

**Report of: Executive Member Children and Families**

Meeting of:	Date	Agenda item	Ward/s
<b>Executive</b>	06 February 2014	E4	Hillrise and Barnsbury
<b>Delete as appropriate</b>		Non-exempt	

**APPENDIX C TO THIS REPORT IS EXEMPT AND NOT FOR PUBLICATION**
**SUBJECT: Development of former Ashmount School site and New River College Primary Pupil Referral Unit site at Dowrey Street**
**1. Synopsis**

- 1.1 This reports sets out proposals for the development of two school sites. The first at the former Ashmount School site and the second at the site of the New River College Primary Pupil Referral Unit (PRU).
- 1.2 The Executive has received and approved previous reports on the former Ashmount School site including:
- its decision of 13 September 2012 to dispose of the whole of the Ashmount site to a Registered Social Landlord (RSL) through the land disposal framework; and
  - its decision of 11 July 2013 to award a contract for the disposal and development for housing of the whole of the Ashmount site pursuant to the land disposal framework .

Both of these decisions were contingent on receiving approval for the disposal of the site from the Secretary of State for Education under Schedule 1 of the Academies Act 2010 and the disposal of playing field areas under Section 77 of the Schools Standards and Framework Act 2006.

- 1.3 The Secretary of State has not given permission for the disposal of the former Ashmount School site and has indicated that he is minded to direct that it be used for the Whitehall Park Free School and the Bridge Integrated Learning Space Free School
- 1.4 The Council has made clear its objections to the Secretary of State on the proposed

establishment of the Whitehall Park Free School on the basis that the Council:

- does not have a need for school places in this area for the foreseeable future and that the provision of these additional places would create surplus places in local schools which represents poor value for money;
- has, in any event, one of the highest proportions of good and outstanding schools in the country;
- believes that the refurbishment or rebuilding of a school on the former Ashmount School site represents poor value for money and a waste of public money which should be focused on areas where there is a basic need for school places;
- would be unable to provide the much needed affordable and social housing planned for the site;
- would lose in the order of £3.5m capital receipt which was earmarked to assist in paying for the rebuilding of Ashmount School on the Crouch Hill site, the impact of which is that fewer resources will be available for school capital requirements across the borough.

1.5 The Secretary of State is undertaking a formal consultation on whether to enter into a funding agreement with Whitehall Park School and Bridge Integrated Learning Space. He is seeking the views of the Council and neighbouring local authorities on the proposals. The Council will be setting out its objections to the establishment of Whitehall Park School on the lines set out above. The Council will give support for the establishment of the Bridge Integrated Learning Space on the lines set out in paragraph 3.12.

1.6 This report sets out the Council's proposals following extensive negotiations with the Education Funding Agency (EFA). The following recommendations are being made should the Secretary of State decide to enter into a funding agreement with Whitehall Park School and Bridge Integrated Learning Space.

## **2. Recommendations**

### **2.1 Former Ashmount School site**

The Executive is recommended:

- a) to rescind its decision of 13 September 2012 to dispose of the whole of the former Ashmount School site to an RSL through the land disposal framework;
- b) to rescind its decision of 11 July 2013 to award a contract for the disposal and development for housing of the whole of the Ashmount School site to an RSL pursuant to the land disposal framework;
- c) to agree to dispose of the part of the former Ashmount School site (shown edged in red on the attached plan at *Appendix A*) to the Secretary of State and to delegate authority to the Corporate Director of Finance and Resources (in consultation with Executive Members for Children and Families and Finance and Performance and the Corporate Director of Children's Services) to decide on whether to exclude the area marked with a dotted red line and whether the disposal should be of the freehold or the grant of a 125 year lease at a peppercorn rent dependant on the outcome of further discussions with the Education Funding Agency;
- d) to note that the above recommendations are subject to the Secretary of State for Education deciding to enter into a funding agreement with the Whitehall Park Free School Trust and granting consent to the Council under Schedule 1 to the Academies Act 2010 and pursuant to Section 77 of the Schools Standards and Framework Act 2006 (in respect of the playing

fields areas) to dispose of the remainder of the site to a registered social landlord for housing development.

