

PETITION REQUESTING THAT THE COUNCIL PERMIT THE NANAKSAR PRIMARY SCHOOL PERMANENT BUILDING TO BE ERECTED AND TO ALLOW FOR THE RECEPTION INTAKE FOR 2016/2017 TO BE APPROVED

Cabinet Member	Councillor Jonathan Bianco
Cabinet Portfolio	Finance, Property and Business Services
Officer Contact	Mike Paterson, Residents Services
Papers with report	Lease plans

HEADLINE INFORMATION

Purpose of report	To inform the Cabinet Member that a petition was received on 25 November 2015 from Mr Summer Babber and Mr Gurpeet Singh. This contained over 1,000 signatures and requested that the Council permit the Nanaksar Primary School permanent building to be erected and to allow for the reception intake for 2016/2017 to be approved. This is eligible for consideration at a Petition Hearing with the Cabinet Member for Finance, Property and Business Services.
Contribution to our plans and strategies	Not applicable.
Financial Cost	No direct financial cost to the Council.
Relevant Policy Overview Committee	Corporate Services and Partnerships.
Ward(s) affected	Townfield

RECOMMENDATION

That the Cabinet Member:

- 1. Meets the petitioners and considers their request that the Council permit the Nanaksar Primary School permanent building to be erected and to allow for the reception intake for 2016/2017 to be approved.**
- 2. Decides on the appropriate course of action having met with the petitioners.**

INFORMATION

Reasons for recommendation

To allow the Cabinet Member to meet the petitioners to consider the petition.

Alternative options considered

These can be identified from the discussions with the petitioners.

Comments of Policy Overview Committee(s)

None at this stage.

Supporting Information

1. A petition was received on 25 November 2015 from Mr Summer Babber and Mr Gurpeet Singh. This contained over 1,000 signatures and requested that the Council permit the Nanaksar Primary School permanent building to be erected and to allow for the reception intake for 2016/2017 to be approved. The petition is eligible for consideration at a Petition Hearing with the Cabinet Member for Finance, Property and Business Services.

2. The residents have signed the following statement :-

"We the undersigned, call upon Hillingdon Council to permit the Nanaksar Primary School permanent building to be erected and to allow for the reception intake for 2016/2017 to be approved."

3. The justification for the petition states that "the Education Funding Agency had initially approved the funding for the school building to be erected on the Guru Nanak Sikh Academy school field. The school produced great academic results and gained a good rating by Ofsted for a school that is only in its infancy. Despite this, the Education Funding Agency has refused to further fund the build due to Hillingdon Council not authorising the permission required. In response to the lack of support from the local authority, parents from both NPS and GNSA have turned to the community for their support."

Background

4. The Council is the freehold owner of the playing fields adjoining the Guru Nanak Sikh Academy, Springfield Road, Hayes (the playing fields), shown on the attached plan. The Council has been working in partnership with the Education Funding Agency (EFA) for the purpose of facilitating the permanent build of Nanaksar Primary School on the playing field site.

5. However, allegations of financial impropriety in relation to the school site and more particularly, against those running it, have led the EFA to carry out an investigation in relation to them. As a consequence, the EFA served a Financial Notice in April 2014 on the grounds that there have been a number of financial irregularities, which include the non-payment of outstanding loans that have been secured on the school site. The EFA

has informed the Council that the requirements of the Notice have yet to be fully complied with.

6. Although there is more than one loan which is secured on the school site as a whole, only one such loan, which is in favour of Lloyds Bank, is actually secured on the playing fields. The exact amount of the loan is not known but it is thought to be very significant.
7. The Council is not party to the loan, but is nevertheless significantly affected by it. Not only is the loan secured on Council-owned land, but its existence is also preventing the development of Nanaksar Primary School. This is on the basis that the EFA has made it clear that it is not prepared to invest any funding in the school until such time as the requirements of the Financial Notice, which includes the discharge of the loan, have been fully met.

History and Chronology

8. A lease, dated 9 September 2003, was granted by the Council to the Trustees of the Guru Nanak Sikh College, in relation to playing fields for a term of 125 years. The named Trustees in the lease document are Sant Baba Amar Singh, Nirmal Singh Rana and Amarjit Singh. The lease commencement date is 4 May 1994, some 9 years before the actual completion date of the lease. It has not, however, been possible to determine the reasons for the gap between the commencement date and the completion date of the lease.
9. The Borough Solicitor has considered the lease and in particular those clauses relevant to the charging of the lease, clauses 5.12.1 and 5.12.2. He has concluded that whilst there is an absolute prohibition against charging part of the playing fields, there is no prohibition against charging the whole of the playing fields. Therefore, the Council's consent, in its capacity as the freehold owner of the playing fields, was not required to the securing of the Lloyds Bank loan on the playing fields and it was not expressly sought, presumably on the basis of this same interpretation of the lease by the Trustees and their solicitors. The charging of the existing lease, dated 9 September 2003, does not, therefore, constitute a breach of the lease terms and as such, there are no grounds for the Council to take steps to terminate it.
10. A Deed of Variation and Licence was completed on 10 November 2009 to alter the boundary between the playing fields and the adjacent Hayes and Yeading Football Club, as shown on the plan. Lloyds Bank was a party to this Deed as Mortgagee.
11. Negotiations commenced in October 2010 to grant a new 125 year lease to the Trustees of Guru Nanak Sikh College on the basis that it was to become an Academy with effect from 1 November 2010. An important part of the negotiations included the proposal that the 2003 lease would be surrendered back to the Council, which would enable the new lease to be granted. The negotiations for a new lease broke down completely after 1 November 2010, however, when it became clear that Lloyds Bank would not agree to any legal arrangement which would in any way jeopardise the security of its loan. This resulted in an impasse and the 2003 lease continues to date as a result.
12. In April 2014, a planning application was submitted on behalf of Guru Nanak Sikh Academy and permission was granted on 16th June 2014 to provide "three modular

classroom / administration units, substation, car / cycle parking, new access arrangements and ancillary development on existing school site"

