


REPORT TO CABINET

22 January 2020

Subject:	Land at Perrott Street, Smethwick – Proposed Free School
Presenting Cabinet Member:	Councillor Bob Lloyd – Cabinet Member for Inclusive Economic Growth
Director:	Alison Knight, Executive Director - Neighbourhoods Lesley Hagger, Executive Director of Children’s Services
Contribution towards Vision 2030:	
Key Decision:	Yes
Cabinet Member Approval and Date:	Councillor Bob Lloyd – Cabinet Member for Inclusive Economic Growth: 3.1.20
Director Approval:	Alison Knight, Executive Director – Neighbourhoods: Lesley Hagger, Executive Director of Children’s Services:
Reason for Urgency:	Urgency provisions do not apply
Exempt Information Ref:	No exemption applies
Ward Councillor (s) Consulted (if applicable):	Ward councillors have not been consulted
Scrutiny Consultation Considered?	Scrutiny boards have not been consulted
Contact Officer(s):	Martyn Roberts, Team Lead – Planning, Education Support Services, Education, Skills and Employment Directorate Email: martyn_roberts@sandwell.gov.uk

DECISION RECOMMENDATIONS

That, in connection with land at Merry Hill Allotments, Perrott Street, Smethwick, as indicated for information purposes edged bold on Plan No. "SAM/37920/004"

1. Cabinet authorise the Director – Law and Governance and Monitoring Officer to grant to Windsor Academy Trust, the nominated sponsor of the proposed Chance Academy, a Lease of the whole, or part of land at Merry Hill Allotments, Perrott Street, Smethwick, in accordance with the principles of the council's 'Policy on Academy Conversions (2017)', including payment of a nominal annual rental and otherwise on terms and conditions to be agreed by the Director – Regeneration and Growth.

1 PURPOSE OF THE REPORT

- 1.1 This report seeks authority to grant to the nominated sponsor for a proposed new secondary school, Windsor Academy Trust, a Lease of the whole, or part of land at Merry Hill Allotments, Perrott Street, Smethwick, as indicated on Plan No. "SAM/37920/004". The terms and conditions of the Lease to be in accordance with the principles of the council's 'Policy on Academy Conversions (2017)', as approved by Cabinet on 28 June 2017 (Minute No.122/17 refers).
- 1.2 The land will be used to develop a new 900 place secondary school which is scheduled to open in September 2022.

2 IMPLICATION FOR THE VISION 2030

- 2.1 The recommendation in this report relates to the allocation of land to support new school development which will contribute towards areas 1, 4 and 8 of the council's Vision for 2030 "Ambition 1: "Sandwell will be a borough where families' aspirations are raised and that prides itself on equality of opportunity and resilience."; Ambition 4: "Our children benefit from the best start in life and a high quality education throughout their school careers with outstanding support from their teachers and families"; Ambition 8: "Our towns will be successful centres of the community and places where people choose to bring up their families".

The development will provide 900 secondary school places, which will assist the Authority to improve the educational chances children have in life by ensuring there are enough good school places in the area and contribute to enhanced local community facilities to support families who choose to settle, work and live in the Borough.

We will continue to work with those schools that want to remain in partnership with the council by providing the services that they require and continuing to co-ordinate school place planning, capital investment, school improvement activity and school governance options.

3 BACKGROUND AND MAIN CONSIDERATIONS

- 3.1 The Authority's Schools Capital Programme has provided 2,385 permanent secondary places since 2016/17. New places continue to be provided through the programme to meet an increasing demand for secondary school places as significant cohorts of primary aged children transfer to year 7.
- 3.2 It is currently projected that up to September 2025, 3,300 places will be required in secondary schools across the borough. On 28 August 2019 Cabinet approved funding to develop 3 major projects to expand secondary schools and provide 990 places through Basic Need Funding.
- 3.3 In addition to the expansion of existing schools the Authority identified a need for a new school in the borough to help provide the projected places for September 2025.
- 3.4 The Education Act 2011 changed the arrangements for establishing a new school and introduced section 6A (the "free school presumption") of the Education and Inspections Act 2006 which requires that, where a local authority identifies the need for a new school in its area, it must seek proposals to establish an academy (free school).
- 3.5 The Department of Education (DfE) invited applications for free school groups through the central mainstream free schools' programme. Applications must meet the DfE criteria for the location including demonstrating a strong track record, have a clear vision, offer good value for money, strong understanding of teacher recruitment and retention, have a new or innovative approach that brings diversity to the local provision. The Chance Academy, part of the Windsor Academy Trust which has 9 academies across Halesowen and Walsall, won the presumption process.
- 3.6 The LA provided a list of potential sites in the borough that could be developed and used for education purposes. The sites ultimately proved to be unavailable because no agreement could be reached on valuation or because the land owners have their own aspirations for their development, or unsuitable because of insurmountable environmental, design and access challenges.

