



Cabinet
6th February 2023

**Report from the Corporate Director
of Finance and Resources**

Airco Close Lease Assignment

Wards Affected:	Kingsbury
Key or Non-Key Decision:	Non-Key
Open or Part/Fully Exempt: <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Partly Exempt – Appendix 2 is exempt as it contains the following category of exempt information as specified in Paragraph 3, Schedule 12A of the Local Government Act 1972, namely: "Information relating to the financial or business affairs of any particular person (including the authority holding that information)"
No. of Appendices:	Two Appendix 1: Site Plan Appendix 2: Lease Transfer Document (exempt)
Background Papers:	None
Contact Officer(s): <small>(Name, Title, Contact Details)</small>	Neil Martin Head of Capital Programmes (Schools) 020 8937 4203 neil.martin@brent.gov.uk Denish Patel Head of Property 020 8937 2529 denish.patel@brent.gov.uk

1.0 Purpose of the Report

- 1.1 This report sets out the recommendation to approve a transfer of a 999-year lease from the Developer of 399 Edgware Road to the Council for a concrete podium above a basement car park as part of a s106 agreement for the development.

2.0 Recommendation(s)

That Cabinet:

- 2.1 Agree a transfer of a 999-year lease from the Developer of 399 Edgware Road to the Council for a concrete podium above a basement car park as part of a s106 agreement for the development.

3.0 Detail

- 3.1 In May 2013, the Council granted planning consent for a mixed-use development at the former Oriental City, 399 Edgware Road, Kingsbury, NW9 0JJ. Consent was granted for 7817m² of retail A1 space and 5207m² of other shops and offices and 183 residential units along with a two-form entry primary and nursery school (Class D1).
- 3.2 In June 2013, the Council entered in a Section 106 Agreement (s106) which secured the transfer of land to the Council for two-form of entry (2FE) primary school with nursery provision.
- 3.3 The location of the school and nursery is a concrete podium (~2,700m²) to the north-west corner of the development site, alongside the boundary with Airco Close. The site is inclusive of 39 parking spaces in the basement car park along with access to the site from Airco Close and from within the Morrison's service yard. Appendix 1 shows the site plan.
- 3.4 Following on from the planning approval, the initial proposal for the site was to develop the school site for a two-form entry school. Initial plans were to provide a Free School with the Department for Education (DfE) managing the design and build process. The School Podium was completed in 2015 and in accordance with a Technical Specification that has been submitted and approved by the Council
- 3.5 In May 2016, Cabinet approved the leases for Floreat Education Academies Trust (FEAT) in May 2016 to operate the proposed new school at Airco Close and an interim lease at 434 Church Lane, Kingsbury, NW9 9BD until the new school was ready.
- 3.6 However, since then, pupil numbers have decreased and it was confirmed there was no need for a school in this part of the borough, FEAT withdrew from operating a school in the borough and the DfE confirmed they would not be providing a new school building at Airco Close. The project to deliver a primary school on this site was aborted.
- 3.7 The site has remained vacant since completion in 2015 except for being used as a building compound for the residential developments which completed in 2018. The developer has undertaken protective measures as well as recent repairs to the area to ensure it is transferred to the Council in a reasonable and appropriate state.

3.8 There is currently no requirement to provide a Primary School in this part of the borough. Within the terms of the lease, the Council has the right to seek the landlord's consent for other uses and such consent should not be unreasonably withheld.

3.9 Options for the site will be brought forward for consideration in future Cabinet reports.

4.0 Financial Implications

4.1 The Council will be acquiring a site capable of development as a school or otherwise in a significant growth area. Such sites are difficult to secure on the market at reasonable cost. The acquisition is at nil payment and is part of a significant s106 agreement that has allocated the land as school development site.

4.2 There could be cost implications to maintain and secure the site until such time a contractor is appointed to deliver work and a building operator is in place to operate and manage the building(s). Subject to project approval, this is likely to be in 2025/26.

