

	<h2>Cabinet</h2>
Title	Disposal of 233-241 West Hendon Broadway
Date of meeting	16 th April 2024
Report of	Councillor Barry Rawlings – Leader of the Council and Cabinet Member for Resources & Effective Council
Wards	West Hendon
Status	Public with accompanying Exempt Appendices The Confidential Annexes are not for publication by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972.
Key	Key
Urgent	Yes
Appendices	Appendix A – Disposal Plan Appendix B – Confidential Annex (Exempt) Appendix C – Confidential Annex (Exempt)
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Summary

This matter concerns the disposal of Council land and buildings that are currently occupied by an independent Jewish (Torah) School, the Beis Medrash Elyon (the School). The Council had let the premises to a linked party to the School, Mechinah Golders Green Ltd (“the Tenant”) under a lease of ten years that expired on the 30th April 2023. The Tenant currently occupies the property under a Tenancy at Will (a short-term lease).

On the 13th September 2021 the Council’s Housing and Growth Committee agreed to authorise the premises known as 233 and 241 West Hendon Broadway and land adjoining 239 West Hendon Broadway (“the Property”) as a surplus asset.

This report updates Cabinet on the negotiations that have taken place with recommendations to sell the Property on terms as set out in the Confidential Annexes.

Recommendations

1. **That Cabinet approves the sale of the Council’s premises of 233 and 241 West Hendon Broadway and land adjoining 239 West Hendon Broadway to the Purchaser, or associated party, on terms as detailed in the Confidential Annexes, but subject to recommendation 2(a).**
2. **That Cabinet delegate authority to the Chief Officer, Deputy Chief Executive, to:**
 - (a) **subject to compliance with S123 of the Local Government Act 1972, agree any amendments to the Heads of Terms as reasonably required as part of any final negotiations.**
 - (b) **finalise the contractual arrangements and instruct the Council’s legal advisors to negotiate and finalise the necessary documentation including the granting of a lease to regulate occupation prior to completion.**

1. Reasons for the Recommendations

- 1.1 The Property had been declared surplus to the Council’s needs pursuant to minute 13 of the meeting of the Growth and Housing Committee of the 13th September 2021 whereby the Committee resolved;

“that the Committee declared that the freehold interest in the property known as 241 and 233 West Hendon Broadway, and Land adjoining 239 West Hendon Broadway NW9 (“the site”) is a surplus Council asset and following the expiration of the occupational lease no longer required for its current use, and to authorise that the Council commences the consideration and exploration of options for the future use of the site including but not limited to a potential sale or development of the same.”
- 1.2 At that meeting the Committee asked if discussions with governors of the school would take place, if the decision is to make a sale, to ensure that one of the considerations would be to make it available for the school to purchase. Officers agreed that these discussions would be considered.
- 1.3 Negotiations had taken place with parties connected to the Purchaser and the Purchaser and terms had been agreed, in principle and subject to contract, to sell the Property.
- 1.4 The School premises in total is over all of the Property and also that owned by a third party, West Hendon Estates Ltd (WHE) and the Council had been negotiating the sale of the Council’s part to WHE and with a linked party, the now Purchaser. To assist understand the proximity and relationship of the Property and that owned by WHE the Property is detailed edged red on the

attached Disposal Plan and that in the ownership of WHE is shaded grey. The Disposal Plan is subject to any boundary amendments as may be required.

- 1.5 The Council agreed Heads of Terms which are now agreed with the Purchaser, a charity, whereby the sole trustee is also the proprietor of the School therefore whilst the Purchaser is not the School in name, there is a clear link between the parties. These negotiations have taken two years to negotiate and the Purchaser has now agreed terms and, therefore, the Council is desirous to exchange contracts as soon as possible with a deferred completion in or around December 2024.
- 1.6 An independent valuation supports s123 of the Local Government Act 1972 best consideration with a purchase price and recovery of other costs including rent arrears, however the Council needs to progress with urgency to exchange contracts once the Purchaser has placed their solicitors in funds for the deposit and therefore not delay the transaction further and increasing rent arrears by awaiting a report to May or subsequent meeting of Cabinet.
- 1.7 This paper seeks Cabinet's approval to delegate authority to the Chief Officer, Head of Property and Portfolio Management to finalise negotiations, agree any amendments to the Heads of Terms, if required, and finalise the sale of the Property whereby completion will occur by the end of 2024.

