

	<p>Assets, Regeneration and Growth Committee</p> <p>1 June 2015</p>
<p>Title</p>	<p>Land at Pavilion Way, Burnt Oak– Appropriation of the site for planning purposes and the grant of Tenancy at Will for a temporary school building.</p>
<p>Report of</p>	<p>Chief Operating Officer Commissioning Director - Children and Young People</p>
<p>Wards</p>	<p>Burnt Oak Ward</p>
<p>Status</p>	<p>Public</p>
<p>Enclosures</p>	<p>Appendix A – Drawing Number 23839/2 Site Plan Appendix B – Objections received from public advertising</p>
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Summary

The report seeks approval for the appropriation of the Site as identified and edged red on the drawing attached, number 23839, for planning purposes in two stages under Section 122 (1) of the Local Government Act 1972 and for the grant of a Tenancy at Will pending grant of a permanent lease to enable the permanent development of a new two form entry primary school by the Department for Education at Pavilion Way HA8.

The recommendations in this report follow the decision by Cabinet Resources Committee on 16 Dec 2013 to utilise the Site for education purposes subject to planning consent being granted. A proposal has been developed for the provision a new two-form entry non-denominational primary free school (to be known as Watling Park) to provide 420 pupil places together with sporting facilities available to the local community outside school

hours.

Subject to planning consent being granted and the approval of this report, a temporary building will first be constructed on part of the Site edged green on the Site Plan to allow the initial opening of the educational facilities in time to admit pupils in September 2015.

A further planning application will be made for replacement of the temporary buildings with permanent buildings for the primary school. The permanent school development will be the subject of a subsequent committee paper and will comprise the whole Site.

Recommendations

- 1. That the Committee note the responses to the public advertising of the Council's intended appropriation of the Site as shown edged red on drawing number 23839 to planning purposes under Section 122 (2A) Local Government Act 1972: and**
- 2. That, subject to planning consent being granted for (1) the temporary school as shown edged green on drawing number 23839/2 and (2) the permanent free school on the Site, the Committee approves the appropriation of the Site pursuant to S122 (1) of the Local Government Act 1972 for the above planning purposes**
- 3. That, subject to planning consent being granted for the temporary school, the Committee approves the grant of a Tenancy at Will to the Bellevue Place Education Trust for the temporary school.**

1. WHY THIS REPORT IS NEEDED

- 1.1 The report seeks approval for the appropriation of the Site as identified and edged red on the drawing attached, number 23839, for planning purposes in two stages under Section 122 (1) of the Local Government Act 1972. It also seeks approval for the grant of a Tenancy at Will pending the grant of a permanent lease to enable the permanent development of a new two form entry primary school by the Department for Education at Pavilion Way HA8.
- 1.2 The proposals in the report reflect the decision by the Cabinet Resources Committee (CRC) on 16 December 2013 to utilise the Site for education purposes. The CRC report of that date, also allowed for the potential development of housing on the site. Developing a mixed use site has not proved to be possible. In order to meet the pressing need for school places in the area together with the provision of enhanced sporting facilities for the local community, it is proposed to lease the Site shown on drawing number 23839 on an Education Funding Agency model free school lease to

Bellevue Place Education Trust for a primary school and enhanced sports facility. The sports facility will be used by the school in school hours and will be available, once the lease has been completed, for community use outside these hours.

- 1.3 The school, subject to planning consents being granted, will provide 420 places for primary aged children within the Burnt Oak area and is due to admit its first pupils in September 2015. The school is to be known as Watling Park Academy and as at the 1st May 2015, a number of children within the area have been allocated a school place at Watling Park to start in September 2015.
- 1.4 The Site currently comprises approximately three acres of land, previously used as an all-weather pitch, sports pavilion with car park and a football field.
- 1.5 A further planning application will be made for replacement of the temporary buildings with permanent buildings for a primary school. The permanent school development, which will be subject to the grant of planning consent, will also be the subject of a subsequent committee paper, setting out the terms of the proposed lease to the Academy Trust to provide educational and sporting facilities, the latter being available for the local community outside school hours
- 1.6 Subject to the grant of planning permissions for first, the temporary school structures, and thereafter for use as a permanent school site with associated sports facilities, authority is required to enable the appropriation of the Site for planning purposes under Section 122 (1) of the Local Government Act 1972 (see paragraph 5.3.1 below). The decision to appropriate will only take effect upon the relevant planning consents being granted.
- 1.7 Paragraph 5.6.1 below summarises the result of the public advertising for the appropriation of the Site in accordance with S122 (2A) Local Government Act 1972 for the committee to consider. Two objections to the proposal were received.
- 1.8 Authority is also sought for the grant of a Tenancy at Will to Bellevue Place Education Trust pending the grant of the permanent lease for the entire Site, to enable the construction and occupation of the temporary buildings and the installation of the required services in the interim. The principal heads of terms proposed for the Tenancy at Will are set out in paragraph 5.3.2 below.

