

REPORT TO LAND AND ASSET MANAGEMENT COMMITTEE

14 September 2017

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The information contained in this report is strictly confidential and in accordance with the appropriate Codes of Conduct, must not be disclosed to unauthorised persons

Subject:	Land at Wilson Road, Smethwick – Collegiate Academy Trust
	Councillor Simon Hackett - Cabinet Member for Children's Services
Director:	Chief Executive – Jan Britton Executive Director of Children’s Services – Jim Leivers Director – Education, Skills and Employment – Chris Ward Executive Director – Resources – Darren Carter
Contribution towards Vision 2030:	
Key Decision:	Yes
Forward Plan (28 day notice) Reference:	SMBC02/10/2017
Cabinet Member Approval and Date:	15 August 2017
Director Approval:	31 August 2017
Ward Councillor (s) Consulted (if applicable):	

Contact Officer(s):	Marty Roberts Team Lead – Planning, Education Support Services, Education, Skills and Employment Directorate Email: marty_roberts@sandwell.gov.uk
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DECISION RECOMMENDATIONS

That in connection with land at Wilson Road, Smethwick, as indicated edged bold on Plan No. “SAM/53380/001” Cabinet is recommended to authorise the Director – Monitoring Officer to:-

- 1.1 dispose of the freehold interest, for a XXXXX sum of £XXXX, to Sandwell Land and Property Limited and otherwise on terms and conditions to be agreed by the Executive Director – Neighbourhoods.
- 1.2 subject to 1.1 above, acquire a leasehold interest in the site from Sandwell Land and Property Limited at a nominal annual rent and otherwise on terms and conditions to be agreed by the Executive Director – Neighbourhoods.
- 1.3 subject to 1.1 and 1.2 above, grant the Collegiate Academy Trust, an under-lease of the site on the principles of, and co-terminus with, the Trust’s existing Under-Lease in respect of land at Waterloo Road, Smethwick including payment of a nominal annual rental and otherwise on terms and conditions to be agreed by the Executive Director – Neighbourhoods.

1 PURPOSE OF THE REPORT

- 1.1 This report seeks approval to transfer the freehold interest in 0.297 Ha of council-owned land at Wilson Road, Smethwick (Plan No. “SAM/53380/001”) to Sandwell Land and Property Limited, with the subsequent grant of a Lease back to the council for use of the land for educational purposes.
- 1.2 The report further seeks authority to grant an extension to the existing Under-Lease granted to the Collegiate Academy Trust (“the Trust”) for land at Waterloo Road, Smethwick to include the land at Wilson Road, Smethwick (Plan No. “SAM/53380/001”).
- 1.3 The Trust will use the land to support both the expansion of Shireland Collegiate Academy to provide new secondary school places, which Cabinet has agreed to fund through the Authority’s Schools Capital Programme, and the Trust’s development of a proposed new primary free

school, funded directly by the Education and Skills Funding Agency (ESFA).

- 1.4 The Trust and the ESFA have expressed an interest in the Trust acquiring the land to support school development.

2 IMPLICATION FOR THE COUNCIL'S AMBITION

- 2.1 The recommendations in this report relate to the allocation of land to support new school development which will contribute towards area 4 of the council's Vision for 2030 "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".

Superb primary schools will give children the best start. Both school developments will assist the Authority to improve the educational chances children have in life by ensuring there are enough good school places in the area.

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 Council is the freehold owner of land off Wilson Road, Smethwick, shown for identification purposes only on the plan attached as appendix "SAM/53380/001". The land, acquired under Compulsory Purchase Powers, has previously been retained by the Council for potential expansion of Hadley Stadium. This proposal is, however, no longer to be pursued and the Trust wish to utilise it as part of its expansion proposals for the school.
- 3.2 To ensure a consistent approach with regard to land utilised for Educational purposes the intention is to transfer the freehold interest in the site to Sandwell Land and Property Limited, with a Lease back to the council to enable the council to grant an under-lease to the Trust.
- 3.3 The Trust already holds an Under-Lease from the council dated 19 August 2016 and it is proposed to grant an extension to the under-lease to incorporate the land at Wilson Road so the term runs con-currently with the original under-lease term.
- 3.4 On 28 June 2017 Cabinet approved the Schools Capital Programme 2017/18-19/20 which included funding to expand Shireland Collegiate Academy to provide 275 new secondary school places. The ESFA has

also approved the Collegiate Academy Trust as a free school sponsor to open a new two form entry primary school in the Smethwick area (420 places).

