

REPORT TO CABINET

14 November 2018

Subject:	Recommendations Arising from Land and Asset Management Committee at its meeting on 1 November 2018 – Land at Kelvin Way, West Bromwich – Site Boundary to New School and Retained Open Space
Presenting Cabinet Member:	Councillor Bill Gavan – Chair of the Land and Asset Management Committee
Director:	Director – Education, Skills and Employment – Chris Ward Executive Director – Resources – Darren Carter Director – Regeneration and Growth – Amy Harhoff
Contribution towards Vision 2030:	
Key Decision:	Yes
Forward Plan (28 day notice) Reference:	SMBC04/11/2018
Cabinet Member Approval and Date:	Councillor Bill Gavan
Director Approval:	Chris Ward, Director – Education, Skills and Employment
Reason for Urgency:	Urgency provisions do not apply
Exempt Information Ref:	Exemption provisions do not apply
Ward Councillor (s) Consulted (if applicable):	Councillors J Edwards and J Taylor
Scrutiny Consultation Considered?	Scrutiny have not been consulted
Contact Officer(s):	Martyn Roberts, Team Lead – Planning, Educations Support Services, Education, Skills and Employment Directorate martyn_roberts@sandwell.gov.uk

DECISION RECOMMENDATIONS

That, in connection with land at Kelvin Way, West Bromwich, as indicated for information purposes edged bold on Plan No. "SAM/27260/019":

- (1) Cabinet approve the boundary details for the proposed land transfer for the new 750 place secondary school;
- (2) that detail of utilisation of the open space to the back of the school be presented to the Cabinet Member or Committee as appropriate.

1 PURPOSE OF THE REPORT

1.1 At its meeting on 31 January 2018, Cabinet resolved to approve the transfer of land at Kelvin Way, West Bromwich to Sandwell Land and Property Limited, with the grant of a lease back to the Authority (Minute No.20/18 refers). Cabinet further agreed in principle Plan No. SAM/27260/17 for the proposed land transaction and requested a further report be submitted to the Land and Asset Management Committee in due course detailing the following:-

- (i) defined boundary;
- (ii) outcome of public consultation proposing site layout;
- (iii) planning details;
- (iv) community open space development.

1.2 Approval is sought to confirm the boundary detail for the transfer of 3.655 hectares of land at Kelvin Way, West Bromwich.

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 Ambitions 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".

2.2 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.

- 2.3 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

Site plan SAM/27260/19 indicates edged bold the boundary of the proposed land allocation for the academy lease for the proposed free school secondary school at Kelvin Way. The open space to the north of the site, and adjacent to Lyng Primary School and Bromford Lane Allotments (as indicated hatched on the plan) has been excluded following consultation with Parks and Green Spaces.

4 THE CURRENT POSITION

- 4.1 A report approved by Cabinet on 31 January 2018 'Proposed New Secondary School – Kelvin Way, West Bromwich', resolved that Basic Need capital funding be allocated to proceed with construction of Phase 1 and pursue an academy sponsor for a new secondary school (Minute No. 13/18 refers). The Collegiate Academy Trust, sponsor of Shireland Collegiate Academy has now been appointed by the DfE as preferred sponsor for the new school.
- 4.2 The design and build process for the new school has started via the Local Education Partner, Sandwell Futures Limited.
- 4.3 Two reports were submitted to the Land and Asset Management Committee: 6 December 2017, 'Land at Kelvin Way, West Bromwich – Sandwell Land and Property Limited' (Minute No.19/17); 13 December 2017, 'Land at Kelvin Way, West Bromwich – Sandwell Land and Property Limited' (Minute No.22/17). The 6 December 2017 report was deferred for further information. On 13 December 2017 report resolutions 1 – 3 were approved. Resolutions 4 and 5 were agreed in principle requiring a further report to be submitted.

5 CONSULTATION (CUSTOMERS AND OTHER STAKEHOLDERS)

- 5.1 The planning application was published by neighbour notification, site and press notice without response.
- 5.2 The area of land allocated to the school development was reduced following initial public consultation during July and October 2017, and subsequent consultation with Parks and Green Spaces.

- 5.3 Parks and Green Spaces have confirmed that a public open space contribution is required for the retained land. The public open space contribution would go towards the enhancement and maintenance of the retained open space (Lyng/Maud Road OS); and also the maintenance of the pedestrian path (excluding lights) from Maud Road. However, if possible they would like to utilise some of this open space contribution towards the enhancement and maintenance of nearby Kenrick Park and Lyng Public Open Space.
- 5.4 Planning permission for the new school development, DC/17/61307, was granted on 26 July 2018.
- 5.5 Use of the new school development shall not commence until a community use agreement prepared in consultation with Sport England has been submitted to and approved in writing by the Local Planning Authority, and a copy of the completed approved agreement has been provided to the Local Planning Authority. The agreement shall apply to the school playing field, Multi-use Games Area (MUGA) and the sports hall, and shall include details of pricing policy, hours of use, access by non-educational establishment users, management responsibilities and a mechanism for review. The development shall not be used other than in compliance with the approved agreement.
- 5.6 A risk assessment will be carried out to assess the impact of the ball strike from the use of the proposed cricket pitch on the car park, playground and MUGA and shall be submitted to and approved in writing by the Local Planning Authority in consultation with Sports England. Any mitigation recommendations will be submitted and agreed with the Local Planning Authority in consultation with Sports England.

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) 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.

7 STRATEGIC RESOURCE IMPLICATIONS

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

Costs for providing a secure boundary between the retained open space and the new school site, and enhancements to the open space area will be met from the approved capital budget for the project.

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.

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 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;
 - 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 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.

- 11.2 The Council's strategic risk register currently includes a red risk SR040 around school place planning: 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 with SLAP 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 primary school to ensure effective management

12 **SUSTAINABILITY OF PROPOSALS**

- 12.1 The open space will be enhanced by the introduction of the secondary school and playing fields which would serve the wider community and address pressure on school places. The open space to the north, and potentially, Kenrick Park and Lyng Public Open Space will be enhanced by the open space contribution which will improve the area making it more accessible to the community.

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.

14 **IMPACT ON ANY COUNCIL MANAGED PROPERTY OR LAND**

- 14.1 The freehold interest in the land will be transferred to SLaP.
- 14.2 A Lease back of the land to the council will be acquired from SLaP.
- 14.3 The council will grant an under-leasehold interest to the Academy Trust the term of which will run con-currently with the lease held by the Council.
- 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.

15 **CONCLUSIONS AND SUMMARY OF REASONS FOR THE RECOMMENDATIONS**

- 15.1 The Council currently owns the freehold interest in 4.3 hectares of land at Kelvin Way, West Bromwich, of which 3.66 ha will transfer to SLaP and be leased back to the Authority. The remaining land will be retained for continued use as open space.
- 15.2 This is a further report as requested by Cabinet at its meeting on 31 January 2018 to define the boundary to the land transfer, outcome of public consultation proposing the site layout, planning details and community open space development.
- 15.3 Previous Council resolutions provide for the transfer of publicly held land to be transferred to SLaP, leaseback and subsequent lease to an occupying school/ Academy.
- 15.4 This report seeks Cabinet approval to agree the boundary of the new secondary school at Kelvin Way, with the retained open space to the north of the site.

16 **BACKGROUND PAPERS**

None

17 **APPENDICES:**

Location Plan – SAM.27260.19

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