

**AGENDA ITEM: 14**

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Meeting	Cabinet Resources Committee
Date	4 April 2012
<b>Subject</b>	Freehold Disposal of Surplus Lands adjacent to Broadfields School and Northway Fairway School
Report of	Cabinet Member for Resources and Performance
Summary	To report the offers received for the Council's freehold interest in the surplus land adjacent to both Broadfields School and Northway Fairway School, and to seek approval to revise the terms of sale so as to offer the areas of land separately on an informal tender basis. Subject to the prior consent of the Secretary of State to the disposal of the sites, the results of the informal tender process to be reported to Cabinet Resources Committee for consideration prior to any tender being accepted.

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Officer Contributors	Siobhan Reade, Principal Valuer
Status (public or exempt)	Public (with separate exempt report)
Wards Affected	Edgware & Hale
Key Decision	No
Reason for urgency / exemption from call-in	N/A
Function of	Executive
Enclosures	Drawing no:24196/2- Land adjacent to Broadfields School Drawing no:24197/3- Land adjacent to Northway Fairway School
Contact for Further Information:	Siobhan Reade, Principal Valuer, Tel: 020 8359 7360 siobhan.reamde@barnet.gov.uk

## **1. RECOMMENDATIONS**

- 1.1 That the Council's freehold interest in the surplus lands adjacent to Broadfields School, Edgware and Northway Fairway School, Mill Hill, as shown outlined in red on the attached drawings numbered 24196/2 and 24197/3, be offered for sale on an informal tender basis.**
- 1.2 Subject to the prior consent of the Secretary of State to the disposal of the sites, to report the results of the tendering process to Cabinet Resources Committee for consideration prior to any offer being accepted.**

## **2. RELEVANT PREVIOUS DECISIONS**

- 2.1 Cabinet 4 September 2006 (Decision item 9) approved the part financing of the Primary School Capital Investment Programme (PSCIP) by the sale of surplus land separately or through the Strategic Partnership, as determined during the procurement process.
- 2.2 Leaders Delegated Powers Report (No.1435) dated 29 September 2011 approved the marketing of the Council's freehold interest in the surplus lands adjacent to both Broadfields School and Northway Fairway School on a binding tender basis and, subject to the prior consent of the Secretary of State to the disposal of the sites, to report the offers received to a future meeting of Cabinet Resources Committee for consideration prior to acceptance.

## **3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS**

- 3.1 The Corporate Plan 2011-2013 commits the Council to delivering 'Better services with less money'. A key principle of the medium term financial strategy is to continually review the use of Council assets so as to reduce the cost of accommodation year on year and to obtain best consideration for any surplus assets to maximise funds for capital investment and/or the repayment of capital debt. The sale of the surplus lands identified adjacent to both Northway Fairway School and Broadfields School will provide a capital receipt which will assist in offsetting any prudential borrowing which was made for the delivery of the PSCIP programme.

## **4. RISK MANAGEMENT ISSUES**

- 4.1 It is proposed that the sites identified be offered for sale by way of informal tender. It is likely that the highest offers for both sites will be achieved through proposals for residential development. Although Officers are providing planning guidance for both sites, higher density levels may be achieved in the future by subsequent planning applications. In such event and in order to mitigate this risk so that the Council will receive additional consideration, an overage provision will be included within any sale transfer. This will support the Council's obligations under S.123 of the Local Government Act 1972 which requires local authorities to dispose of land for the best consideration reasonably obtainable.

- 4.2 Schedule 35A to the Education Act 1996 applies to the disposal or appropriation of any land at a community school, including buildings and playing fields, by a local authority where that land has been used wholly or mainly for such a school in the last 8 years. Both Northway Fairway and Broadfields School fall within this category so it is necessary for the Council to make applications to the Secretary of State to dispose of both sites. As part of the application process it is necessary for the Secretary of State to consult with the relevant governmental departments to satisfy themselves that the sites are not suitable for use by an Academy Trust or Free School. If following the outcome of that consultation those government department considers either site to be suitable for continued educational use then the Council will be unable to proceed with the proposed sale of that site.