## 2.2 **New River College Primary PRU site at Dowrey Street**

The Executive is recommended:

- a) to agree to the redevelopment of the Dowrey Street site to provide a new building for the New River College Primary PRU and the new Bridge Integrated Learning Space Free School;
- b) to note the budget provision required for the overall development as set out in the exempt appendix including the contribution from the Education Funding Agency (EFA) for the Bridge Integrated Learning Space;
- c) to support the inclusion of the budget required for the New River College Primary PRU within the council's capital programme for 2014/15 and the council's basic need funding allocation for 2015/16
- d) to delegate authority to the Corporate Director of Finance and Resources (in consultation with Executive Members for Children and Families and Finance and Performance and the Corporate Director of Children's Services) to decide whether the disposal of New River College PRU site at Elthorne Road shown edged red on the attached plan at *Appendix B* (the 'Site') is required to generate a capital receipt to fund the inclusion of replacement KS3 PRU provision within the new school development at the Dowrey Street site;
- e) to declare the Site surplus to the Council's requirements and arrange for its disposal, subject to Recommendations d) above and f) and g) below;
- f) to delegate authority to the Corporate Director of Children's Services to carry out any necessary consultation procedure required prior to application being made under Section 77 of the School Standards and Framework Act 2006 and Schedule 1 to the Academies Act 2010 for consent to the disposal of the Site, subject to Recommendation d) above
- g) to delegate authority to the Assistant Chief Executive HR and Governance to apply to the Secretary of State for Education for consent to dispose of the Site under Section 77 of the School Standards and Framework Act 2006 and Schedule 1 to the Academies Act 2010, subject to Recommendation d) above
- h) to agree to carry out detailed feasibility work;
- i) to agree that the Council will lead this development and consider the following procurement options:
  - i) procurement via mini competition off existing framework (eg iESE); or
  - ii) procurement using the LEP pursuant to the BSF strategic partnering agreement; or
  - iii) competitive procurement involving OJEU advertisement; or
  - iv) procurement via the Education Funding Agency's contractor framework;
- j) to delegate authority to the Corporate Director of Children's Services (in consultation with Executive Members for Children and Families and Finance and Performance) to decide the procurement option and to award the contract in view of EFA required timescales;
- k) to delegate authority to the Corporate Director of Children's Services (in consultation with Executive Members for Children and Families and Finance and Performance) to agree to the Council entering into any necessary agreements with the EFA and Bridge Integrated Learning Space Free School Trust to give effect to or facilitate the development of Dowrey Street site;

- l) to agree to grant a 125 year lease at a peppercorn rent of the part of the new development comprising the Bridge Integrated Learning Space to the Bridge Integrated Learning Space Free School Trust on practical completion of the new development subject to the Secretary of State for Education granting consent under Schedule 1 to the Academies Act 2010 to the disposal and to enter into any necessary ancillary agreements regarding use of shared facilities and management of the site;
- m) to note that recommendations a) to l) are subject to the Secretary of State for Education deciding to enter into a funding agreement with the Bridge Integrated Learning Space Free School Trust.

### **3. Background**

#### **Former Ashmount School site**

- 3.1 Ashmount School has been rebuilt on the Crouch Hill Park site. Following an extensive development, the school opened on its new site in January 2013.
- 3.2 The Executive, at its meeting on 12<sup>th</sup> September 2012, agreed to the disposal of the whole of the former Ashmount School site to a Registered Social Landlord (RSL) through the land disposal framework.
- 3.3 Further, at its meeting on 11<sup>th</sup> July 2013, the Executive agreed to award a contract to an RSL for the development of housing on the former Ashmount School site. This development would have provided approximately 82 housing units and a potential capital receipt in the order of £3.5m.
- 3.4 These decisions were subject to receiving the necessary consent of the Secretary of State for Education under Schedule 1 to the Academies Act 2010 to dispose of the site for housing development and to the disposal of any playing field areas under Section 77 of the Schools Standards and Framework Act 2006.
- 3.5 The Secretary of State refused consent for this disposal and indicated his wish to utilise the site for the Islington Free Primary School.

