



REPORT TO LAND AND ASSET MANAGEMENT COMMITTEE

6 December 2017

Exempt information relating to financial or business affairs of any particular person (including the authority holding that information)

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 Kelvin Way, West Bromwich – Sandwell Land and Property Limited
Director:	Dr Alison Knight, Executive Director - Neighbourhoods Jim Leivers, Executive Director of Children's Services Chris Ward, Director – Education, Skills and Employment Darren Carter, Executive Director – Resources
Contribution towards Vision 2030: 	
Key Decision:	Yes
Forward Plan (28 day notice) Reference:	SMBC01/11/2017
Director Approval:	Dr Alison Knight, Executive Director – Neighbourhoods: Jim Leivers, Executive Director of Children's Services: Chris Ward, Director – Education, Skills and Employment: Darren Carter, Executive Director – Resources:
Ward Councillor (s) Consulted (if applicable):	Councillors J Edwards and J Taylor
Scrutiny Consultation Considered?	Scrutiny Consultation has not been considered.

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 Kelvin Way, West Bromwich, as indicated for information purposes edged bold on Plan No. SAM/27260/016 Cabinet is recommended to authorise the Director – Monitoring Officer to:-

- 1.1 transfer the freehold interest, for a XXXXX sum of £XXXXX, to Sandwell Land and Property Limited and otherwise on terms and conditions to be agreed by the Director – Regeneration and Growth.

- 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 Director – Regeneration and Growth.

- 1.3 subject to 1.1 and 1.2 above, following completion of the presumption exercise for selection of a preferred sponsor for a new secondary school at Kelvin Way, West Bromwich, to grant to the nominated sponsor an Under-Lease of the whole, or part of land at Kelvin Way, West Bromwich 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 approval to transfer the freehold interest in 4.3 Ha of Council-owned land at Kelvin Way, West Bromwich (Plan No. SAM/27260/016) 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 to the nominated sponsor for a proposed new secondary school at Kelvin Way, West Bromwich, an Under-Lease of the whole, or part of land at Kelvin Way, West Bromwich, the terms and conditions of the Under-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 (Key Decision No.122/17).

- 1.3 The land will be used to develop a new 750 place secondary school which is scheduled to open in September 2019. At its meeting on 28 June 2017 Cabinet agreed to fund a scheme through the Authority's Schools Capital Programme 2017/18-19/20 to develop the design for the new school. On 31 January 2018 Cabinet will be requested to approve capital funding to construct the first phase of the school.

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 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 regeneration in the local area to Kelvin Way, 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 Council is the freehold owner of land at Kelvin Way, West Bromwich, shown for identification purposes only on the plan attached as appendix SAM/27260/016. The land was acquired on 2 July 1947 by the former West Bromwich Corporation and has been held for open space purposes.
- 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 of the whole, or part thereof to the successful school sponsor.

- 3.3 It is proposed to grant an Under-Lease to the nominated sponsor in accordance with the principles of the Council's approved '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.
- 3.4 On 31 January 2018 Cabinet will also be advised of the outcome of the current presumption exercise to identify a preferred sponsor for the proposed new secondary school. Subject to Cabinet approval an application will be submitted to the Regional Schools Commissioner seeking approval to nominate the preferred sponsor for the school.

4 THE CURRENT POSITION

- 4.1 The Council owned parcel of land as indicated for information purposes edged bold on Plan No. SAM/27260/016 is used for open space purposes. The land is maintained by Parks and Countryside Services.
- 4.2 Redevelopment of the land will provide 750 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.
- 4.3 Although previously used for team sports, the land has not been used for such purposes within the last 5 years. The site no longer forms part of the Council's playing field pitch strategy.
- 4.4 The site is allocated as Community Open Space in the Council's Site Allocations and Delivery Development Plan Document (SADDPD). The open space was assessed as low quality, low value in the Green Space Audit (2013), and the recommendation for such sites is that if their value cannot be enhanced, alternative uses could be sought.
- 4.5 The proposal for a new secondary school is a departure from the adopted plan and a case will need to be made to justify and mitigate the loss of open space through the planning application process. The Council's presumption exercise to identify a new school sponsor has indicated the Council's requirement that the new school facility should provide reasonable access to the local community.
- 4.6 Cabinet approval is sought to the proposed freehold and leasehold transfers to enable development to continue.
- 4.7 The proposed new secondary school places are required for September 2019.

4.8 Through the current design stage and pre-planning application period, the Council is looking to retain a proportion of the land for continued community open space purposes. The budget for the new school development will include an allowance to undertake improvements to that proportion of the site. Consultation through the planning application process will determine the final design and layout of the open space, which may then require a part reversion of the proposed freehold transfer to Sandwell Land and Property Limited.

5 CONSULTATION (CUSTOMERS AND OTHER STAKEHOLDERS)

5.1 Detailed consultation has already commenced with local residents, local schools, parents / carers of Year 5 pupils attending neighbouring schools.

5.2 A public consultation event was held on 13 July 2017 to advise local residents, and parents / carers of pupils attending Lyng Primary School, of the Council's proposals to develop a new secondary school to meet demand for places from September 2019 onwards. Opportunity was also provided to receive initial feedback from the local community on the proposals.

5.3 On 19 October 2017 a further drop in session was held to consult on the plans proposed to support a planning application for the new school. The invitation was extended to include parents / carers of pupils currently attending Year 5 at neighbouring primary schools, as these children will be the first cohort attending the school when it opens.