## **5. EQUALITIES AND DIVERSITY ISSUES**

- 5.1 Pursuant to the Equality Act 2010, the Council and all other organisations exercising public functions on its behalf must have due regard to the need to: eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; advance equality of opportunity between those with a protected characteristic and those without; promote good relations between those with a protected characteristic and those without. The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; Sexual orientation. It also covers marriage and civil partnership with regard to eliminating discrimination.
- 5.2 The Council is committed to improving the quality of life and wider participation for all in the economic, educational, cultural, social and community life of the Borough.
- 5.3 It is not considered that the proposals will give rise to any issues under the Council's Equalities policies and that they do not compromise the Council in meeting its statutory equalities duties.

## **6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)**

- 6.1 There are no procurement, performance and value for money, staffing, IT or sustainability implications. The property implications are set out in paragraph 8 below. Offers following the binding tender process are set out in the exempt report.
- 6.2 The financial implications are set out in the exempt report. All costs associated with this disposal will be met from existing commercial budgets.

## **7. LEGAL ISSUES**

- 7.1 The areas of land included in these proposals are owned by the London Borough of Barnet. Section 123 of the Local Government Act 1972 allows the

council to dispose of land in any manner it wishes. However, the ability to dispose of land is not unfettered. Section 123 of the 1972 Act requires the council to dispose of land at the best price reasonably obtainable.

## **7.2 Playing Fields**

7.2.1 In accordance with Section 77 of the School Standards and Framework Act 1998 a local authority must obtain the Secretary of State's consent to dispose of school land where the land is being used, or has within the last 10 years been used by the school as a playing field. However, this consent is not required where the land in question is land in respect of which the Secretary of State has given a general consent. The Department for Children, Schools and Families has confirmed that the proposed disposals fall within the terms of the general consent under Section 77 of the 1998 Act.

7.2.2 Even though a general consent applies to the proposed disposals under Section 77 of the 1998 Act, it does not obviate the need to also obtain the Secretary of State's consent under Schedule 35A to the Education Act 1996. Local authorities must obtain such consent where the playing fields in question have been used wholly or mainly for the purposes of a community school in the last 8 years. Accordingly applications have been made for the Secretary of State's consent under Schedule 35A to the 1996 Act.

## **8. CONSTITUTIONAL POWERS (Relevant section from the Constitution, Key/Non-Key Decision)**

- 8.1 Constitution Part 3, Responsibility for Functions – Section 3.6 - Functions delegated to the Cabinet Resources Committee – All matters relating to land and buildings owned, rented or proposed to be acquired or disposed of by the Council.
- 8.2 Constitution, Part 4, 'Management of Real Estate, Property and Land' - Rule 1 - The 'Property Review Process' requires properties to be considered in the context of the Corporate Plan and Service Key Priorities and their ability to deliver continuing value for money for the council.
- 8.3 Constitution, Part 4, 'Management of Real Estate, Property and Land' - Rule 2 - Provides that where property is no longer required by the Council then the procedures set out in the remainder of the Rules will be followed for the disposal of the property.
- 8.4 Constitution, Part 4, 'Management of Real Estate, Property and Land' - Rule 10 – Provides that where disposal is to be by open tender, the designated officer will advertise the property and seek competitive tenders reserving the right not to accept the highest or any bid. Advertisements are to be placed in two newspapers circulating in the borough and in such other publication as the designated officer considers necessary. The closing date for bids must be not less than two weeks after the latest publication date.