- 3.7 Of the original list of sites considered, the only viable location capable of being delivered within the required timescale is the land at Perrott Street, Smethwick which is the subject of this report.

4 THE CURRENT POSITION

- 4.1 The council owned parcel of land as indicated for information purposes edged bold on Plan No. "SAM/37920/004" was previously known as Merry Hill Allotments. The land is maintained by Parks and was formally used as allotments.
- 4.2 The long-standing use of this site has been as Merry Hill Allotments. Originally there were 118 plots on site and in previous years has been actively used. However, in recent years the cultivation of plots has reduced, and the site has been subject to anti-social behaviour and fly-tipping which has resulted in continual clearance and additional cost to the council. The structures on the site are also currently being used by homeless people as a place to reside. Part of the site to the north lies within Flood Zone 2.
- 4.3 Redevelopment of the land will provide 900 new secondary school places that will meet an initial direct demand for new places for children living within a half mile radius of the site.
- 4.4 Cabinet approval is sought to the proposed leasehold transfer to enable development to continue.
- 4.5 The proposed new secondary school places are required for September 2022 to support the Authority's school place planning needs.
- 4.6 The formal application process to the Secretary of State to remove the allotment designation was completed earlier this year. The land is currently unallocated in the adopted Local Plan. Therefore, the planning application for the school will be considered on its own merits.
- 4.7 It should however be noted that an Interim Planning Statement covering the wider area was approved by the Council in November 2018. This document identified that the subject site be developed for housing. The Interim Planning Statement does not form part of the statutory Local Plan and, whilst carrying some weight in the planning decision-making process, would not be an impediment to the use of the site for education purposes.
- 4.8 There will of course be several other considerations, such as traffic impact and environmental matters, that will need to be addressed through the planning process.

5 CONSULTATION (CUSTOMERS AND OTHER STAKEHOLDERS)

- 5.1 Detailed consultation has been held with the DfE to determine the suitability of a number of sites across the borough to locate the new school. Consultation has considered a number of council owned sites, and also privately-owned sites that have been advertised on the open market for sale. Discussions have explored the Planning and Highways merits for each site. The re-use of the allotment land for school purposes has been accepted by the DfE.
- 5.2 Friends of Black Patch are a local interest group who were previously consulted on an interim planning statement, that included proposals for housing development on Perrott Street. A recent meeting with key representatives of the group was held to advise them on the potential use of the site for a secondary school. They were really pleased with the prospect of a new school being provided on the site, as they see that it will benefit the area massively and will help to kick-start the much-needed regeneration of the area. More detailed consultation will now be extended to include both the group, and the local community that the new school will serve.

6 ALTERNATIVE OPTIONS

- 6.1 Alternative options considered are that the council could:-
- (i) Do nothing. To do nothing is not an option as the 900 places to be provided through the school's opening is required to support the total 3,300 school places required by September 2025;
 - (ii) Expand existing secondary schools. Further temporary expansions are already necessary to ensure sufficient school places are available for 2020/21. Existing secondary schools cannot sustain the scale of expansion required to provide permanent expansions to accommodate 900 additional pupils;
 - (iii) Release an alternative site for development. As detailed in paragraph 3.6 a list of both council and privately-owned sites has been exhausted by the DfE. The recommended course of action to allocate the allotment land for school use is considered to be the most appropriate solution to provide the school places within the timescale of a September 2022 opening;

- (iv) dispose of the land for alternative uses – as explained in paragraph 4.8 above, the site has been identified for potential residential development in the 2018 Black Patch Interim Planning Statement. The course of action would prohibit timely development of a new secondary school on an alternative site in order that the Authority could meet its statutory obligations to ensure a sufficient supply of school places;
- (v) redevelopment of alternative sites – the Authority has been unable to identify an alternative suitable site, sufficient to provide a 900 place secondary school to support this area of the Borough.