4 THE CURRENT POSITION

- 4.1 The council owned parcel of land as indicated edged bold on Plan No. "SAM/53380/001" has remained vacant and underutilised for a number of years. Previous proposals for redevelopment have considered re-use for residential purposes or a possible expansion of Hadley Stadium. The land is maintained on a regular basis as part of the Management of Land portfolio.
- 4.2 Inclusion of the land within the campus of Shireland Collegiate Academy provides an opportunity for the land to be brought back into beneficial use.
- 4.3 The Academy has recently expanded its provision however external areas are limited and the additional area of land offers scope for new build construction, replacement or additional P.E./recreational areas, or replacement or new car parking.
- 4.4 ESFA internal procurement procedures do not permit new free school proposals to be progressed to design development without Heads of Terms being agreed for the acquisition of new land. The ESFA are keen for the Trust to open early negotiations with the council to agree Heads of Terms for the proposed transfer of the land to the Trust. Cabinet approval is sought to the proposed freehold and leasehold transfers to enable development to continue.
- 4.5 The proposed new secondary school places are required for September 2019, and the ESFA has already indicated its wish to pursue a joint planning application and a single procurement contractor package with the free school development to achieve economies of scale for both the DfE and the Authority.

5 CONSULTATION (CUSTOMERS AND OTHER STAKEHOLDERS)

- 5.1 Detailed consultation will be held with the school's existing stakeholders and local residents when an application(s) are submitted for planning consent for the proposed new school developments.

6 ALTERNATIVE OPTIONS

- 6.1 Alternative options considered are:-

- i) seek Committee and Cabinet approval to the direct grant of a lease to the Collegiate Academy Trust – for land to be designated for educational purposes Council policy has been to transfer the freehold interest in such land to Sandwell Land and Property Limited with a Lease back to the Authority;
- ii) a freehold disposal of the council's land holding – the Authority has previously set a precedent in retaining a leasehold interest in the adjacent Shireland Collegiate Academy site at Waterloo Road and granting a long under-leasehold interest for the land;
- iii) a transfer of the land to Sandwell Land and Property Limited, with a Lease back to the council, and a new under-lease granted to the Trust – an extension of the existing Under-Lease to include the new land as proposed provides a tidier and more direct land transfer for both the council and the Trust; and
- iv) alternative redevelopment proposals –Wilson Road provides the main pupil entrance to the Shireland Collegiate Academy site, and provides the pedestrian and vehicular access into the Hadley Stadium site. Additional car parking provision will be required on either the existing Academy site or the new land to ease traffic congestion on Sycamore Road.

6.2 The Committee is requested to recommended Cabinet to approve the freehold transfer to Sandwell Land and Property Limited: with a Lease back to the council: and then the grant of an under-lease to the Trust, to enable redevelopment of the Shireland Collegiate Academy site to provide much needed new school places in the Smethwick area.

7 STRATEGIC RESOURCE IMPLICATIONS

7.1 There are no direct strategic resource implications as a result of this report.

7.2 The Director – Regeneration and Planning is of the opinion that disposal of the site on the open market for residential purposes would generate a capital receipt on the region of £XXXXXXXX. This is, however, on the assumption that there are no adverse ground conditions, legal impediments and/or development constraints which would have a detrimental impact of the site's value.

7.3 There will be no reduction in the council's assets as the Authority will be granted a long leasehold interest of the site, with the Academy Trust subsequently granted an extension to its existing under-leasehold interest, but not a freehold disposal.

7.4 Similarly there are no direct revenue implications to the Authority since both the existing Academy and the proposed primary Free School will be funded directly by the ESFA.

- 7.5 With responsibility for a dormant area of land being transferred the council will achieve a revenue saving on its management costs for the land.

8 LEGAL AND GOVERNANCE CONSIDERATIONS

- 8.1 The Council holds the freehold interest in the land at Wilson Road, Smethwick. Legal Services have investigated the title and confirm that there are no restrictive covenants that would restrict the transfer of the freehold interest to Sandwell Land and Property Limited, the Lease back to the council and the grant of an extension to the existing Under-Lease held by the Trust. There is, however, a former highway traversing the site which does not appear to have been formally closed. Steps will therefore need to be taken to formally close this road before transferring the freehold interest to Sandwell Land and Property.
- 8.2 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.
- 8.3 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.
- 8.4 There are restrictions on the disposal or appropriation of land held for education purposes, without the consent of the Secretary of State.
- 8.5 The proposal with regard to the site at Wilson Road would involve the grant of an extension to an existing lease of the site, 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 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;

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 as a result of the proposals contained within the report. A full EIA is not therefore required.