#### **Islington Free Primary School**

- 3.6 The Secretary of State informed the Council that he proposed to establish the Islington Free Primary School at the former Ashmount school site. The Islington Free Primary School, now known as Whitehall Park School, is a mainstream primary school.
- 3.7 The Council has made clear in all correspondence with the Minister and the EFA that it is not in agreement with the establishment of a free primary school on the former Ashmount School site. The Secretary of State has stated that he wants free schools to open where there is demand from the local community and that the provision of the free school will drive up the quality of education in the area.
- 3.8 The Council has undertaken an extensive analysis on the need for school places across the borough and confirmed that it does not have a need for additional school places in this part of the borough through to 2023 and beyond. The provision of an additional 420 primary school places would impact on local schools by creating surplus places.
- 3.9 Islington is one of highest performing authorities in the country for the proportion of good and outstanding schools. The Council has challenged the assertion that the establishment of the free school will drive up the quality of education in the area.

- 3.10 The Council's evidence shows that the school places are not needed in the area proposed and its view remains that a refurbishment of the former Ashmount School site is uneconomic, representing poor value for money for the taxpayer. Further, that at a time of severe financial austerity, public funds should not be used to support generated demand rather than genuine need.

### **Bridge Integrated Learning Space Free School**

- 3.11 The Secretary of State also informed the Council that an application had been received from the Bridge Special School for the establishment of the Bridge Integrated Learning Space as a free school. This school would be a 7-19 mixed special school with a full capacity of 25 pupils – 8 of which will be residential.
- 3.12 The Bridge Special School is an outstanding Islington community school. The school has discussed its proposals with the Council and neighbouring authorities and is proposing a provision which will meet identified need in the area. The Council has supported the establishment of this free school whilst recognising that individual placements will always be subject to individual need, parental support and consideration of best use of resources.

### **Secretary of State for Education**

- 3.13 The Education Funding Agency has been working over recent months to identify potential sites for the two new free schools. The Secretary of State communicated in December 2013 that he was minded to transfer the freehold interest in the former site of Ashmount Primary School for the purpose of Whitehall Park School and the Bridge Integrated Learning Space in time for a proposed opening of Whitehall Park School in September 2014 and the Bridge Integrated Learning Space in September 2015.
- 3.14 However, the Minister recognised that there had been extensive discussions between the EFA officials and Council officers about a range of options and that he was willing to consider alternatives to the above proposal.
- 3.15 The following proposals are therefore being made in order to secure the best possible outcome for the Council in the circumstances whereby the entire former Ashmount School site would otherwise be transferred to the two free schools.
- 3.16 The proposals are for an alternative location to be agreed for the Bridge Integrated Learning Space in order to allow for a joint education and housing use of the former Ashmount School site.

### **Proposals for the former Ashmount School site**

- 3.17 The Secretary of State has determined that the Whitehall Park School will open in September 2014. It is proposed that this site be used for a joint school and housing development and that a proportion of the site, suitable for the free school purposes, be utilised for the new school. This would involve the disposal of that part of the site to the Secretary of State. Discussions are ongoing with the EFA on the method of disposal either transfer of the freehold or the grant of a 125 year lease at a peppercorn rent. In order to progress this development to meet the EFA required timescales, it is proposed to delegate authority to the Corporate Director of Finance and Resources (in consultation with Executive Members for Children and Families and Finance and Performance and the Corporate Director of Children's Services) to agree on the disposal option.
- 3.18 It is proposed that, subject to the satisfactory location of the Bridge Integrated Learning Space at an alternative site, the Secretary of State then gives permission for the disposal of the remainder of the former Ashmount School site for a housing development. This would support the Council's long standing commitment to provide much needed social and affordable housing on the site to help meet the housing needs of children and families in the area. Officers have considered the size of site potentially available for this and are confident that it can provide for a viable housing

development.

