



Originator:

Tel:

Report of The Chief Executive and the Director of Development

Executive Board

Date: 13 December 2006

Subject: New Horizons School

Electoral Wards Affected:

Chapel Allerton

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Eligible for Call In

Not Eligible for Call In

(Details contained in the report)

EXECUTIVE SUMMARY

The purpose of this report is to advise Members of discussions that have taken place between the Trustees of the New Horizons School and officers of the Council in relation to the school's interest in acquiring the Council owned property, Newton Hill House, Chapeltown, which they currently occupy on a tenancy at will. Members of Executive Board are requested to consider the options and the proposal to dispose of the site to the Trustees of the New Horizons School at less than best consideration with a covenant restricting the future use of the site to educational and charitable purposes for a period of five years.

1.0 SUMMARY

- 1.1 New Horizons School is an independent, private school that provides girls-only education for pupil's aged 11-16 within the Muslim faith and traditions. The school is a charitable trust managed by a Board of Governors and the Trustees of the charity. The Council has provided temporary financial and material support since this education matter was first considered by Members of Executive Board in February 2000. Assistance has been provided to date in the form of grant assistance and the use of premises at Newton Hill House on Chapeltown Road at a peppercorn rent. This support was provided on the understanding that the Trustees would work in collaboration with the City Council to seek to identify a suitable way for the girls at the school to be found appropriate provision within the education maintained sector. From September 2005 a stepped rent became payable by the Trust.
- 1.2 Executive Board last considered this matter at their meeting in September 2005 where approval was given to the disposal of the freehold interest in Newton Hill House to the Trustees of the New Horizons School at less than the best consideration reasonable obtainable with a positive covenant restricting the future use of the site to educational and community use subject to the Director of Development approving the detailed terms of sale. The less than best consideration approved at this time was £250k. This sum reflected the value of the restricted value of property in perpetuity for educational use less any repairs that were the responsibility of the Council.
- 1.3 Subsequent to Executive Board's approval, officers sought to progress the completion of the disposal, however, this work stalled on the basis that the representatives of the New Horizons School could not agree to the terms of the restrictive covenant proposed by the Council, the fact that it would be in place for perpetuity, and the financial arrangements for lifting the covenant should this be desired at some future date.
- 1.4 Accordingly, following further meetings between officers and representatives of the school, the Trustees have presented an alternative proposal for the purchase of the property.

2.0 CURRENT POSITION

- 2.1 The Trustees have now approached the Council with a request that that they purchase the freehold of the property and offer a commitment to use the building for educational and charitable purposes for a minimum of five years. On the basis that this would bring to a close all of the outstanding matters officers commissioned a revaluation of the property from Lambert Smith Hampton who had supplied the earlier valuation.
- 2.2 The Lambert Smith Hampton report provided the following information:-
- | | | |
|------|---|----------|
| (i) | The current unencumbered market value of the property is | £575,000 |
| (ii) | The value of the property with the restriction on use to educational/charitable purposes for a minimum of five years is | £485,000 |

2.3 Both of these valuations assume that before disposal the landlord (the Council) fulfils its obligations in terms of essential works required to the building.

These works include:-

- Refurbishment to the windows
- The carrying out of damp remedial work to the basement
- Decoration and repair of portakabins
- Algae removal from the single storey extension walls and roof tiles

2.4 Officers estimate that these works would cost the Council in the order of £20,000 and therefore, should the disposal to the Trustees proceed, and the Trustees agree to carry out these works themselves, then this sum would constitute a valid reduction in price from the reported market value. Should the transaction proceed then requesting that the Trustees carry out such works is recommended by officers since it removes the risk of capital cost overruns from the Council ie it effectively gives the Council cost certainty. Under such a proposal the sale price to the Trust with the restriction over use would be £485,000 - £20,000 = £465,000

2.5 Members will note, therefore, that the amount which the Trustees would pay for the building does reflect precisely the value to the Trust of the building with the restrictions on its use in place. There is therefore no subsidy to the Trust under such a proposal (and as such therefore, no deemed state aid).

2.6 However, Members will also note that the unencumbered market value of the property is a higher figure than the proposed sale price and that therefore a disposal at this figure does constitute less than best consideration in the sense that the Council has chosen to impose a condition upon the building's use which reduces the maximum sum which it might expect to realise if a disposal had taken place without the restriction.

2.7 On balance, Members may consider that to sanction such a less than best disposal is an appropriate use of the Council's powers so as to resolve the outstanding matters pertaining to this property and to deliver the associated educational benefits.

2.8 Rent arrears of £15,000 are currently outstanding and the Trustees have requested that these be waived if the purchase of the property progresses.