6 ALTERNATIVE OPTIONS

6.1 Alternative options considered are that the Council could:-

- i) retain the whole of the land for open space purposes. Whilst this may support the provision of informal play space in Sandwell, it is recognised that the land in question is of low value and low quality;
- ii) dispose of the land for alternatives uses – use for commercial / industrial purposes has already been considered by the Council, and use for housing would lead to an increase in demand for school places;
- iii) proceed with either a direct freehold or leasehold disposal of the Council's land holding to the preferred new school sponsor - 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, and then to grant an Under-Lease to the appropriate Academy Trust;
- iv) redevelopment of alternative sites – the Authority has been unable to identify an alternative suitable site, sufficient to provide a 750 place secondary school to support this area of the Borough;

- v) retain a proportion of the site for open space purposes – through consultation local residents indicated a wish to retain the whole of the site for open space use. As indicated in paragraph 4.8 above, subject to Planning Authority approval, a section of the land could be retained for continued use for open space purposes.

6.2 The Committee is requested to recommend 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 preferred sponsor of the new school.

7 STRATEGIC RESOURCE IMPLICATIONS

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

7.2 The Director – Regeneration and Growth is of the opinion that disposal of the site on the open market for residential purposes would generate a capital receipt in the region of £XXXXX. 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 under-leasehold interest, in whole or part, but not a freehold disposal.

7.4 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.

7.5 The Council's existing landholding will transfer to Sandwell Land and Property Limited, and under the terms of the Under-Lease the Academy Trust will be responsible for all future maintenance of its site. The Authority will retain responsibility for any part of the site that continues to be used for community open space.

8 LEGAL AND GOVERNANCE CONSIDERATIONS

8.1 The Council holds the freehold interest in the land at Kelvin Way, West Bromwich. 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 Under-Lease of the whole or part to the Trust.

- 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 Kelvin Way would involve the grant of an Under-Lease of land, in a similar format to Under-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. The proposal to dispose of the site was advertised on 24 and March 2016, and no objections were received.
- 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;

8.9 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 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 an amber 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. 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 construction of the new school to ensure effective management.

12 SUSTAINABILITY OF PROPOSALS

- 12.1 A presumption exercise has been undertaken with eleven applications being received from prospective bidders wishing to be selected as the preferred sponsor for the new school. A rigorous selection process has been undertaken including interviews following a shortlisting process. The process has also included due diligence and advice provided by the Department for Education / Education and Skills Funding Agency.
- 12.2 At its meeting on 31 January 2018 Cabinet will be requested to authorise an application to the Regional Schools Commissioner to seek approval to the nomination of the Council's preferred sponsor for the new school.
- 12.3 Detailed design for construction of the first phase of the new school is being progressed. Design and construction will be met through the Authority's approved Schools Capital Programme using its Basic Need allocation received from the DfE / ESFA.
- 12.4 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. Consultation with parents / carers who also reside in the area has indicated that in its present state the open space does not provide a safe environment for their children.
- 13.2 The scheme will provide enhanced improvements to the existing playing pitch area and purpose built multi use play surfaces, together with internal sports and community facilities. The Authority's selection criteria has sought to focus on the added value and long term sustainable benefits each school proposer would bring to the new school to provide the local community with access to new facilities to promote health and wellbeing.
- 13.3 The local community has also confirmed through the consultation events held that it requires unfettered access to open space on the land. The Council will seek to retain and improve a proportion of the land for open space purposes.

13.4 Traffic calming measures have already been implemented by the Authority with this section of Kelvin Way now designated as a red route. Careful design of a layby approach to the new development off Kelvin Way, car parking areas, vehicular and pedestrian access / egress to the site will reduce the health and safety aspects for the number of pupils that will be attending the school.

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/27260/016" 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 in the whole, or a part of the land at Kelvin Way, West Bromwich, 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.

14.4 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 Community Open Space in the SADDPD, and as such its inclusion within the demise of the Academy will enhance the future use of an area that has been assessed as low quality / low value quality.

15 CONCLUSIONS AND SUMMARY OF REASONS FOR THE RECOMMENDATIONS

15.1 Council owned land at Kelvin Way, West Bromwich as identified edged bold for information purposes on Plan No. "SAM/27260/016", for the purposes of open space purposes is considered to be of low value / low quality within the Council's Green Space Audit (2013), and the recommendation for such sites is that if their value cannot be enhanced, alternative uses could be sought.

15.2 The Authority's pupil place strategy has identified the need for 750 new secondary school places within the local area to meet projected demand as a result of the unprecedented growth in the birth rate, inward migration and retention levels over recent years. A number of similar proposals are currently being developed through the Schools Capital Programme to support the provision of new secondary school places as pupils enter year 7 from September 2019 onwards.

15.3 A presumption exercise has been undertaken by the Authority to select a preferred sponsor for the new secondary school. A report is scheduled to be submitted to Cabinet at its meeting on 31 January 2018 seeking authority to request consent of the Regional Schools Commissioner to nominate the Council's preferred sponsor for the school.

15.4 The committee is requested to consider and approve the report to recommend that 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) the grant an Under-Lease in the whole or part of the land at Kelvin Way, West Bromwich to the nominated sponsor for the proposed new secondary school on the land in accordance with the principles of the Council's 'Policy on Academy Conversions (2017)'.

16 BACKGROUND PAPERS

16.1 None

17 APPENDICES:

Location Plan – SAM/27260/016

Dr Alison Knight
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