2. REASONS FOR RECOMMENDATIONS

- 2.1 To authorise, subject to planning, the appropriation of the Site for planning purposes to enable the development of a two form entry primary school (Watling Park) and a new community sports facility comprising an All Weather Pitch and changing rooms by way of the two stage development outlined above. As considered by CRC on 16 December 2013, the development will

provide school places in an area of pressing need together with sports facilities managed by the school that will deliver benefit to the community through a new all-weather pitch available outside school hours.

- 2.2 To comply with the appropriation provisions of S122 (2A) of the Local Government Act 1972 the Council must have regard to any representations made by members of the public before making a decision to appropriate (see paragraph 5.6.1).
- 2.3 The grant of a Tenancy at Will to enable the temporary school to lawfully occupy the site.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 Cabinet Resources Committee (CRC) on 16 December 2013 received representations from a number of residents and other interested parties before reaching its decision. The two objections received as a result of the public advertising for the appropriation of the Site in accordance with S122 (2A) Local Government Act 1972 reflect the representations made to CRC in objecting to the appropriation of the Site to a different planning use in favour of retaining the Site for use as a sports centre. The Site was originally laid for sports use in the late 1980s. It was run by the Council until 1995 but demand for the facilities on the Site was insufficient to make its long term use viable. The Council let the facility in 1995 on a commercial basis to an experienced sports partnership that ran the facility on the Site until 2003. The organisation was not able to run the facility on a viable commercial basis and they surrendered the lease in 2003.
- 3.2 There would be a significant capital cost in setting up the Site again as a sports centre and it would require a sustainable management arrangement to repair and maintain the facilities into the future. Having heard representations, it was the view of CRC that the joint use proposal for the Site as a school with a new All Weather Pitch and changing rooms is the best way to provide a sustainable public sports recreational facility on the Site in the long term. The two objections now received and reported to this Committee do not contain a viable alternative sustainable arrangement.

POST DECISION IMPLEMENTATION

- 4.1** The Council will utilise its powers under Section 122 (1) of the Local Government Act 1972 to appropriate the Site for planning purposes in accordance with the recommendations section of this report.
- 4.2** The Tenancy at Will of that part of the Site edged green on the Site Plan for occupation by Bellevue Place Education Trust will be completed to enable Watling Park to open to its first pupils in September 2015.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1** The Corporate Plan 2013-16 has a strategic objective to “promote responsible growth, development and success across the Borough”.
- 5.1.2** The Council’s Estates Strategy 2011-2015 sets out our commitment to continually review the use of Council assets so as to reduce the cost of accommodation year on year.
- 5.1.3** The proposals in this paper will assist towards the Council’s priority set out in its Corporate Plan for 2013-2016 of promoting responsible growth development and success across the borough. The construction of a new school that will provide 420 primary school places in an area of high demand for school spaces and a new all weather pitch to be used both by the school and local people will address these Corporate plan objectives.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

- 5.2.1** The cost of building the school and the community sporting facilities will be met by the Department for Education. In developing the permanent school and enhanced sporting facilities, the Department for Education is funding the All Weather Pitch and the Council will be contributing to upgrade the changing facilities to ensure maximum suitability for the wider community use. The contribution required is estimated to be a maximum of £350k, which will be funded either through section 106 or the Council’s education capital programme.