### **Proposals for the New River College Primary PRU site at Dowrey Street**

- 3.19 The New River College Primary PRU is housed at the former Samuel Rhodes Special School site at Dowrey Street. The PRU provides for between 16-24 pupils and accommodated in a building which requires extensive refurbishment. The Schools Forum has expressed its concern about the quality of accommodation and options need to be considered for the significant improvements required.
- 3.20 In considering the development options for the Dowrey Street site, officers entered into discussion with the EFA on the option for the Bridge Integrated Learning Space to be co-located with the New River College Primary PRU on the Dowrey Street site. Officers have considered the basic space requirements for the New River College Primary PRU and the Bridge Integrated Learning Space and have concluded that there is sufficient space on the site for this co-location. If agreed, the overall number of pupils to be accommodated would be approximately half the number previously provided for when the Samuel Rhodes Special School was on the site.
- 3.21 It is officers' view that a joint development would represent better use of space and value for money in the longer term. The headteachers of both institutions are keen on the proposal and subject to approval would work with officers from the Council and the EFA on the proposed development and required site agreements. This proposal would not only provide for the much needed rebuilding of the New River College Primary PRU but would also facilitate the provision of housing on the Ashmount site.
- 3.22 The development has been welcomed in principle by the New River College Management Committee. A further option has been proposed which would be to integrate the small KS3 PRU facility (currently at Elthorne Road) for children with more complex needs with the Primary PRU. This is proposed as an option to secure greater continuity for those children with more complex needs moving from KS2 to KS3 at the PRU and provide a stronger 'critical mass' of staffing and leadership resources. However, this option needs urgent further appraisal. Should the recommendation be to pursue this option, consideration will need to be given as to whether it is necessary to dispose of the site at Elthorne Road to provide the necessary capital receipt to enable the relocation to take place.

### **Procurement Options for the Dowrey Street Site**

- 3.23 It is proposed that Council will lead on the development of the Dowrey Street site and consider the following procurement options:
- a) procurement via mini competition off existing framework (eg iESE); or
  - b) procurement using the LEP pursuant to the BSF strategic partnering agreement; or
  - c) competitive procurement involving OJEU advertisement; or
  - d) procurement via the Education Funding Agency contractor framework;
- 3.24 The target date for opening the Bridge Integrated Learning Space is September 2015. In order to progress this development to meet the EFA required timescales, it is proposed to delegate authority to the Corporate Director of Children's Services (in consultation with Executive Members for Children and Families and Finance and Performance) to agree the method of procurement and the decision on the award of the contract and to agree to the Council entering into any necessary agreements with the EFA and Bridge Integrated Learning Space to give effect to or facilitate the development of the Dowrey Street site.
- 3.25 It is also proposed to agree to grant a 125 year lease at a peppercorn rent of that part of the new development comprising the Bridge Integrated Learning Space to the Bridge Integrated Learning Space Free School Trust on practical completion of the new development subject to the Secretary of State for Education granting consent under Schedule 1 to the Academies Act 2010 to the disposal.
- 3.26 The procurement will be undertaken in accordance with all relevant requirements including the

Council's Procurement Rules and the Public Contracts Regulations 2006.