7 STRATEGIC RESOURCE IMPLICATIONS

- 7.1 There are no direct strategic resource implications as a result of this proposal.
- 7.2 It is Government policy that local authorities and other public bodies should dispose of surplus land wherever possible. Generally, it is expected that land should be sold for the best consideration reasonably obtainable. However, it is recognised that there may be circumstances where an authority considers it appropriate to dispose of land at an undervalue.
- 7.3 Circular 06/03: Local Government Act 1972 general disposal consent (England) 2003 'disposal of land for less than the best consideration that can reasonably be obtained', provides consent to give local authorities autonomy to carry out their statutory duties and functions, and to fulfil such other objectives as they consider to be necessary or desirable. However, when disposing of land at an undervalue, authorities must remain aware of the need to fulfil their fiduciary duty in a way which is accountable to local people.
- 7.4 The terms of the Consent mean that specific consent is not required from the Secretary of State for the disposal of any interest in land which the authority considers will help it to secure the promotion or improvement of the economic, social or environmental well-being of its area, e.g., for educational purposes.
- 7.5 An independent valuation report has been obtained in respect to the freehold interest in the site. The report indicates the current open market value for use of the land for residential purposes to be in the region of £1m, and for educational purposes, £10k.

- 7.6 There will be no reduction in the council's assets as the Academy Trust will be granted a leasehold interest, in whole or part, but not a freehold disposal.
- 7.7 Similarly, there are no direct revenue implications to the Authority since the new Academy will be funded directly by the Education, Skills and Funding Agency (ESFA). The new facility will be subject to business rates and will generate an additional income for the council.

8 LEGAL AND GOVERNANCE CONSIDERATIONS

- 8.1 In accordance with the Education Act 1996 the council has a statutory duty to ensure there are sufficient schools available for the children of Sandwell. Any school organisation changes arising out of the development of the project will be subject to the relevant statutory processes.
- 8.2 The Council holds the freehold interest in the land at Perrott Street. Legal Services have investigated the title. There is a restrictive covenant on part of the site which subject to the final design solution may require an Indemnity Policy to enable erection of buildings and for the land to be used for education purposes.
- 8.3 Pursuant to Schedule 1 of the Academies Act 2010 (as amended) where land owned by a Local Authority forms the whole or part of a site specified in a notification given to the Secretary of State under section 6A of Education and Inspections Act 2006, or a notice published under section 7 of that Act, (proposals for new schools) as a possible site for a new school, the Secretary of State may make a transfer scheme, which requires the Local Authority to grant a lease of the land specified in the notice.
- 8.4 A transfer scheme would require the Local Authority to either grant a lease of the property or transfer the freehold, to the person specified in the scheme.
- 8.5 The proposal regarding the site at Perrott Street would involve the grant of a Lease of land, in a similar format to Leases previously granted for Academy purposes.
- 8.6 Paragraph 20 of Schedule 1 of the Academies Act 2010 states that subsections (2) and (2A) of Section 123 of the Local Government Act 1972 (disposals of land by principal councils) do not apply to a disposal of land to a person for the purposes of an Academy. Subsection (2) is the obligation to obtain best consideration, and Subsection (2A) relates to the

obligation to advertise the intention to dispose of open space for two weeks.

- 8.7 Should an Academy close the Secretary of State will need to make a determination in order to protect the public investment in the land where the land ceases, or will cease, to be used for an academy.
- 8.8 Land Transfer Advice issued by the Department for Education (DfE) in April 2013, confirms that in exercising the powers under Part 3 of Schedule 1 to the Academies Act 2010, and / or consenting to a disposal of land as required under the terms of the Funding Agreement, the Secretary of State will act fairly and justly and, in determining any proceeds of disposal or compensation to be paid, will have regard to:
- the degree of public investment in the land and the degree of any enhancement to the value attributable to that investment;
 - the degree of private investment in the land and the degree of any enhancement to the value attributable to that investment;
 - the length of time that the land has been in public use; and
 - the value of the land at the date of determination.

9 EQUALITY IMPACT ASSESSMENT

- 9.1 An Equality Impact Assessment (EIA) initial screening has been undertaken. The screening identified that there will be no adverse impact on people or groups with protected characteristics because of the proposals contained within the report. A full EIA is not therefore required.

10 DATA PROTECTION IMPACT ASSESSMENT

- 10.1 A data protection impact assessment is not required for this proposal – all material is maintained in accordance with the council's data protection policy.