5.3 Legal and Constitutional References

- 5.3.1** Council Constitution, Responsibility for Functions, Annex A – sets out the terms of reference of the Assets, Regeneration and Growth Committee which includes, “Asset Management – all matters relating to land and buildings owned, rented or proposed to be acquired or disposed of by the Council.”.

5.3.2 The Council Constitution, The Management of Asset, Property and Land Rules provide the governance structure within which the Council may acquire, lease, act as landlord, licence, develop, appropriate, change use of, or dispose of Assets within its Asset Portfolio. ,

5.3.3 Barnet will utilise its powers under Section 122 (1) of the Local Government Act 1972 (“the LGA 1972”) to appropriate the Site for planning purposes. Section 122 (1) of the LGA 1972 enables a local authority to appropriate land which it owns to a different use where such land could have been acquired by agreement and where such land is no longer required for the original use for which it was acquired, subject to certain conditions, including as is the position in the present case, advertising the Council’s intention to make the decision to appropriate in accordance with the requirements contained at s 122 (2A) of the LGA 1972. Appropriation undertaken on this basis affords the collateral benefit of the provisions of Section 237 of the Town and Country Planning Act 1990 (as amended) which provide, inter alia, for the extinguishment of certain rights including covenants relating to the land in question subject to the compensatory provisions as contained at Section 237 (4).

5.3.4 The principal heads of terms proposed for the Tenancy at Will are as follows:

Tenant	The governors of The Bellevue Place Education Trust
Property to be let	See drawing number 23839/2 (area edged green including the MUGA (Multi Use Games Area))
Term	Property to be held at the will of the landlord and the tenant
Rent	One peppercorn if demanded
Use	The construction and development of the temporary school in accordance with the relevant planning permission and the use as a school or college for educational use
Assignment or subletting of the premises	Not permitted
Alterations	Not permitted
Repair	The tenant shall keep the Property clean and tidy and make good
Reinstatement	To reinstate the Property to the extent required by the Landlord at the end of the Term or earlier determination
Utilities	The tenant is to be responsible for all water, gas, electricity and communications charged on the Property.
Insurance	The tenant shall insure the Property and carry liability insurance reasonably required in respect of third party public liability

Fire authority requirements	The tenant must comply with all statutory requirements including of the fire authority in accordance with Health and Safety legislation and the Regulatory reform (Fire Safety) Order 2005 and the Building regulations as to fire precautions relating to the Property.
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5.3 Risk Management

5.4.1 By withdrawing the proposal for residential development on part of the Site and providing a new, managed sports facility for local people, the risk of objection to the proposals from a planning perspective have been significantly reduced.

5.4.2 If planning consent for either the temporary or permanent school is not forthcoming the relevant stage of the decision to appropriate cannot proceed and the scheme as proposed will not proceed. The Council will be required to secure and fund the development of alternative school places for pupils allocated a place at Watling Park.

5.4.3 The Site reflects the existence of a title restriction which inter alia confines its use to sports pitches for use by the general public with ancillary changing rooms and parking. The beneficiary of this restriction was the surrounding Deansbrook Estate, of which there are now a number of occupiers. One of the effects of appropriating the Site for planning purposes pursuant to s 237 of the Town and Country Planning Act 1990 (“the TCPA”) is that this restrictive covenant will be extinguished. This ensures that the development of the Site free of the covenant can proceed thereby reducing the risk of delay through challenge based on the covenant issue. The rights of those parties who believe that their rights have been affected would need to be able to prove a financial loss within the terms of any claim made against the Council under s 237(4) of the TCPA. It is considered that the re-provision of an improved facility which will be available for community use, mitigates this risk.

5.4.4 If the proposal does not proceed the Site will remain in its existing condition until an alternative option is secured which is likely to require significant capital investment. Management costs will continue to be incurred in the interim.

5.5 Equalities and Diversity

5.5.1 Under the Equality Act 2010, the Council must have due regard to the need to: a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; b) advance equality of opportunity between those with a protected characteristic and those without; c) promote good relations between those with a protected characteristic and those without. The ‘protected characteristics’ referred to are; age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation. It also covers marriage and civil partnership with regards to

eliminating discrimination.

