

Subject:	Exchange of leases for Wilson Avenue and the Connaught Centre		
Date of Meeting:	14 October 2010		
Report of:	Acting Director of Children's Services		
Contact Officer:	Name:	Gil Sweetenham	Tel: 29-3433
	E-mail:	gil.sweetenham@brighton-hove.gov.uk	
Key Decision:	Yes	Forward Plan No: CAB18713	
Wards Affected:	All		

FOR GENERAL RELEASE

Note: The special circumstances for non-compliance with Council Procedure Rule 7, Access to Information Rule 5 and Section 100B (4) of the Local Government Act as amended (items not considered unless the agenda is open to inspection at least five days in advance of the meeting) is due to the timing of the ongoing negotiations and the urgent need to complete the transaction.

1. SUMMARY AND POLICY CONTEXT:

- 1.1 In April 2010 City College Brighton & Hove declared the Connaught Centre as surplus to their requirements and the Council entered negotiations to acquire the site for a primary unit of a new school. These negotiations included consideration of extending the lease on Wilson Avenue to City College.
- 1.2 Negotiations concluded on 30 September 2010 with an agreement subject to contract and approval of final terms as follows:

The Council will grant a lease of the Wilson Avenue Site to City College and City College will grant a lease of the Connaught Centre to the Council. The lease of the Wilson Avenue site will not include the Stanley Deason Leisure Centre and vehicular access to the Leisure Centre will also be retained as indicated on the plan attached to the agreement and referred to in this report.

The respective term of years in such leases shall be 30 years from commencement, subject to break clauses as appropriate. The Council and City College will act in good faith and seek to agree the respective heads of terms of the leases as soon as possible so that the leases themselves can be entered into as soon as possible.

The Council will procure through its Leisure Services Contract that the College shall have made available to it at educational rates during the term time of the College (i) 25 hours per week use of the Sports Hall at the Leisure Centre and (ii) 15 hours per week use of the All Weather Pitches at the Leisure Centre.

- 1.3 To open the Connaught Centre as an Infant primary unit in September 2011 assumes that the statutory processes, including planning consent along with

refurbishment of the Grade 2 listed building, can be completed within the time frame.

2. RECOMMENDATION:

- 2.1 That Cabinet approves the Council entering into an exchange of leases for a period of thirty years, subject to break clauses as appropriate, with City College Brighton & Hove whereby the Council shall take a lease of land at the Connaught Centre shown on plan 1 and City College take a lease of land at Wilson Avenue shown on plan 2.
- 2.2 That the detailed terms of the leases shall be agreed by the Acting Director of Children's Services or the Lead Commissioner Schools, Skills and Learning as appropriate and the Head of Law in consultation with the Cabinet Member for Children & Young People.

3. RELEVANT BACKGROUND INFORMATION

- 3.1 The Council has a statutory duty to provide a school place for any child that wants one. Current and projected pupil numbers for the City as a whole show there is an immediate and ongoing need for additional school places in the City as a whole. This need is most acute in south central Hove and on the Brighton/Hove border.
- 3.2 To meet the projected future growth in pupil numbers we need to provide a minimum of 165 additional primary school places which equates to 5.5 forms of entry by September 2011.
- 3.3 2.5 forms of entry are being provided by extensions to Goldstone, Westdene and Queens Park primary schools. Work is presently underway on all three sites.
- 3.4 A number of proposals were presented to the CMM meeting on 12 July 2010 and it was agreed that the preferred option would be the acquisition of the Connaught Centre which would be used to provide primary reception places in the form of an expansion of an existing primary school for September 2011. The governance and site of that expansion will be considered by the Cabinet member for Children's Services at the CMM on 10 December 2010.

4. CONSULTATION

- 4.1 The Council has finalised its negotiations with City College regarding the acquisition of the Connaught site.
- 4.2 Formal consultation with schools, governors and the community will be carried out in line with the requirements of the School Organisation Regulations at the appropriate time.
- 4.3 City Planning has been consulted in relation to the improvements to and refurbishment of the Connaught site.

5. FINANCIAL & OTHER IMPLICATIONS:

5.1 Financial Implications:

- 5.1.1 Subject to satisfactory Stamp Duty Land Tax avoidance (see 5.2.1 below) and an agreed equality of exchange in terms of the final form of leases, there do not appear to be any direct financial implications in respect of the grant of the leases for the Wilson Avenue site and the Connaught Centre. Future financial implications may arise as a result of any break clauses in either lease being triggered, but it is understood that these will only be imposed as appropriate devices to agree valuations and may be subject to side agreements to mitigate their impact in the unlikely event of break notices being served by either party.
- 5.1.2 There are financial implications for the authority for the refurbishment of the building. A figure of £1.5m has been identified and committed for redevelopment of the Connaught Site in the Primary Capital programme budget in the financial years 2011/12 & 2012/13. However given that the recent budget announcement indicates that government departments will have to find reductions of 25% over the next 4 years, we are not sure if this will impact on funding for Primary Capital. If this reduced in 2011/12 or 2012/13 then the funding for any adaptations will have to be the first call on any reduced budget.

