

**Report for:
ACTION**

Item Number: 8

Contains Confidential or Exempt Information	Yes, the appendices are confidential pursuant to section 3 of Schedule 12A of the Local Government Act 1972 (Information relating to the financial or business affairs of any particular person (including the council))
Title	Sale of Minority Shareholding in BSF Project Company
Responsible Officer(s)	Emily Hill, Interim Strategic Director of Corporate Resources
Author(s)	Russell Dyer, Assistant Director Accountancy
Portfolio(s)	Councillor Kamaljit Kaur Nagpal, Fairer Start Councillor Steve Donnelly, Inclusive Economy
For Consideration By	Cabinet
Date to be Considered	22 nd February 2023
Implementation Date if Not Called In	3 rd March 2023
Affected Wards	Dormers Wells
Keywords/Index	Building Schools for the Future, PFI, Dormers Wells School,

Purpose of Report:

This report seeks authority to sell the Council's minority interest shares in a Building Schools for the Future (BSF) project company to Amber Infrastructure,

1. Recommendations for DECISION

It is recommended that Cabinet:

1. Approves the sale of the shares to Amber Infrastructure on the terms set out in confidential Appendix 1
2. Authorises the Strategic Director of Corporate Resources, following consultation with the Director of Legal and Democratic Services, to negotiate and complete all necessary documentation to achieve an effective sale to Amber Infrastructure of the Council's stake in Future Ealing Phase 1 Limited.

2. Recommendations for NOTING

It is recommended that Cabinet:

1. Notes the consequences of selling the shares outlined in the report.

3. Background

3.1 Future Ealing Phase 1 Limited (FEP1 Ltd _ Hold Co) was formed to develop the Dormers Wells School PFI – this school, which is a high school, has now converted to Academy status since the original arrangement was set up. This PFI achieved financial close in December 2010. The Council has a 20% minority stake (18% direct and 2% via Future Ealing Limited – Lep Co-) in FEP1 Ltd. The majority shareholder, Amber Infrastructure, has offered to purchase the Council's 20% stake in the company.

3.2 Under the BSF programme the commercial structure of the arrangements involved the set up for each phase of the programme. The arrangements provided for the Council to take a minority stake in the company and also indirectly through the Council's shareholding in the LEP.

3.3 The Council has appointed Asteros Advisors Limited, who are financial advisors that specialise in PFI contract financing and Bevan Brittan as legal advisors, to advise the Council on whether the financial valuation of the offer is appropriate and on the legal implications of the share sale.

4. Key Implications

4.1 The Council's financial advisors, Asteros, have produced a letter of assurance setting out their analysis of the offer received from Amber. Their work considered the underlying financial models, macro – economic assumptions, future cash flows, sensitivity analysis and other factors. Asteros has engaged with Amber to clarify the basis of the offer.

4.2 The report from Asteros confirmed that, having reviewed the financial model for the project, the valuation has been undertaken using a valid methodology and in all material aspects, the financial models have been updated with actuals in the way they would anticipate. They have received satisfactory responses to several questions they have raised with Amber in relation to their financial models and assumptions. Asteros concluded that the basis of calculation and the discount rate proposed, are appropriate in the context of achieving a fair evaluation of the equity held by the Council and consider the offer by Amber to be fair and value for money.

4.3 The Council has received legal advice from Bevan Brittan (BB) on the share sale and the proposed agreement provided by Amber, namely the Share Purchase Agreement (SPA) and the Observer Letter. They advise that the SPA is a purely mechanical document and does not contain any provisions that they consider unusual or onerous. By reason of the sales of the shares, the Council would lose

the following rights under the original Shareholder Agreement – the right to appoint a director and veto rights in respect of the matters referred to in Schedule 3 of the Shareholder’s Agreement.

4.4 However, even where the Council has a director on board of the project and holding companies, that Director needs to act in the best interests of those companies and not the Council. Decisions of the board would also be subject to majority vote so the Council’s director could not in any event unilaterally exercise control, therefore the Council would not be losing much in the way of control of the companies, BB did not flag anything of concern on the Observers Letter but have suggested some minor amendments.

4.5 The Council has advised the Education Skills and Funding Agency (ESFA) that it is exploring the option to proceed with the sale of its share. The ESFA has no issues with the sale and require notification for their records, if and when the sale proceeds to completion. They also require assurance that the Council has taken appropriate financial advice on the valuation from experienced financial advisers familiar with this type of equity sale, which we have provided to them in the form of the assurance letter from Asteros.

4.6 The terms of the Council’s acceptance of the offer are set out on the attached confidential Appendix A.

5. Financial

5.1 The Council has received dividends from its shareholdings in the BSF project company since the PFI was last refinanced in 2019/20. If the shareholding were sold there would be no further dividend payments. The report by the financial advisers considers that forecast dividend returns are largely locked up until the end of the contract, with distributions mainly relating to interest on subordinated debt. The valuation and sale of the Council’s interests based on receiving a one-off payment compared with receiving ongoing dividends offers value for money.

5.2 The receipt for the shareholding will be taken as a one-off revenue saving in 2023/24, as noted in the Budget Report also on the February agenda, and this saving will be net of the fees for both of the advisors.

6. Legal

The Council’s shareholding does come with certain voting rights as a member of the company. However, as a minority shareholder, the Council could be outvoted. The Council will retain the right to appoint an observer to attend company meetings.

7. Value For Money

The value for money arrangements have been commented upon by Asteros.

8. Sustainability Impact Appraisal

Not applicable.

9. Risk Management

This is considered throughout the report which notes the comments and observations of the advisors.

10. Community Safety

None.

11. Links to the 3 Key Priorities for the Borough

None.

12. Equalities, Human Rights and Community Cohesion

None.

13. Staffing/Workforce and Accommodation implications:

None.

14. Property and Assets

None.

15. Any other implications:

None.

16. Consultation

As noted in the report.

17. Timetable for Implementation

As noted in the report.

18. Appendices

See 19 below..

19. Background Information

Share Purchase Agreement – Confidential Appendix 1

Observer Letter – Confidential Appendix 2

Advisors Report – Confidential Appendix 3

Consultation

Name of consultee	Post held	Date sent to consultee	Date response received	Comments appear in paragraph:
Internal				
Carolyn Fair	Acting Strategic Director of Children's	5 January 2023	N/A	N/A
Helen Harris	Director, Legal and Democratic Services	5 January 2023	6 January 2023	Throughout
Emily Hill	Interim Strategic Director of Corporate Resources	5 January 2023	3 February 2023	Throughout
Tamara Quinn	Assistant Director Resource Planning and Service Development	5 January 2023	N/A	N/A
Cllr Kamaljit Kaur Nagpal	Cabinet Member for a Fairer Start	7 February 2023	N/A	N/A
Cllr Steve Donnelly	Cabinet Member for Inclusive Economy	3 February 2023	N/A	N/A
External				
ESFA				
Dormers Well School				

Report History

Decision type:	Urgency item?
EITHER: Key decision	No
Report no.:	Report author and contact for queries:
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