3.0 OPTION APPRAISAL

3.1 There are three options available to the Council:-

- (i) Seek to take possession of the building on the basis of the rent arrears outstanding.

Such a course of action would carry with it a human resource requirement and a financial cost and would be disruptive to the education of the young people involved. It is not therefore a course of action that officers would recommend whenever there are potentially more fruitful options available which would bring about resolution in a more amicable manner, support the education of the young people involved, and at the same time offer the most advantageous financial settlement for the Council. However, it is an option which the Council may have to revisit if an acceptable conclusion to the outstanding matters cannot be achieved.

- (iii) Seek to complete the lease agreement (previously approved by Executive Board) with the Trustees.

This is a course of action which has in the past proved extremely difficult to bring to a conclusion, and officers have little confidence that to again pursue this option would result in an outcome which could be recommended to Members.

- (iv) Seek to dispose of the freehold of the building to the Trustees.

This option, if it can be achieved at a financial consideration which is acceptable to the Council, appears to offer the best way forward in that it would mean a quick resolution of the outstanding issues and minimum disruption to the education of the young people involved, and would also generate a significant and previously not anticipated capital receipt to support the Council's Capital Programme.

4.0 RISK ANALYSIS

- 4.1 There are a number of risks for the Council if this matter is not brought to a conclusion.
- 4.2 The Council may continue to lose revenue income through non-payment of rent by the Trust and attempts to recover related arrears may prove resource hungry whilst at the same time proving disruptive to the education of the young people involved. In this regard the Council's aspirations regarding the creation of cohesive communities might well be prejudiced.
- 4.3 The most appropriate way to mitigate against these risks would be for there to be a timely, amicable financial settlement at a value which has been arrived at through following the established and rigorous process always followed by the Council during disposals of the property.

5.0 FINANCIAL AND LEGAL IMPLICATIONS

- 5.1 The Council is being requested to write-off the current rent arrears of £15,000. A decision to comply with this request would result in a corresponding reduction in revenue budget resources.
- 5.2 The disposal would result in a capital receipt for the Council (not previously anticipated) of £465,000.
- 5.3 Section 123 of the Local Government Act 1972 provides that, except with the consent of the Secretary of State, a Council shall not dispose of land under that Section, otherwise than by way of lease for not more than 7 years, for a consideration less than the best that can reasonably be obtained. The Chief Legal Services Officer has been consulted for advice if this option is pursued as the Council will receive a reduced capital receipt if the site is sold with a covenant restricting the future use of the site for a period of five years.

- 5.4 Generally, the case law shows that “consideration” for these purposes means money or money and other elements which have a commercial or monetary value capable of being assessed by those expert in the valuation of land, and that the perceived social or economic value of a proposed use cannot be reflected as a discount on, or as part satisfaction of the commercial or monetary value required to be obtained.
- 5.5 However, the Local Government Act 1972 General Disposal Consent (England) 2003 provides the general consent of the Secretary of State to a disposal where the authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of the whole or part of the area, or of all or any persons resident or present in its area, and the difference between the unrestricted value of the land and the consideration for the disposal does not exceed £2m.
- 5.6 Separately from the requirements of Section 123, the Council has a general fiduciary duty to its Council taxpayers, and the interests of those taxpayers need to be considered when deciding whether or not to dispose of the subject site for a consideration less than the best that can reasonably be obtained. In this context it is of course legitimate for the Council to have regard to the fact that a disposal of the freehold will realise a capital receipt rather than the current reduced rental, and the level of its previous financial commitment to the New Horizons School. The Council must also consider the position in relation to EU state aid. However, given that the Council is intending to impose special obligations in the public interest which the potential buyer is able to fulfil, and the economic disadvantage of these obligations has been evaluated by an independent valuer, the disposal will still be treated as being at the market price for these purposes, and so not granting a state aid under the Commission Communication on state aid elements in sales of land and buildings by public authorities.

6.0 NEXT STEPS

- 6.1 The principles of a disposal as outlined in this report have been discussed with representatives of the Trustees and a formal response to the Council is expected following the next Board of Trustees meeting scheduled for early December 2007. Officers will report verbally on that response at the Executive Board meeting.

7.0 RECOMMENDATIONS

- (i) Should the Trustees of the New Horizons School agree to acquire the freehold of Newton Hill House from the Council for the sum of £465,000 then officers be instructed to expedite the disposal with each party meeting its own legal and surveyor costs. Current rent arrears of £15,000 to be written off under this option.
- (ii) Should the Trustees of the New Horizons School not agree to acquire the freehold of Newton Hill House from the Council for the sum of £465,000 then officers be instructed to seek immediate payment of rent arrears outstanding and the signing of the lease and should this fail, to take any recovery action appropriate in the circumstances.