4.3 The estimated costs to cover any security and maintenance of the site and the site's contribution to the landlord's service charge share until the site is utilised are £20k per annum and will be covered within the existing projects budget.

4.4 Capital financial implications for site development will be included in future Cabinet reports.

5.0 Legal Implications

5.1 The Council entered a s106 agreement on 26 June 2013 which sets out the terms under which the developer is required to grant a long lease at a peppercorn rent of the school podium and hence the Council is contractually committed to taking a transfer of the lease of the school land.

5.2 As the lease is for 999 years, Cabinet is required to approve the Council taking a transfer of the lease of the school land. According to paragraph 11.2 Part 3 of the Brent constitution, the Corporate Director, Finance and Resources may not acquire leases where the term exceeds 125 years. According to paragraph 11.11 Part 3 of the Brent constitution, in any cases where officers do not have or may not exercise delegated powers in respect of land and buildings the matter shall be determined by the cabinet.

5.3 The main terms of the lease of the school land that is being transferred to the council are as follows:

5.3.1 The lease is dated 18 May 2015 relating to school land at 399 Edgware Road, Colindale, London NW9 between (1) Nereus Limited (in

liquidation) (2) Phillip Rodney Sykes (3) Development Securities (Edgware Road No.1) Limited.

5.3.2 The term of the lease is 999 years from 18 May 2015.

5.3.3 The annual rent is a peppercorn.

5.3.4 The tenant is responsible for paying the rates and the outgoings.

5.3.5 The tenant has to keep the demised premises in a good and substantial state of repair, decoration and condition.

5.3.6 The tenant must not make any structural alteration in the construction or arrangement of the demised premises which might adversely impact on the other buildings within the Estate.

5.3.7 The tenant must comply with the terms of the s106 Agreement dated 26 June 2013 and made between (1) The Mayor and Burgesses of the London Borough of Brent (2) Nereus Limited (in liquidation) (3) Phillip Rodney Sykes and David Alan Rolph (as receivers) (4) Development Securities (Projects) Limited (5) Development Securities Plc so far as it relates to the demised premises.

5.3.8 The tenant must not make any application under the Planning Acts in relation to the demised premises without the prior written consent of the landlord (which will not be unreasonably withheld or delayed where the landlord's consent or approval is also obtained under the lease for a permitted alteration, a sign or a change in use).

5.3.9 User – not to use the demised premises other than for use as an educational facility within Class D1 of the 1987 Use Classes Order or such other use as the landlord shall approve such approval not to be unreasonably withheld or delayed and provided that no approval is required for a change of use to residential use.

5.3.10 The landlord will procure the repairing, maintaining, lighting, cleaning and reinstating of the Access Roads Service Area and Car Park.

5.3.11 The title to the lease is registered under title number AGL361458 with title absolute.

6.0 Equality Implications

6.1 The Council, as a public authority exercising public functions, is subject to a public sector equality duty (PSED) under section 149 Equality Act 2010 (EqA). The PSED requires public authorities to have “due regard” to:

- The need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the EqA.

- The need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. This involves having due regard to the need to:
- remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic.
- take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it; and
- encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- The need to foster good relations between persons who share a relevant protected characteristic and those who do not share it. This includes having due regard to the need to tackle prejudice and to promote understanding.

6.2 There are no equality implications for the assignment of the lease. Specific equality implications will be considered in future development proposal reports.

7.0 Consultation with Ward Members and Stakeholders

7.1 Consultation with Ward Members will take place as part of any future development proposals for the site.

7.2 Relevant stakeholders will be engaged at the appropriate stages of any future development proposals for the site.

8.0 Human Resources/Property Implications (if appropriate)

8.1 There are no human resource implications for this decision.

8.2 There is a risk that if no development proposal comes forward in the medium to long-term, the site will be at risk of deterioration and security breaches which would fall onto the Council to resolve and would have an impact on revenue finances.

Report sign off:

Minesh Patel

Corporate Director of Finance and
Resources