10 DATA PROTECTION IMPACT ASSESSMENT

10.1 Not applicable.

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 under-mentioned significant risk that has been identified, arrangements are in place to manage and mitigate this 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. The risk that the report is not agreed is assessed as green.

- 11.2 The council's strategic risk register currently includes an amber risk around school place planning: SR040 - if the LA 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. If, however, these recommendations are not approved or delayed, this may have the potential to increase the strategic risk assessment to red.

The key project risk mitigation is that similar transactions have successfully been completed with Sandwell Land and Property Limited for areas of land used for educational purposes.

- 11.3 If the report is approved any potential risks will relate specifically to the future redevelopment of the site. To mitigate any associated risks a project plan and project risk register will be maintained for the Authority's proposed expansion of the Academy to ensure effective management. The ESFA will be requested to work with the Authority, or will otherwise maintain its own risk register for the primary free school scheme.

12 SUSTAINABILITY OF PROPOSALS

- 12.1 Shireland Collegiate Academy has been rated outstanding by Ofsted and continues to be one of the Authority's most successful secondary schools.
- 12.2 On 19 August 2016 the Trust successfully entered into a further Under-Lease agreement with the Local Authority, with the inclusion of additional land off Sycamore Road and Wilson Road to extend the area of its original demise. It is proposed to grant a Deed of Variation to the Under-Lease for the new land at Wilson Road.
- 12.3 The ESFA have approved the Trust as the approved sponsor for the new Primary Free School, and is keen to work in partnership with the Authority to deliver its Basic Need expansion proposals for new secondary school places at the Academy.
- 12.4 Following completion of the school developments the Academy Trust will become directly responsible for all costs associated with the general upkeep, maintenance and outgoings for the land at Wilson Road.

13 HEALTH AND WELLBEING IMPLICATIONS (INCLUDING SOCIAL VALUE)

- 13.1 The opportunity to incorporate the new land at Wilson Road into the Academy campus will help to minimise the loss of external P.E. and recreational areas that would be lost to building development.

13.2 Careful design of car parking areas and access / egress to the site will reduce the health and safety aspects for the increased number of pupils that will be attending the campus.

14 IMPACT ON ANY COUNCIL MANAGED PROPERTY OR LAND

14.1 The freehold interest in the land will transfer to Sandwell Land and Property Limited.

14.2 A Lease back of the land to the council will be acquired from Sandwell Land and Property Limited.

14.3 The council will grant an under-leasehold interest to the Collegiate Academy Trust the term of which will run con-currently with the existing under-lease held by the Trust for its adjacent land at Waterloo Road.

14.4 There will be no overall impact on the council's Asset Management Plan or register as the council will retain a long leasehold interest in the land.

14.5 The site is allocated for residential development in the Sites Allocation and Delivery DPD Policy Document and as such its inclusion within the demise of the Academy will prejudice the delivery of housing.

15 CONCLUSIONS AND SUMMARY OF REASONS FOR THE RECOMMENDATIONS

15.1 Council owned land at Wilson Road, Smethwick as identified edged bold on Plan No. "SAM/53380/001" has remained undeveloped since its acquisition under slum clearance powers.

15.2 The Collegiate Academy Trust have indicated a wish to acquire the land to support the Authority's proposed expansion of Shireland Collegiate Academy to provide new secondary school places, and also its proposed new Primary Free School, which is being developed in partnership between the Trust and the ESFA.

15.3 The Trust already holds an under-lease from the council for its main site at Waterloo Road. The committee is requested to consider and approve the report recommendation to recommend Cabinet approve:-

- i) a transfer of the freehold interest in the land to Sandwell Land and Property Limited;
- ii) the council acquire a Lease back of the land from Sandwell Land and Property Limited;
- iii) grant an extension to the Trust's existing Under-Lease from the council for adjacent land at Waterloo Road to include the new land at Wilson Road.

- 15.4 The ESFA are keen to extend their partnership with the Authority to jointly apply for planning consent for both proposed school developments and a single procurement package for the works.
- 15.5 Committee approval is sought in order for Cabinet to consider the report recommendation as the ESFA is unable to progress the Primary Free School development without confirmation as to whether the council is prepared to transfer the land to the Trust.

16 **BACKGROUND PAPERS**

16.1 None

- 17 **APPENDICES:**
Location Plan – SAM/53380/001

Jan Britton
Chief Executive