Finance Officer Consulted: Andy Moore

Date: 12/10/10

5.2 Legal implications

5.2.1 Stamp Duty Land Tax

If (as is anticipated) the exchange of leases is for nil consideration as between the two parties then it is anticipated that it may be possible to ensure that the taking of the lease of the Connaught Centre will attract nil SDLT. However there are instances (including land exchanges) where HMRC may require SDLT to be paid based upon the value of the grant of the lease. As this matter is not certain it is possible that SDLT may arise and appropriate steps should be taken to minimise the Council's liability. SDLT is based upon the transaction value and amount of SDLT liability to the Council would not exceed 4% of the value of the Connaught lease. It should also be noted that should VAT apply to the grant of the lease, then VAT will also be payable at the appropriate rate on the SDLT.

5.2.2 Title Defects

It is unlikely given the history of the properties, but nonetheless possible, that upon the disclosure and receipt of the full details of the legal titles of the two sites, defects at will law be discovered. It is sometimes possible to overcome such by negotiating settlement with those parties who benefit from these defects or alternatively by purchasing title defect indemnity policies. This will be a matter for negotiation between the two parties and may affect the amount of consideration passing between them.

5.2.3 Primary School Places

The proposed use of the Connaught site is to address an anticipated shortfall in the primary school places in the city 2011-12. Members should be mindful that the Council has a statutory duty under section 14 of the Education Act 1996 to ensure the provision of sufficient schools for the provision of primary and secondary education in its area. In due course the governance of the expansion of an existing school onto the Connaught site will need to be decided by the Cabinet Member for Children Services, and the published admission arrangements for 2011 amended accordingly in time for the closing deadline for submission of school preferences.

5.2.4 Schools PFI

Previous development at the Wilson Avenue site required that the Council enter into a Private Finance Initiative ("PFI") agreement. The lease will ensure that the PFI arrangements and PFI credits are not prejudiced in any way.

5.2.5 Break Clauses

The final drafting of the mutual break clauses has not been agreed at the time of this report. They may be appropriate to ensure equality of exchange in terms of the respective valuations and will be subject to strict provisions designed to reduce the risk of the Connaught Centre ceasing to be available to the Council.

Lawyer Consulted:

Bob Bruce

Date: 12/10/10

- 5.3 Equalities Implications: Planning and provision of school places is conducted in such a way as to avoid potentially discriminatory admissions priorities or planning processes. The City Council and voluntary aided school governing bodies must be mindful of best practice as described in the Admission Code of Practice.
- 5.4 Sustainability Implications: All new extensions to Brighton and Hove Schools utilise, where ever possible, environmental and sustainable principles such as higher than minimum insulation levels, the use of efficient gas condensing boilers, under floor heating, solar shading and natural ventilation. Materials are sourced from sustainable sources where ever possible.
- 5.5 Crime & Disorder Implications: Throughout the development of the proposals consultation will be undertaken with community groups and the Community Safety team and police liaison officers. It is anticipated that by including the community in the development and use of the facilities at the schools that crime and disorder in the local area will be reduced. This will be further improved by offering extended use of the facilities to the community outside of the school day.
- 5.6 Risk and Opportunity Management Implications: It is important that this opportunity is taken to ensure the future provision of learning and teaching, and continuing improvement in standards of education in the city.
- 5.7 Corporate / Citywide Implications: To meet the projected future growth in pupil numbers we should be looking to provide a minimum of 165 additional primary school places which equates to 5.5 forms of entry.

6. EVALUATION OF ANY ALTERNATIVE OPTION(S):

- 6.1 The alternative options for providing additional primary places were presented to the CMM meeting on 12 July 2010

7. REASONS FOR REPORT RECOMMENDATIONS

- 7.1 The Council has a statutory duty to provide a school place for any child that wants one. Current and projected pupil numbers for the city as a whole show there is an immediate and ongoing need for additional school places in the city as a whole. This need is most acute in south central Hove and on the Brighton / Hove border.
- 7.2 To meet the projected future growth in pupil numbers we need to provide a minimum of 165 additional primary school places which equates to 5.5 forms of entry by September 2011. The Connaught Centre could provide up to 90 additional primary places equating to 3 forms of entry.

SUPPORTING DOCUMENTATION

Appendices:

1. Plans of the two sites

Documents in Members' Rooms

None

Background Documents

1. CMM report entitled 'Proposed New School for Hove interim proposal', 12 July 2010
2. Memorandum of Understanding agreed between City College and the Council