13. The Council granted consent, dated 15 August 2014, to Sant Baber Amar Singh, Sukhdev Sigh Nahal and Amarjit Singh being the Trustees of Nanaksar That Isher Darbar ("the tenant" - it should be noted that this is a different legal entity to the Trustees of the Guru Nanak Sikh College to whom the Council granted the original 2003 lease) to enable them to grant a 3 year licence out of the 2003 lease, in respect of the playing fields, to a company known as Guru Nanak Sikh Academy Limited. This was also on 15 August 2014. This licence effectively permitted the Academy to implement the planning permission as Lloyds Bank's consent was not required for the grant of the consent by the Council or the licence by the Trustees.
14. The consent granted by the Council and the licence granted by the Trustees served two purposes - i) It enabled the temporary building to be erected in accordance with the planning permission obtained on 16^h June 2014 and ii) It provided a three year period for the granting of two new 125 year leases for both the Guru Nanak Sikh Academy and for the Nanaksar Primary School. A 125 year lease was needed for the permanent building of the Nanaksar Primary School as the EFA funding could not be granted without the 125 year lease being in place. However, for the Council to grant the new 125 year leases, the 2003 lease would need to be surrendered and this requires the Lloyds Bank loan to be discharged as far as it affects the Council owned land.

Summary

15. The issues preventing progress on erecting the permanent Nanaksar Primary School buildings are :
 - (a) The EFA will need to lift the Financial Notice served in April 2014. To do this, the requirements of the Notice will need to be fully met (including the discharge of the Lloyds Bank loan).
 - (b) The tenant under the Council's 2003 lease (currently believed to be the Trustees of Nanaksar That Isher Darbar) must discharge the Lloyds Bank loan to enable the granting of two new 125 year leases.
16. Neither of the actions above are within the control of the Council and key to both is the discharging of the Lloyds Bank loan. The Council has confirmed in principle that it is prepared to grant the 125 year leases. However, this will require the surrender of the current 2003 lease and the new leases will have a standard prohibition on the charging of the whole or part of the land. It must be recognised that the Council's freehold land cannot be charged in any future dealings by the School.

Financial Implications

17. As stated in the summary above, key to both actions currently preventing the outcome desired by the Petitioners is the lifting of the Financial Notice served by the EFA and the discharging of the Lloyds Bank loan. Neither of these actions are within the control of the Council.

EFFECT ON RESIDENTS, SERVICE USERS & COMMUNITIES

What will be the effect of the recommendation?

The recommendation will enable the Cabinet Member to discuss with the petitioners their concerns and allow him to consider whether or not to agree to their requests.

Consultation Carried Out or Required

This Petition Hearing is part of the Council's consultation.

CORPORATE IMPLICATIONS

Corporate Finance

Corporate Finance has reviewed this report and confirms that there are no direct financial implications to the Council from considering this petition. As noted throughout this report, both actions required to achieve the outcome desired by the petitioners are outside the control of the Council.

Legal

The Borough Solicitor has recently checked the current position with the EFA, who have confirmed that the terms of the Financial Notice which it served back in April 2014, particularly in relation to the discharge of the Lloyds Bank loan, have still not been complied with. In the circumstances, the EFA is maintaining its position that it is not prepared to invest any funding in the school until such time as the requirements of the Financial Notice have been fully met. This is a matter outside of the Council's control.

As is stated in the body of the report, the Council granted a lease dated 9 September 2003 to the Trustees of the Guru Nanak Sikh College in relation to the playing fields for a term of 125 years. However, the lease commencement date is 4 May 1994, some 9 years before the actual completion date of the lease. There is no prohibition in the lease against charging the whole of the playing fields and therefore, the Council's consent in its capacity as Landlord was not sought, and indeed not required, prior to the securing of the Lloyds Bank loan on its land.

Section 77[7] of The School Standards and Framework Act 1998 defines playing field land as being '*land in the open air which is provided for the purposes of physical education or recreation, other than any prescribed definition of land*'. The playing fields in question clearly fall within this definition.

Schedule 3, paragraph 7 of the 1998 Act provides that a trustee of a voluntary aided school [which the Guru Nanak Sikh College was before it converted into an academy] can borrow to provide facilities at a school but cannot use any school assets or school revenue, as a form of security. All loans must be free standing and have no financial impact on a school and the school should not take on the burden of the loans in terms of paying out money or selling assets. The Secretary of State's consent is required before these rules can be relaxed.

In spite of enquiries which have been made by the Council, it has been unable to conclusively establish whether the Secretary of State's consent was even sought, let alone obtained, by the Guru Nanak Sikh College prior to the charging of the Council's playing fields by the Lloyds Bank

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loan. What is clear, however, is that land in the Council's ownership has had to bear the burden of a financial charge being registered against it and its continued existence and direct link to the Financial Notice is, through no fault of either the Council or the EFA, preventing the achievement of the very outcomes which are the subject of this petition.

BACKGROUND PAPERS

Lease plans