5.5.2 The Bellevue Place Educational Trust will offer non-denominational, co-educational school places that will welcome children from all backgrounds in the area. As the school will be open to all children in the local area to apply for a school place, there are no adverse equalities implications. Establishing a high quality education offer in the west of the borough, open to all children is likely to have a positive impact on equalities.

5.6 Consultation and Engagement

5.6.1 The proposal to appropriate the Site for planning purposes in accordance with S122 (2A) of the Local Government Act 1972 has been advertised twice in the local press and copies of the advertisement and the Site plan have been displayed on Site. This has resulted in the receipt of the following representations:

Date	Name	Representation
24 March 2015	Londinium Football Group	Letter from Londinium Football Group dated 24 March 2015 and their proposal to the Head of Estates of Barnet Council of the same date. These are set out in full as part of Appendix B of this report. A summary of the representation is as follows: That the Council should support the rescue of the sports facility for use by members of the community aged 6-21, working in partnership with local businesses.
13 th April 2015	A local resident	The following is part of a letter received by Chris Smith, Head of Estates dated 13 th April 2015. A full copy of the letter is attached as part of Appendix B to this committee paper. "I wish to lodge a complaint against Barnet Council for trying to convert the football pitch located in Pavilion Way, into luxury private residential houses plus a Chinese mandarin speaking school, on the land. It appears that Barnet Council is riding roughshod over local residents concerns and opposition to the proposed project. Barnet Council has deliberately left the Pavilion Way football pitch derelict for more than 15 years, prior to its present decision to sell this land. My family has lived in Pavilion Way for 24 years and it was a joy to hear children's laughter coming from the football ground in its heyday. The burning issue here is the covenant covering the proposed Site, which

		states that it must be used for recreational purposes. This was written into the Deed dating back to the 1980s when Laing Homes started building works inside Pavilion Way.”
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5.6.2 The proposal to develop the Site for a school with enhanced sporting facilities available for community use will enable the community to have access to improved sporting facilities within a sustainable management arrangement through the school. No housing will be developed on the Site. It is therefore considered that the provision of a floodlit all weather sports pitch for public use outside school hours which will be built as part of the construction of the permanent school will satisfy the representation and the provision of continuing sports facility on the Site.

6. BACKGROUND PAPERS

6.1 On 4th November 2013 the Council’s Cabinet Resources Committee 4 November 2013, <http://barnet.moderngov.co.uk/mgChooseDocPack.aspx?ID=7460>

Decision Item 6 resolved:

1. That authority is given for the disposal of up to one acre of the southern end of the Site shown on drawing number 23839 to Taylor Wimpey UK Limited (“Taylor Wimpey”) for development as housing subject to receipt of a planning permission.
2. That following agreement of the consideration to be received from Taylor Wimpey the proposal is referred to a future meeting of the Council’s Cabinet Resources Committee.
3. That the Council enters into an agreement for lease with the Department for Education (DfE) and The Marco Polo Academy for funding by the DfE for the development of the remainder of the Site as a primary academy school with approximately 360 pupils together with a community sports facility. The agreement for lease will provide for the Council to grant a 125 year Academy Lease of the completed school and sports facility to The Marco Polo Academy based on the DfE model form of lease in accordance with the Academies Act 2010. The Academy Lease will provide for the free school to maintain and run the sports facility for local people.

6.2 Cabinet Resources Committee on the 16th December 2013
<http://barnet.moderngov.co.uk/mgChooseDocPack.aspx?ID=7461>
 Confirmed this decision following a referral of the decision by Overview and Scrutiny committee.

6.3 On 15 December 2014 the Council’s Assets Regeneration and Growth Committee resolved:
<http://barnet.moderngov.co.uk/mgChooseDocPack.aspx?ID=7886>

1. Note the decision of the Department for Education to approve the Bellevue Place Education Trust to be the sponsor for the new free school to be provided as part of the development at Pavilion Way.

2. Approve the replacement of the education sponsor, Marco Polo Academy Trust by the new education sponsor, Bellevue Place Education Trust, in relation to the decision confirmed by the Cabinet Resources Committee on 16th December 2013 for the development of the Pavilion Way site.