2. Alternative Options Considered and Not Recommended

- 2.1 **Not progress with the Purchaser.** – The Council could look to place the property on the market. Any new purchaser would take the Property in its current condition and would have to separate the premises from the adjoining property. This could potentially mean, if school use is not maintained that the School may have to close. This, in turn, could result in the children who attend the School then falling within the remit of the Council as the Local Education Authority, albeit any statutory duty of the Council should not, in itself, influence the decision.
- 2.2 **Continue to lease the Property to the School.** The Council has agreed to declare the Property as surplus and therefore the sale will realise a Capital Receipt and the Council will not retain any liability for repairs and the condition of the Property, if a further long lease was granted.

3. Post Decision Implementation

- 3.1 The Council's legal advisors will be instructed to finalise documentation to enable the sale to proceed and a new lease to be granted to the Tenant, or potentially the Purchaser or other appropriate person on substantially the terms set out in Appendix B with such variations as the said Chief Officer may consider appropriate or necessary.

4. Corporate Priorities, Performance and Other Considerations

Corporate Plan

Being an Engaged and Effective Council

- 4.1 This decision will regularise the occupation of the Property and support the continuing of the School and educational needs it provides in line with the aims of the Council's Corporate Plan Barnet 2023-2026.

Corporate Performance / Outcome Measures

- 4.2 A capital receipt will be achieved along with a saving against maintenance and repair costs that may be required in the future at the Property. The rent arrears will also be paid as well as the purchase price.

Sustainability

- 4.3 Not applicable

Corporate Parenting

4.4 Not applicable

Risk Management

4.5 It is considered that there are no significant risks associated with following the recommended strategy and a greater risk in not progressing the sale.

Insight

Social Value

4.6

5. Resource Implications (Finance and Value for Money, Procurement, Staffing, IT and Property)

5.1 This decision will ensure that arrears of rent currently owed are collected by the Council along with the Capital Receipt.

5.2 The negotiated terms, as set out in the Heads of Terms and the exempt appendices, enables the Council to exchange contracts with a 10% deposit. A deferred completion date of 2nd December 2024 has been agreed with the purchaser to assist them with their cashflow. Should the purchaser fail to complete they would forfeit their deposit, however, the Council would have received all rent arrears and rent up to that date.

6. Legal Implications and Constitution References

6.1 The Council may dispose of its property under Section 123 of the Local Government Act 1972. Except with the consent of the Secretary of State and for certain short leases, this shall not be otherwise than for the best consideration reasonably obtainable.

6.2 The Council has sought confirmation from an external advisor that the sale complies with the Council's requirement to obtain the best consideration reasonably obtainable.

6.3 The Council will enter into a lease arrangement until completion of the sale to regularise the occupation of the Tenant, or other party in its place.

6.4 Under Part 4B Table A of the Council's Constitution (Contract Procedure Rules) , disposals of over £1million are to be approved by Cabinet.

6.5 Under the Council's Constitution, Part 2D the terms of reference of Cabinet includes responsibilities for all key decisions.

7. Consultation

7.1 Officers have consulted with legal advisors; independent property valuers; and the Council's Finance Team.

8. Equalities and Diversity

8.1 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.

The proposed sale is not considered to have any adverse effects on those with protected characteristics and is expected to support the School in the future.

9. Background Papers

- 9.1 Report of the Housing and Growth Committee of the 13th September 2021 – item 13
<https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=696&MId=10846&Ver=4>
- 9.2 Minutes (Minute Item 13) of the meeting Housing and Growth Committee of the 13th September 2021. <https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=696&MId=10846&Ver=4>