- 3.27 The Employment Relations Act 1999 (Blacklist) Regulations 2010 explicitly prohibit the compilation, use, sale or supply of blacklists containing details of trade union members and their activities. The Information Commissioner has published examples of organisations found guilty of blacklisting within the construction industry, albeit prior to the coming into the operation of those regulations. At full Council on 26 March 2013, a motion was passed that called upon the Leader to ask the Chief Executive to review the Council's procurement processes to ensure that the involvement of tenderers in this practice can be taken into account where legally possible.
- 3.28 As part of the procurement process, all prospective tenderers will be required to sign the Council's anti-blacklisting declaration. Where an organisation is unable to declare that they have never blacklisted, they will be required to evidence that they have 'self-cleansed'. Two of the organisations on the IESE framework, a number of organisations on the EFA's contractors framework and the LEP's building contractor have been implicated in blacklisting. Accordingly, the Council will not award a contract to these organisations unless they have demonstrated 'self-cleansing' and taken adequate measures to remedy past actions and prevent re-occurrences. The adequacy of these measures will be initially assessed by officers and the outcome of that assessment will be reviewed by the Council's Procurement Board
- 3.29 As part of the procurement process, suitable consideration will be given to wider social benefits and the London Living Wage. Further information will be provided in the Corporate Director of Children's Services key decision delegated report in respect of the award of the contract to the preferred design and build contractor.

## **4 Implications**

### **Financial Implications**

- 4.1 See Exempt Appendix. to this report

### **Legal Implications**

#### **Former Ashmount School Site**

- 4.2 The Council's title to the site is registered at the Land Registry under various titles. The Council owns the freehold of the site and holds it for education purposes. The title notes that a six inch sewer pipe runs under the land but not where and that this sewer is subject to the rights of the statutory undertaker. Part of the land is also subject to the terms of a lease of an electricity sub-station. A number of restrictive covenants are registered against the title from a document relating to a sale of the land in 1881. However, it is unlikely that these restrictive covenants could be enforced against the Council now or would inhibit the proposed disposal and development of the site.
- 4.3 The Council has previously declared the Ashmount site surplus to the Council's requirements with effect from October 2012 when Ashmount primary school moved to its new site at Crouch Hill Community Park. The Council may agree to dispose of part of the former Ashmount School site to the Whitehall Park Free School Trust or to the Secretary of State for Education under Section 123 of the Local Government Act 1972. The requirement under Section 123(2) for the Council to obtain best consideration on the disposal is disapplied as the disposal of land will be to a person (the Whitehall Park Free School Trust) for the purposes of an academy / free school (paragraph 20((2) of Schedule 1 to the Academies Act 2010).
- 4.4 The Council must normally obtain best consideration in respect of a land disposal in order to satisfy its fiduciary duty to Council tax and rent payers. In the case of the former Ashmount School site, the Secretary of State for Education has indicated that he is minded to transfer the Council's freehold interest in the whole site for the purpose of Whitehall Park Free School and the Bridge Integrated Learning Space. Any such transfer would be way of a scheme made by

the Secretary of State under paragraph 2 of Schedule 1 to the Academies Act 2010. No consideration would be payable to the Council in respect of the transfer pursuant to such scheme. The discussions with the DfE / EFA regarding the voluntary disposal of part of the site for the Whitehall Park Free School and the development of the Dowrey Street Site to provide a new Primary PRU and the Bridge Integrated Learning Space are on the basis that the Secretary of State will give consent to the Council to dispose of the remainder of the Ashmount site to a registered social landlord which will generate a capital receipt for the Council and new affordable housing to which the Council will have nomination rights.