## 9. BACKGROUND INFORMATION

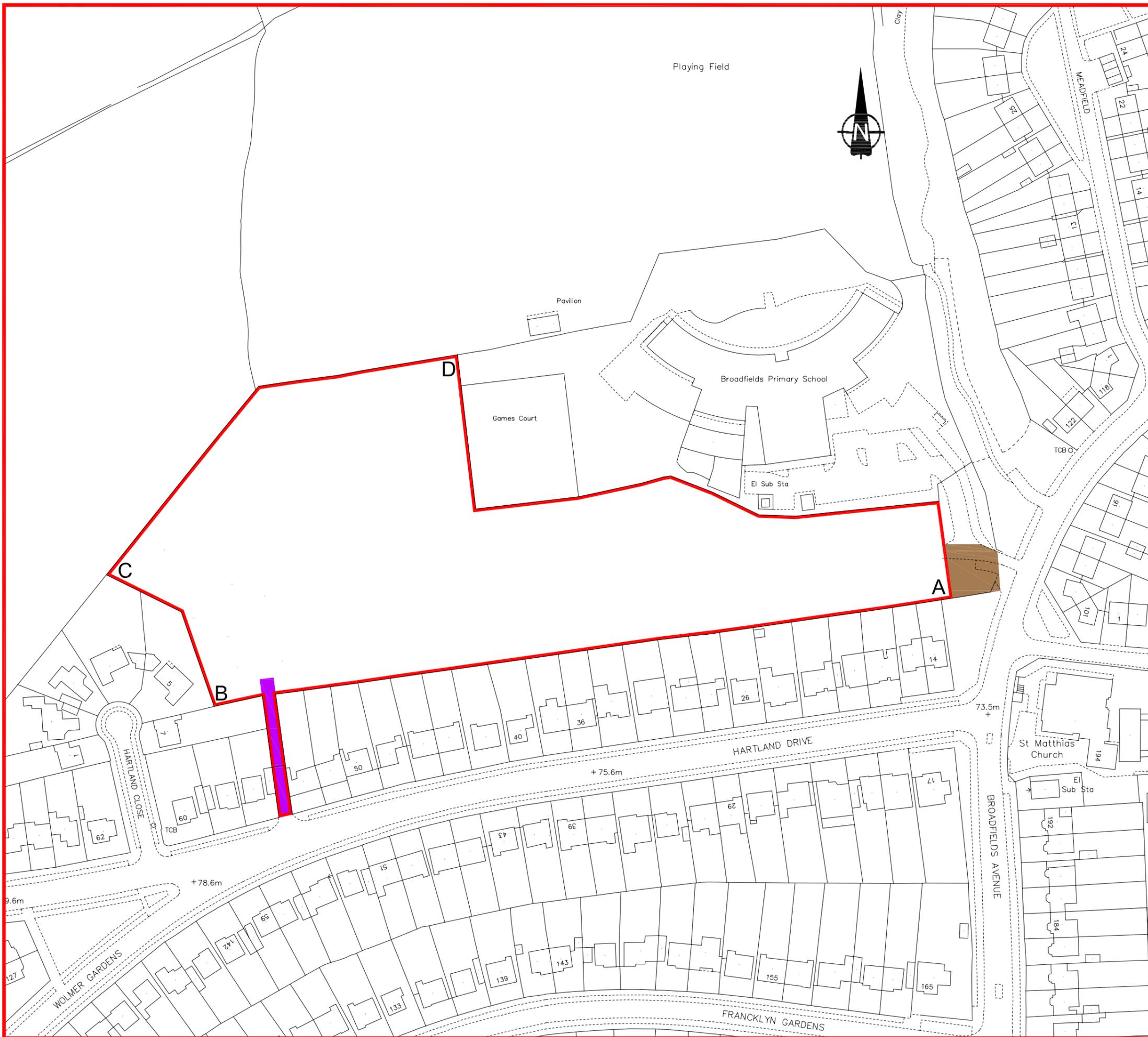
- 9.1 At its meeting on 4 September 2006, the Cabinet resolved to proceed with Wave 1 of the Primary Schools Capital Investment Programme (PSCIP). The first wave included the re-building of both Broadfield School and Northway Fairway School and the construction of both has now been completed. The re-build programme included reviewing the use of land and buildings, and due to the new configuration of both schools, surplus land has been identified. These areas of land are shown edged red on the attached drawings numbered 24196/2 and 24197/3.
- 9.2 It was anticipated that a significant proportion of the funding for PSCIP would come from capital receipts achieved from the disposal of surplus school land. The potential receipts were assessed at the beginning of the programme and values were reported to Cabinet. However, due to the economic crisis the original values have now decreased.
- 9.3 Section 123 of the Local Government Act 1972 allows local authorities to dispose of land in any manner they wish. However, the ability to dispose of land is not unfettered. Local authorities are required to dispose of land for the best consideration reasonably obtainable.
- 9.4 In accordance with a decision taken by the Leader of the Council in September 2011, the Council's freehold interest in the surplus lands adjacent to Broadfields School and Northway Fairway School were offered to the market on a binding tender basis. Throughout the process officers received a number of enquiries from interested parties for both sites and whilst there was significant appeal, concerns were raised with regards to the terms of sale.
- 9.4 Although a binding tender creates a degree of certainty in terms of timescale and a 'level playing field', it also requires all prospective purchasers to carry out detailed investigations of the properties at their own expense. Therefore, unless the market is strong for the property on offer, the number of bids likely to be received will be less than if a property was offered by way of informal tender or private treaty. This is now the confirmed position following the tender closing date of 16 January 2012.
- 9.5 With the uncertainties in the current financial market, and forecasters still predicting a possible double-dip recession, developers are finding it more difficult to secure funding for any acquisition and particularly those which carry any element of risk. Without planning permission being secured on the sites, developers are more likely to seek to acquire sites on a non-binding basis in order to de-risk the transaction.
- 9.6 Offers received following the tender process are set out in the exempt report. Although the terms of sale required offers to be made on a binding basis, following the tender closing date of 16 January 2012 the Council received three unsolicited non-binding offers which were higher. This confirmed that the Council would not be complying with their statutory obligations under s.123 Local Government Act 1972 to obtain best consideration for their assets, if one of the binding offers were accepted

