

Report to Cabinet

29 September 2021

Subject:	Sandwell Land and Property Ltd – Future Use and Options
Cabinet Member:	Cllr Karen Simms Cabinet Member for Children & Education
Director:	Director of Law and Governance & Monitoring Officer – Surjit Tour Director of Finance – Simone Hines
Key Decision:	Yes
Contact Officer:	Mark Bodley Trading Business Partner - Solicitor mark_bodley@sandwell.gov.uk

1 Recommendations

1. That Cabinet, on behalf of the Council as sole shareholder of Sandwell Land & Property Limited agrees the recommendation of the Board of Directors of Sandwell Land and Property Ltd made on 10 May 2021, that the company has served the purpose for which it was incorporated, and has reached the end of its useful life, and that the company be placed into Members' Voluntary Liquidation.
2. That Cabinet agrees to provide an indemnity on the terms detailed in Appendix 2 to this report to the appointed Insolvency Practitioner concerning Sandwell Land and Property Limited.




3. That the Director of Law and Governance & Monitoring Officer be authorised to take the necessary steps to appoint appropriate professional practitioners and requisite actions necessary to administer the Members Voluntary Liquidation of Sandwell Land and Property Ltd.

2 Reasons for Recommendations

- 2.1 The company has served the purpose for which it was incorporated, and has reached the end of its useful life. Ceasing the use of a property holding company will simplify the administration and the accounting treatment of the Council's Education portfolio.

3 How does this deliver objectives of the Corporate Plan?

	Best start in life for children and young people – Sandwell Land and Property Ltd has reached the end of its useful life, and cessation of the company will simplify the administration of the Council's Education portfolio
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4 Context and Key Issues

Background

- 4.1 On the 13th October 2010, Cabinet meeting resolved to authorise the Head of Legal Services, in consultation with the Executive Director of Finance and Corporate Services, to take all necessary steps including appointment of company officers and the preparation of relevant documentation to incorporate a Local Authority Controlled Company to receive and hold school land assets on terms and conditions to be agreed by the Executive Director of Children and Families.
- 4.2 With the emergence of the academies programme, there was uncertainty and concerns raised over the loss of the freehold interests in educational land and property assets held by the council. The establishment of Sandwell Land and Property Limited sought to provide assurance with regards to protecting the freehold interests.



- 4.3 The incorporation of Sandwell Land and Property Limited therefore sought to insulate the freehold of the assets, in the event that schools changed status (eg: converted to Academy status). Government guidance confirms that a Community School converting to Academy status, is entitled to a lease of the site that it previously occupied.
- 4.4 Pursuant to this report, Sandwell Land and Property Limited (company registration number 07492864) was incorporated on 14th January 2011, and Directors appointed to run and administer the Company.
- 4.5 The Education Asset Portfolio was transferred to Sandwell Land and Property Limited (SL&P), in return for shares issued, with a nominal value equivalent to the unencumbered value of the assets transferred. The Education Asset Portfolio consisted of 108 registered titles relating to 99 separate sites across the borough, valued at £217,543,642.00. Shares with a nominal value of £217,543,642.00 were issued to the Council
- 4.6 Long leases (125year term) were granted back to the Council (at an annual rent of £1.00 per site, if demanded) to allow the Council to continue to deliver the Education function. SL&P holds the freehold reversion of the properties, subject to the 125 year leases of the sites, held by the Council.
- 4.7 Since the incorporation of SL&P, where schools have converted to Academy Status, sub-leases have accordingly been granted to the school by the Council.

External Audit Recommendations

- 4.8 The Council's external auditors have identified two major issues relating to the way the property is held by SL&P. Firstly, some shares issued by the company has not been properly evidenced (in Companies House records or any board minutes) that an ordinary resolution was made for these share issues. Secondly, other shares have been issued (with a resolution) in relation to property assets in respect of which the Council held the legal title but not the beneficial title.



For example, some assets ought to have been transferred to other bodies, such as the Governing Body of a Foundation School or the Lichfield Dioceses, rather than to SL&P. Where the Council does not hold the beneficial title, the freehold title should be transferred to the body holding the beneficial interest in accordance with the Education Act 1996 and Schools Standards and Framework Act 1998.

- 4.9 The Council's external auditors have recommended that the use of SL&P should cease. In their 2019-20 audit findings report Grant Thornton stated that,

"We have identified a number of matters which are currently unresolved and provide uncertainty over a number of transactions. Without the company and ourselves undertaking substantive additional work, including seeking further legal and technical advice we have an uncertainty in relation to opening balances of tangible assets. At the October 2020 Board meeting we discussed with Directors whether the Board should consider winding up the company and this would seem an appropriate way forward".

- 4.10 Having considered the advice obtained, the legal position, and the recommendations of the Council's external auditors, the Board of Directors resolved that the company has served its purpose and has come to the end of its useful life, and should cease to be used by the Council as a property holding company, and the company's interest in the properties transferred back to the Council. The transfers necessary to other bodies (such as the Governing Body of a Foundation School or Lichfield Dioceses) will be undertaken following a thorough due diligence exercise to ensure only transfers that a legally required are executed.

External Advisors/Assistance

- 4.11 The Board of Directors appointed an external firm of solicitors to investigate the most efficient and effective way to cease the use of Sandwell Land and Property Limited, and to return the assets to the Council.
- 4.12 Weightmans were appointed and presented a series of options, and after due consideration, there were two options that the company and the Council could pursue, which were



- 4.12.1 Voluntary Strike Off (VSO), and
- 4.12.2 Members Voluntary Liquidation (MVL).

