

EXECUTIVE BOARD DECISION



REPORT OF:	Executive Member for Finance and Governance Executive Member for Children's Young People and Education
LEAD OFFICERS:	Director of Finance and Customer Services Director of Children's Services and Education
DATE:	12 March 2020

PORTFOLIO/S AFFECTED:	Finance and Governance Children's Young People and Education
WARD/S AFFECTED:	All (Please Select...)
KEY DECISION:	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>

SUBJECT: Sale of minority shareholding in BSF Project Companies

1. EXECUTIVE SUMMARY

As part of the Building Schools for the Future Programme ("BSF") the Council became a minority shareholder in two project companies. The Council has received an offer from the majority shareholder, Amber Infrastructure, to purchase the Council shares.

2. RECOMMENDATIONS

That the Executive Board:

1. Notes the consequences of selling the shares outlined in this report
2. Approves the sale of the shares to Amber Infrastructure.

3. BACKGROUND

As part of the BSF Programme, three new schools were procured through two PFI (Private Finance Initiative) Contracts. The schools were delivered in two phases and both achieved Financial Close in 2010:
Phase 1 – Pleckgate High School.

Phase 2 - Witton Park High School and Blackburn Central High School with Crosshill.

On the 21st September 2009, Balfour Beatty Education was appointed as the Council's selected partner to form the Blackburn with Darwen and Bolton Local Education Partnership to deliver the BSF investment programme across the Borough.

On the 12th July 2016 the Local Education Partnership (LEP) formally notified the Council of Balfour Beatty's Investment's decision to sell its shares in the PFI Project Companies and the LEP; the shareholding was then subsequently sold to Amber Fund Management.

Under the BSF programme the commercial structure of the arrangements involved the setup of a Project Company for each phase of the programme. For the Council's BSF programme two project companies were set up. The arrangements provided for the Council to take a minority (9.5%)

shareholding in each company. Bolton Metropolitan Borough Council also own a minority (0.5%) shareholding as a result of their investment in the LEP.

Amber Infrastructure have now made an offer to buy both Council's shares in the two PFI Project Companies.

The Council has appointed Asteros Advisors Limited, who are financial advisors that specialise in PFI contract financing, and DAC Beachcroft who provided legal advice on the original BSF programme, to advise the Council on whether the financial valuation is appropriate and on the legal implications of the share sale.

4. KEY ISSUES & RISKS

The Council's financial advisors Asteros have produced a letter of assurance setting out their analysis of the offer received from Amber. The letter considered the underlying financial models, macro-economic assumptions, future cash flows, sensitivity analysis and other factors. Asteros has engaged with Amber to clarify the basis of the offer.

The letter from Asteros confirmed that, having reviewed the financial models for the two projects, the valuation has been undertaken using a valid methodology and in all material respects, the financial models have been updated with actuals in the manner they would expect. They have received satisfactory responses to several questions they have raised with Amber in relation to the financial models. Asteros have advised that any changes to the valuation resulting from a re-run of the models would be minimal and that the sensitivity analysis supports moving forward on a timely basis, should the Council wish to proceed. Asteros concluded that the basis of the calculation, and the discount rate proposed, are appropriate in the context of achieving a fair valuation of the equity held by Blackburn with Darwen and consider the offer by Amber to be fair and value for money

The Council has received legal advice from DAC Beachcroft on the share sale and the proposed agreements provided by Amber, namely the Share Purchase Agreement (SPA) and the Observer Letter. They advise the SPA is a purely mechanical document and does not contain any provisions that they consider unusual or onerous. By reason of the sale of the shares, the Council would lose the following rights under the original Shareholders' Agreement - the right to appoint a director and veto rights in respect of the matters referred to in Schedule 3 of the Shareholders' Agreement. However, even where the Council has a director on the board of the project and holding companies, that director needs to act in the best interests of those companies and not the Council. Decisions of the boards would also be subject to majority vote so the Council's director could not in any event unilaterally exercise control, therefore the Council would not be losing much in the way of control of the companies. DAC did not flag up anything of concern in the Observer letter but have suggested some minor amendments.

The Council has advised the ESFA that it is exploring the option to proceed with the sale of its shares. The department has no issues with the sale and require notification for their records, if and when the sale proceeds to completion. They also require reassurance that the Council has taken appropriate financial advice on the valuation from experienced financial advisers familiar with this type of equity sale, which we have provided to them in the form of the letter of assurance from Asteros.

5. POLICY IMPLICATIONS

There are no specific policy implications arising from this report.

6. FINANCIAL IMPLICATIONS

The Council has received dividends from its shareholdings in the BSF Project Companies since

December 2013 (excluding the dividends that have resulted from the recent refinancing exercises). If the shareholdings were sold there would be no further dividend payments.

7. LEGAL IMPLICATIONS

The Council's shareholding does come with certain voting rights as a member of the company. However as a minority shareholder, the Council could be outvoted. The Council will retain the right to appoint an observer to attend company meetings.

DAC Beachcroft will support the Council through the process and will review and advise on any legal documentation that the Council will be a party to as a result of the share sale.

8. RESOURCE IMPLICATIONS

There are no specific resource implications arising from this report.

9. EQUALITY AND HEALTH IMPLICATIONS

Please select one of the options below. Where appropriate please include the hyperlink to the EIA.

Option 1 Equality Impact Assessment (EIA) not required – the EIA checklist has been completed.

Option 2 In determining this matter the Executive Member needs to consider the EIA associated with this item in advance of making the decision. (*insert EIA link here*)

Option 3 In determining this matter the Executive Board Members need to consider the EIA associated with this item in advance of making the decision. (*insert EIA attachment*)

10. CONSULTATIONS

Not applicable.

11. STATEMENT OF COMPLIANCE

The recommendations are made further to advice from the Monitoring Officer and the Section 151 Officer has confirmed that they do not incur unlawful expenditure. They are also compliant with equality legislation and an equality analysis and impact assessment has been considered. The recommendations reflect the core principles of good governance set out in the Council's Code of Corporate Governance.

12. DECLARATION OF INTEREST

All Declarations of Interest of any Executive Member consulted and note of any dispensation granted by the Chief Executive will be recorded in the Summary of Decisions published on the day following the meeting.

VERSION:	2
CONTACT OFFICER:	Chris Bradley
DATE:	27 th February 2020
BACKGROUND PAPER:	N/A