- 9.7 Following completion of the binding tender exercise, it is clear that the Council will not realise the full potential of both sites through this tender process. Developers are reluctant to offer on a binding tender basis due to the potential risk associated with failing to secure a planning consent. Therefore, it would be more prudent for the sites to be re-advertised on a two stage tender process. This process would be non-binding and subject to planning.
- 9.8 Following completion of the first stage, selected bidders would be invited to work up their planning proposals within a specific period of time followed by a submission of their best and final offers once the planning position had been satisfied. This would ensure the Council achieved the maximum potential for the sites and a commitment from the prospective purchaser to complete the purchase.
- 9.9 The sites will be tendered separately and, as both are currently held for educational purposes, it is necessary for the Council to seek consent from the Secretary of State for their disposal. The Department for Children, Schools and Families has confirmed that the proposed disposals fall within the terms of the general consent under Section 77 of the School Standards and Framework Act 1998. However, as both sites have been wholly or mainly used for the purposes of a community school within the last 8 years, Schedule 35A to the Education Act 1996 will apply and the Secretary of State's consent must be sought. An application for consent has been submitted and officers are currently awaiting a decision. Part of the consultation following the Council's application requires the Secretary of State to consider the government's new policies in connection with Free Schools and Academies. This is to ensure that the sites are surplus and cannot be used for another school. The disposal of these sites is, therefore, conditional on the Council receiving the above consent to dispose.

## **10. LIST OF BACKGROUND PAPERS**

10.1 None

<b>Cleared by Finance (Officer's initials)</b>	<b>JH</b>
<b>Cleared by Legal (Officer's initials)</b>	<b>SWS</b>



**NOTES:**

- Disposal Site
- Land to be Transferred subject to any access rights
- Access Land