### **New River College Primary PRU site at Dowrey Street**

- 4.5 The Council's title to the Dowrey Street site is registered at the Land Registry. The Council owns the site freehold with title absolute. The site is held for education purposes and there are no restrictive covenants affecting the development of the site. A lock-up garage forming part of the site is subject to a lease granted for 60 years from 11 December 1973.
- 4.6 The Council has a duty to provide and maintain sufficient schools for the provision of primary and secondary education in its area (Sections 14 and 16 of the Education Act 1996). Accordingly the Council has power to enter into a contract for the construction of new school buildings for the New River College Primary PRU and the Bridge Integrated Learning Space Free School at the Dowrey School site, (Section 1 of the Local Government) Contracts Act 1997) with the cost of the Bridge Integrated Learning Space being met by a contribution from the Education Funding Agency.
- 4.7 The threshold for works contracts for the application of the Public Contracts Regulations 2006 is currently £ 4,322,012. The value of the contract to be let is above this threshold. Accordingly, the procurement for the new schools on the site will need to comply with the requirements of the 2006 Regulations and the Council's Procurement Rules.
- 4.8 The Council may agree to grant a 125 year lease at a peppercorn rent of the part of the new development comprising the Bridge Integrated Learning Space to Bridge Integrated Learning Space Free School Trust under Section 123 of the Local Government Act 1972. The requirement under Section 123(2) for the Council to obtain best consideration on the disposal is disapplied as the disposal of land will be to an organisation for the purposes of an academy / free school (paragraph 20((2) of Schedule 1 to the Academies Act 2010). Paragraph 4.3.3 above applies in respect of the Council's fiduciary duty as it applies to such disposal noting that the cost of construction of the Bridge Integrated Learning Space is to be funded by a contribution from the Education Funding Agency.
- 4.9 Any future planning applications will be assessed against adopted policies within the Development Plan
- 4.10 Any disposal of the New River College Primary PRU site at Elthorne Road may require Secretary of State's specific consent to dispose under Section 77 of the School Standards and Framework Act 2006 and Schedule 1 to the Academies Act 2010 if the site does not come within any of the general disposal consents.

### **Equality Impact Assessment**

- 4.11 The Council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (Section 149 Equality Act 2010). The Council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and encourage people to participate in public life. The Council must have due regard to the need to tackle prejudice and promote understanding.
- 4.12 The works will improve the quality of educational provision for all children at the New River



College Primary PRU. The works will enable the PRU to make significant improvements to the working environment for pupils and staff.

- 4.13 The development at Dowrey Street will provide disabled access in compliance with the Equality Act 2010.
- 4.14 The proposed development will provide high quality facilities for all members of the community. It is known that there are slightly higher proportions of Black and Minority Ethnic pupils and pupils whose first language is not English in community schools and investment in this project would have a positive benefit for those communities.

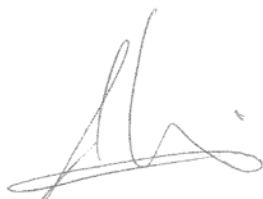
## 5 Conclusion and reasons for recommendations

- 5.1 The Secretary of State is currently formally consulting the Council and its neighbouring authorities on the impact that entering into a funding agreement with the Whitehall Park Free School Trust and the Bridge Integrated Learning Space Free School would be likely to have on maintained schools, academies and FE institutions in the areas in which the free schools are proposed to be situated. The consultation period ends on 6 March 2014 and the council will be responding. The Secretary of State will then decide whether or not to enter into the proposed funding agreements. Accordingly the recommendations in this report are subject to the outcome of that consultation and the Secretary of State's final decision on the funding agreements.
- 5.2 The recommendations seek to secure the Council's best long term interests for children and families by enabling affordable and social housing to be built on the former Ashmount School site and providing for the much needed improvement to the accommodation for the New River College Primary PRU.

**Background papers:** None

Final report clearance:

**Signed by:**



29 January 2014

Executive Member Children and Families

Date

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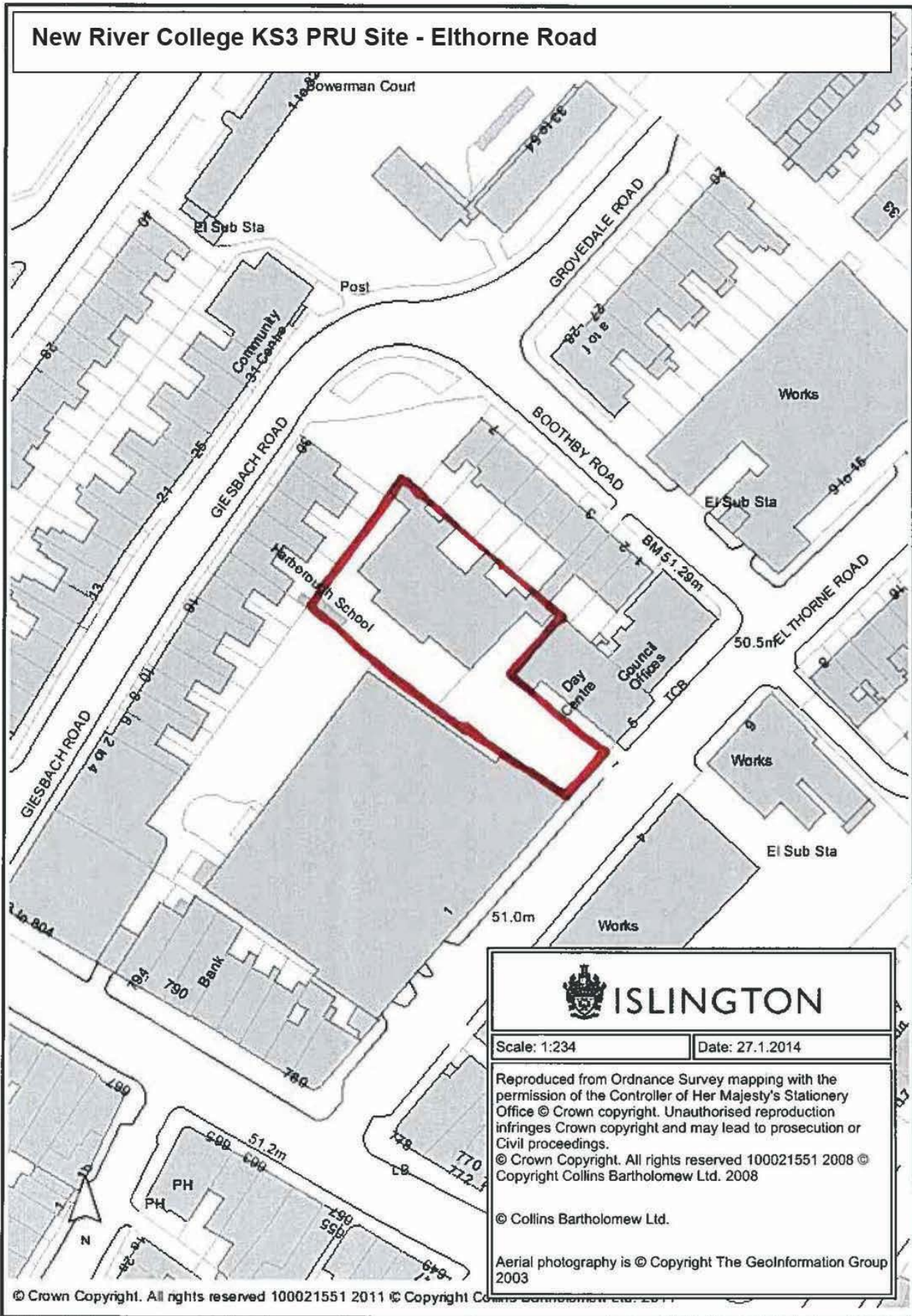
## APPENDIX A

### ASHMOUNT PROPOSED SITE BOUNDARY SPLIT


Please note that this drawing is only intended to show the proposed site boundary split.

The free school trust and the housing developer will need to liaise with planning officers to find a suitable design solution for each of the developments. This will include requirements for school deliveries and disabled pupil access as well as, potentially, vehicular turning. If a 'turning head' is needed (potential position shown by dotted red line boundary) then a suitable location for a multi-use games area (marked with a dotted green line) will be found on the school site.





**New River College KS3 PRU Site - Elthorne Road**

 <b>ISLINGTON</b>	
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