The relative benefits and consequences of each option were considered, and the Board has resolved that the most suitable option would be MVL. A summary of the options is attached at appendix 1.

- 4.13 The MVL route is the route used when a company has come to the end of its useful life, is fully solvent and is wound up leading to the settlement of any outstanding liabilities and the return of its assets to shareholders, in this case the Council, and the dissolution of the company at Companies House. It involves the appointment of an independent third party to act as Liquidator, who takes over administration of the company, and is able to distribute the assets held by the company immediately, having retained sufficient assets to cover known liabilities.
- 4.14 The Liquidator takes responsibility for contacting any debtors or creditors of the company and will finalise the company's pre-liquidation tax position, including settling any tax liabilities. The process to appoint the Liquidator is quick and the Liquidator is appointed by the shareholder passing a written shareholder resolution.

Indemnity

- 4.15 SL&P is a non-trading company, and acts as a holding company only for the Council's Education Asset Portfolio. It does not enter into trading contracts or arrangements with any other third party (except professional advisors), so there are no contractual liabilities. The only assets held by SL&P are the freehold reversions of the Council's Education Asset Portfolio, so any liabilities on the part of company would be met by the Council, as the sole shareholder. There have been no claims against SL&P since its incorporating and the risk of liabilities are considered extremely low.
- 4.16 Upon appointment of the Liquidator, the administration of the company passes to the Liquidator, for the purposes of liquidating the company, this involves identifying any creditors or debtors, settling any debts, distributing any assets, and removing the company from Companies House. In the normal course of events, the Liquidator would retain control of the assets held by the company, until all liabilities have been resolved, which can take a number of months (even where no liabilities exist), and



any assets would be used to discharge any liabilities identified. In order to ensure the effective and efficient management of the Education Asset Portfolio, it would be preferable for the assets to be returned to the Council as soon as possible, and having considered the situation, the proposed Liquidator has agreed that as the possibility of any potential liabilities is extremely low, it will return the assets to the Council as soon as possible after appointment, provided that an indemnity is given in respect of any liabilities that may be identified (notwithstanding the risk of any such liabilities emerging being extremely low).

- 4.17 The proposed Liquidator, is potentially personally liable in administering the company, hence why an indemnity is sought from the shareholder to enable them to distribute the assets of the company shortly after their appointment and before creditors have had the opportunity to make a claim in the liquidation. Should an unexpected claim arise against the company (considered to be highly unlikely – see 4.15) the Liquidator will be able to revert to the shareholder to seek settlement of the claim. This risk remains irrespective of whether a Liquidator is appointed given that the Council is the shareholder of SL&P. Therefore, granting the indemnity does not expose the Council, as shareholder, to any greater risk of liability than what already exists.
- 4.18 SL&P is a non-trading company, and has entered into no contracts during its existence, so there will be no creditors/debtors.
- 4.19 Once the Liquidator is appointed, the company is no longer required to file accounts or the other usual filings with Companies House (although management accounts will need to be prepared up to the date of liquidation for Corporation Tax purposes).
- 4.20 SL&P is a particularly unique organisation, it is not believed that any other Local Authority has established a company for this purpose, and so the number of firms that are able to advise and assist with this project is very limited. During the course of this project, the Council has been consulting with a firm of Insolvency Practitioners, who would be qualified, and experienced to act as Liquidator for SL&P. The Company is Kroll (formerly Duff & Phelps), and it has assisted the Board of Directors and in examining the options available. The Council would look to appoint representatives from Kroll to act as Liquidator.



4.21 Kroll (formerly known as Duff & Phelps) was identified by the external legal advisors, as a firm that was able act as Liquidator in respect of SL&P, and has provided an indicative estimate of the fees, at between £30k - £50k. The element of work that the Liquidator will be undertaking will be ancillary to the work the external legal advisors were appointed to undertake. Due to the value and nature of the work to be undertaken by the proposed Liquidators, and the level of detailed knowledge that Kroll has relating to this project, it is not practicable for SL&P to consider appointing another independent firm to act as Liquidator in respect of SL&P.

Current Position

4.22 The current position is that the Board of Directors (currently comprising one single Director, after a series of resignations of the previous members of the Board) of SL&P has resolved that the company should be placed into Members Voluntary Liquidation as it has reached the end of its useful life. It currently creates an administrative barrier to the smooth operation of the Education portfolio and is preventing or hindering the rectification of historical anomalies with regard to the registration of a number of Education assets.

5 Alternative Options

5.1 The alternative options were considered and summarised in a report to the Board of Directors prepared by the external advisors (with input from Kroll)

6 Implications

Resources:	The management of the Education Asset Portfolio will be simpler and require less procedural steps.
Legal and Governance:	Administration of limited companies is dealt with primarily under the Companies Act 2006, and the rights and duties of shareholders are set out within the relevant legislation. The Council as sole shareholder in this company is entitled to make this resolution
Risk:	The company is a non-trading, wholly owned, property holding company, and so the risks are limited, however the appointment of external advisors, to deal



	with the administration of the process, will effectively manage any risk involved in the process.
Equality:	There are no Equality Implications relating to the content or subject matter of this report.
Health and Wellbeing:	There are no implications for the health and wellbeing of our communities related to the content or subject matter of this report.
Social Value	There are no implications for social value related to the content or subject matter of this report.

7. Appendices

Appendix 1 – Summary of MVL and VSO procedures

Appendix 2 – Indemnity to the Insolvency Practitioner

8. Background Papers

None