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Revision and Date	Description	Initial
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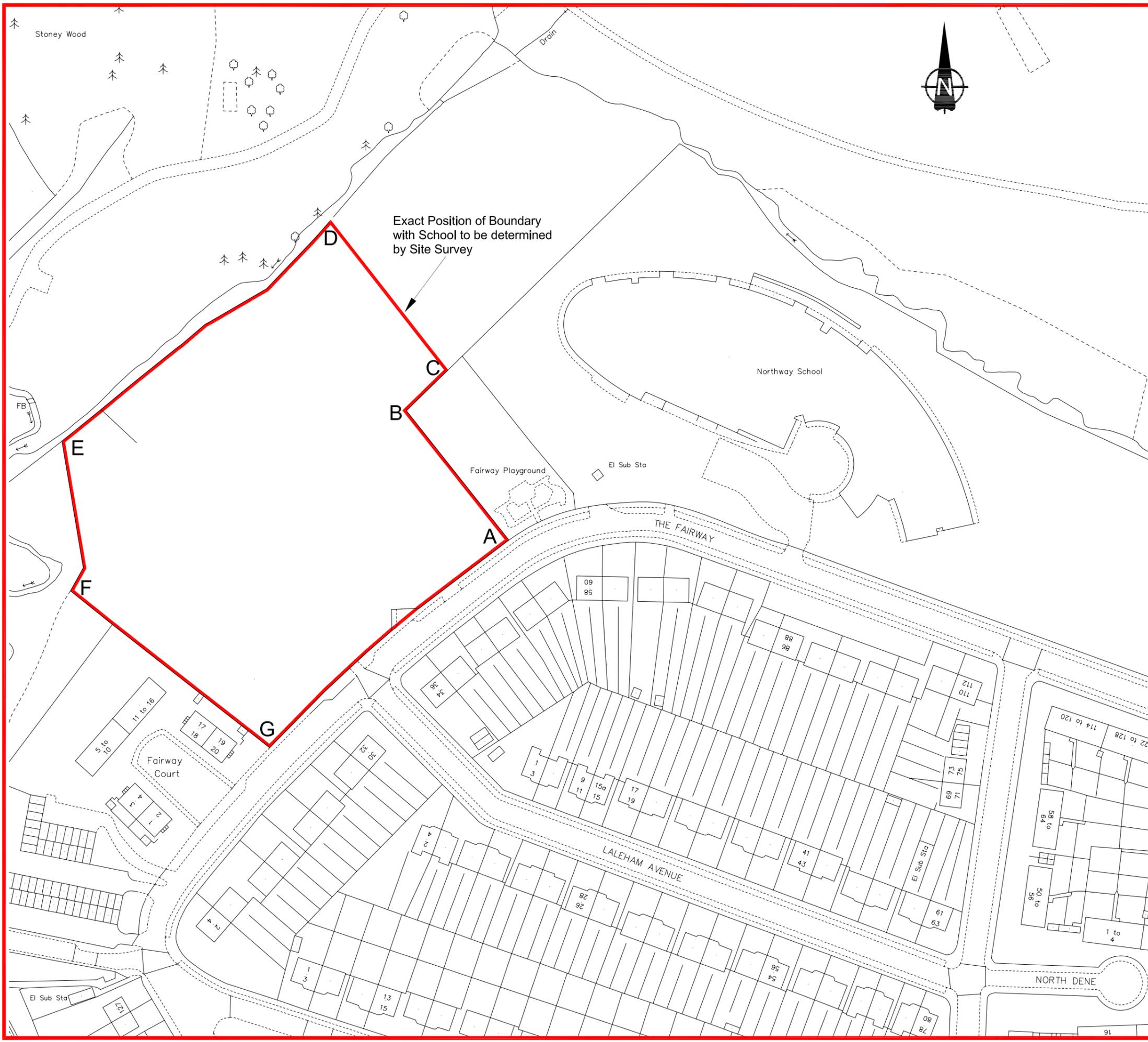


**SCHEME:**  
**SURPLUS LAND ADJACENT TO  
BROADFIELDS SCHOOL  
ROSEBERRY DRIVE, EDGWARE**

**TITLE:**  
**DISPOSAL PLAN**

Scales:	1:1250	Date:	02/11/11
Initiated:	S.O'D	Drawn:	K.E.B.
		Checked:	S.O'D.

**DRAWING NO:**  
**24196/2**



Exact Position of Boundary with School to be determined by Site Survey

NOTES:

Disposal Site

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Revision and Date	Description	Initial
A 10/01/12	Amended Boundary with School	

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SCHEME:  
**SURPLUS LAND ADJACENT TO  
NORTHWAY FAIRWAY SCHOOL,  
THE FAIRWAY, MILL HILL, NW7**

TITLE:  
**DISPOSAL PLAN**

Scales: 1:1250	Date: 10/01/12
Initiated: S.O'D	Drawn: K.E.B.
	Checked: S.O'D.

DRAWING NO:  
**24197/3**