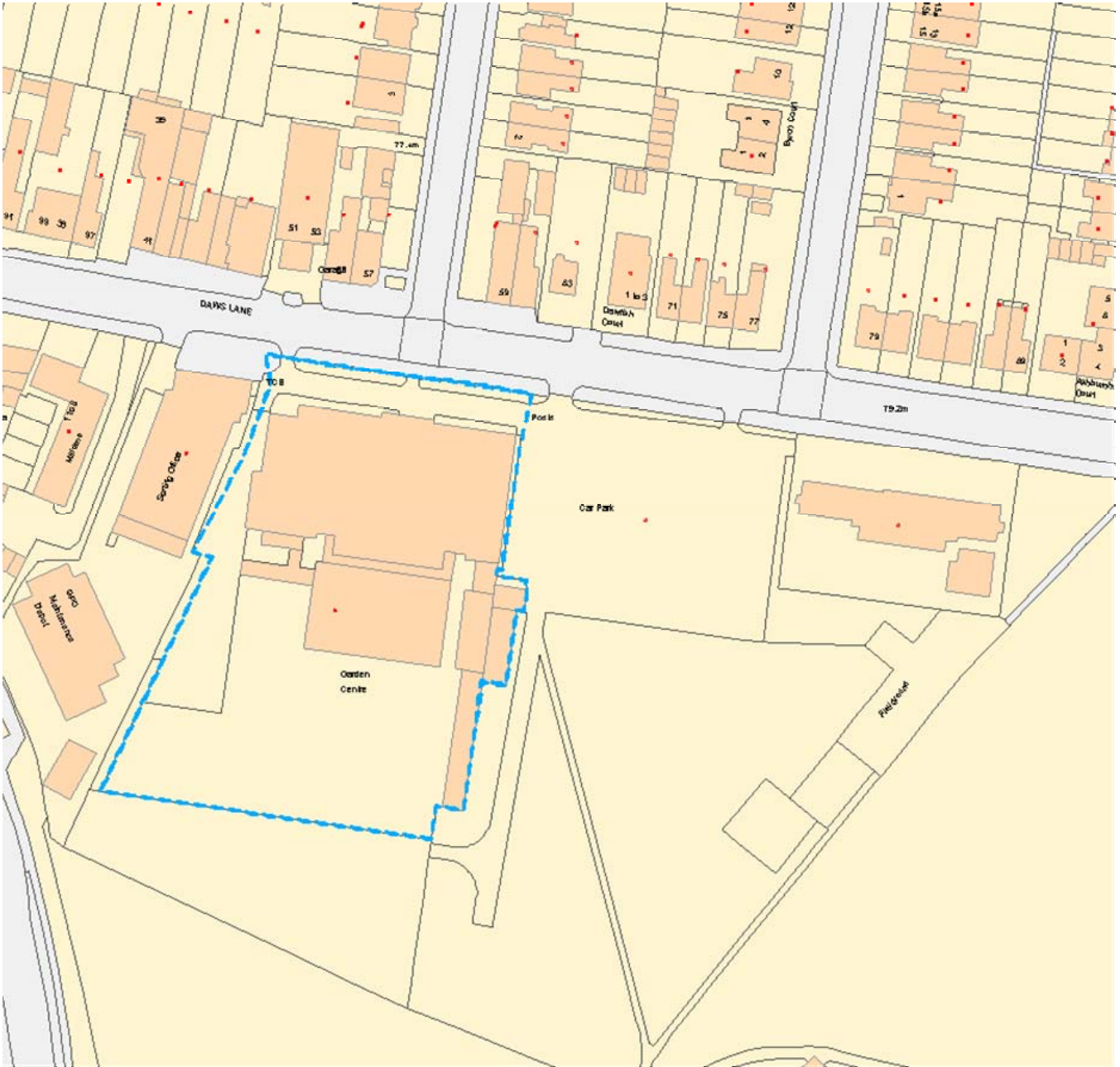
9.11 In addition Etz Chaim Jewish Primary School Trust have requested a 1 year lease from May 2011 of the vacant accommodation in the adjoining Council-owned building premises at the former Civil Defence Building. This was until recently used by the Drug and Alcohol Project, and the archive store. The first floor is occupied by the Sea Cadets. Terms have been discussed and are detailed in the accompanying exempt report.

10. LIST OF BACKGROUND PAPERS

10.1 None.

Legal – JO'H
CFO – DM

PLAN



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