11 CRIME AND DISORDER AND RISK ASSESSMENT

- 11.1 The Corporate Risk Management Strategy (CRMS) has been complied with – to identify and assess the significant risks associated with this decision / project. This includes (but is not limited to) political, legislation, financial, environmental and reputation risks.

Based on the information provided, it is the officers' opinion that for the significant risks that have been identified, arrangements are in place to manage and mitigate these effectively.

If this report is not agreed, then the council will risk having an insufficient level of school places which is contrary to the council's statutory responsibility. If there is an insufficiency of school places this will have a detrimental impact on children's future access to school places within Sandwell and the council's reputation will be detrimentally affected.

- 11.2 The council's strategic risk register currently includes a red risk around school place planning: SR040 - if the Local Authority is unable to exert sufficient strategic control over school place planning and the direction of capital investment, then it will be unable to deliver on its statutory duties. The recommendations above if approved, will assist in the continued mitigation of this risk.

The key project risk mitigation is that similar transactions have successfully been completed for the grant of a leasehold interest of areas of land used for educational purposes by Academy Trusts.

- 11.3 If the report is approved any potential risks will relate specifically to the future redevelopment of the site. The DfE will directly procure and deliver the new Academy. To mitigate any associated risks the Authority will request the DfE to continue with a high level Steering Group to drive the project delivery.

12 SUSTAINABILITY OF PROPOSALS

- 12.1 A significant level of anti-social behaviour is experienced at the site, including rough sleepers and drug mis-use, with regular Police / Home Office intervention.
- 12.2 Chance Academy was approved as part of Wave 11 of the DfE's Free School Programme. Following concern surrounding the initial sponsor the DfE withdrew its nomination and re-brokered the proposed Chance Academy to Windsor Academy Trust (W.A.T.). W.A.T. is an established Multi-Academy Trust within the Black Country.
- 12.3 Following completion of the school development the Academy Trust will become directly responsible for all costs associated with the general upkeep, maintenance and outgoings for the new school site.

13 HEALTH AND WELLBEING IMPLICATIONS (INCLUDING SOCIAL VALUE)

- 13.1 The new school is seen as an opportunity to provide much needed regeneration to the local area.

14 IMPACT ON ANY COUNCIL MANAGED PROPERTY OR LAND

- 14.1 The freehold interest in the land shown for information purposes on Plan No. "SAM/37920/004" is held by the Authority.
- 14.2 The council will grant a leasehold interest in part, or the whole based upon the principles of the council's 'Policy on Academy Conversions (2017)', including payment of a nominal annual rental and otherwise on terms and conditions to be agreed by the Director – Regeneration and Growth.
- 14.3 There will be no overall impact on the council's Asset Management Plan or register as the council will retain the freehold interest in the land.

15 CONCLUSIONS AND SUMMARY OF REASONS FOR THE RECOMMENDATIONS

- 15.1 The Authority has identified that by 2025/26 an additional 3,300 secondary school places are required to keep pace with demand.
- 15.2 The Schools Capital Programme has already delivered 2,385 permanent new secondary places since 2016/17.
- 15.3 Three major projects to expand Bristnall Hall Academy, and complete the newly opened schools, Q3 Academy Langley, and West Bromwich Collegiate Academy by September 2021 will provide a further 990 places.
- 15.4 Once opened the proposed Chance Academy will offer 900 secondary school places in Smethwick, an area that has consistently presented a challenge to provide a sufficient number of school places for the local community.
- 15.5 Land supply for development of a new secondary school is at a premium, with competing demands on the Authority to provide new housing and leisure sites at a time of significant increase in the school population. A number of council and privately-owned sites have been considered to locate the new school, including re-use of existing commercial sites. Given the industrial heritage of the borough there are many instances where the level of remediation and investment required to redevelop land for school use prohibits the DfE in delivering in time for a September 2022 opening.
- 15.6 The land at Perrott Street, Smethwick has been identified as a site that will provide sufficient space to provide a new secondary school. A level of remediation will be required for the land, including possible infrastructure improvements, however Cabinet approval through the report

recommendation is sought to the grant of a long leasehold interest in the site.

15.7 Subject to Cabinet approval the DfE will commence its detailed site investigations and early design feasibility for the new school development.

16 **BACKGROUND PAPERS**

16.1 None

17 **APPENDICES:**
Location Plan No. "SAM/37920/004"

Lesley Hagger
Executive Director – Children’s Services

Alison Knight
Executive Director – Neighbourhoods