

<b>MAYOR AND CABINET</b>			
<b>Report Title</b>	Our Lady & St Philip Neri RC School to the Roman Catholic Archdiocese of Southwark		
<b>Key Decision</b>	Yes	Item No.	
<b>Ward</b>	Sydenham		
<b>Contributors</b>	Executive Director for Children and Young People, Executive Director Regeneration & Resources, Head of Law		
<b>Class</b>	Part 1	Date:	22 March 2017

## **1 Summary**

- 1.1 This paper seeks agreement from the Mayor to the transfer of land comprising part of the existing site of Our Lady & St Philip Neri Roman Catholic Primary School, at 208 Sydenham Road Sydenham London SE26 5SE to the Roman Catholic Archdiocese of Southwark for nil consideration, for the duration of the lifetime of the school on that site.

## **2 Recommendations**

That the Mayor:

- 2.1 subject to consent from the Secretary of State to the disposal being obtained under Schedule 1 of the Academies Act 2010, agrees to the transfer of that part of the existing school site shown outlined in red on the plan attached in Appendix 1 to The Roman Catholic Archdiocese of Southwark (as trustees for the charitable foundation known as the Education Commission) for nil consideration for the duration of the lifetime of the school on that site;
- 2.2 agrees that an application is made to the Secretary of State for Education under Schedule 1 of the Academies Act 2010 for the transfer of the site on the terms set out in this report; and
- 2.3 delegates authority to the Executive Director for Resources and Regeneration, in consultation with the Executive Director for Children & Young People and the Head of Law, to agree the final terms of the transfer.

## **3.0 Policy Context**

- 3.1 The proposals within this report are consistent with *'Shaping Our Future: Lewisham's Sustainable Community Strategy'* and the Council's corporate priorities. In particular, they relate to the Council's priorities regarding *young people's achievement and involvement*, including *inspiring and supporting young people to achieve their potential*, the *protection of children and young*

*people and ensuring efficiency, effectiveness and equity in the delivery of excellent services to meet the needs of the community.*

- 3.2 The Local Authority has a duty to ensure the provision of sufficient places for pupils of statutory school age and, within financial constraints, accommodation that is both suitable and in good condition.
- 3.3 In aiming to improve on the provision of facilities for primary education in Lewisham which are appropriate for the 21<sup>st</sup> century, the implementation of a successful primary places strategy will contribute to the delivery of the corporate priority *Young people's achievement and involvement: raising educational attainment and improving facilities for young people through partnership working.*
- 3.4 It supports the delivery of Lewisham's *Children & Young People's Plan (CYPP)*, which sets out the Council's vision for improving outcomes for all children and young people, and in so doing reducing the achievement gap between our most disadvantaged pupils and their peers. It also articulates the objective of improving outcomes for children with identified SEN and disabilities by ensuring that their needs are met.

#### **4. Background**

- 4.1 The Roman Catholic Archdiocese of Southwark currently own and manage Our Lady and St Philip Neri and St Winifred's Primary Schools. Each school is split across two sites (infants and juniors) with all four sites located across the London Borough of Lewisham. The school buildings across these sites range from a locally listed school hall dating to the 1870s, to buildings constructed during the 1940s, 1960s and 1970s, and more recent bulge expansion and improvement works.
- 4.2 Due to the age, suitability and condition of the existing buildings, discussions regarding expansion and redevelopment works have been ongoing between the Archdiocese and the Council for a number of years.
- 4.3 On 18<sup>th</sup> May 2016 The Mayor agreed a contribution of £6.1m of capital funding towards these expansion works. The Archdiocese is responsible for the delivery of both schemes, subject to the terms of a Development Agreement between the Council and the Archdiocese due to be signed imminently.
- 4.4 The Education Commission (on behalf of the Archdiocese) are currently undertaking enabling works in preparation for the expansion works at both schools. These works will include:
  - Demolition and sale of two of the four school sites to part fund the works
  - Redevelopment of the remaining two school sites to provide a two forms of entry school on each (creating one additional form of entry, or approximately 210 new pupil places).
- 4.5 In order to finalise the development agreement between the contractors and the Archdiocese, an outstanding land ownership issue dating back to the 1950s needs to be resolved.

## **5.0 Details of Land Transfer**

- 5.1 Land Registry records describe the site identified for disposal as being 198 to 206 (even numbers) Sydenham Road, 190 to 192 Fairlawn Park, and passageway adjoining.
- 5.2 This site (shown outlined in red on the plan attached in Appendix 1) is still registered at the Land Registry as being owned by the London County Council (LCC). The main and original part of the school site is owned by the Archdiocese. It appears that the land now owned by the Council was acquired by the LCC for the school in the early 1950's.
- 5.3 However, no transfer between the LCC and the school's trustees was completed and the land was subsequently transferred to the Greater London Council, then to the ILEA in 1986. The land was transferred from the ILEA to the London Borough of Lewisham in 1990.
- 5.4 It appears that the land should have been transferred directly from ILEA to the Archdiocese of Southwark (as trustees for the school), rather than to the Council. However, the transfer was not given effect. This, according to the Archdiocese, is a common occurrence across their estate.
- 5.5 Accordingly, this report requests authority to transfer the land to the Archdiocese now. Ahead of the impending redevelopment and expansion of the school delivered by the Education Commission, the appointed contractor 'Built Offsite' has also requested that the entire site be within the Archdiocese's ownership upon contract close. Failure to resolve this matter may delay commencement of works, and the delivery of the additional school places by 2018.
- 5.6 The land, with the required existing and continued use as a school playground, is currently valued at £30,000.
- 5.7 Based upon the information provided within this report, the Mayor is recommended to transfer the land as described in Section 3, for nil consideration, and for the duration of the lifetime of the school on that site, to the Archdiocese of Southwark.
- 5.8 The Mayor is also recommended to delegate authority to the Executive Director for Resources & Regeneration, in consultation with the Executive Director for Children & Young People and the Head of Law, to agree the final terms of the transfer and to agree and conclude any other outstanding issues in connection with the land transfer arrangements.

## **6.0 Financial Implications**

### ***Capital Financial implications***

- 6.1 This report recommends that Mayor and Cabinet agrees to a transfer of land to the Roman Catholic Archdiocese of Southwark for nil consideration. The land is valued at £30,000 and reflects the current and future use as play space for the existing school. There is no possibility of using the land for any other purpose while the school is operating on site.

- 6.2 The Local Authority has agreed to invest £6.1 million into the demolition and construction of Our Lady and St Philip Neri School and St. Winifred's Primary Schools, which are owned and run by the Roman Catholic Archdiocese of Southwark. The two additional forms of entry created will assist the LA in meeting its statutory duties to provide the required numbers of primary school places in the borough.
- 6.3 The disposal of the land to the Archdiocese would transfer the maintenance responsibility for the site and reduce the LA's liability in this respect both in terms of any maintenance costs and asset management planning costs.

### ***Revenue Financial Implications***

- 6.4 The revenue costs of running the fully expanded accommodation will continue to be fully funded by the Archdiocese and LCVAP funding, with no burden falling on the General Fund resources of the Council.

## **7. Legal Implications**

- 7.1 Had the Council provided the site extension for the school, it would have been under a duty to transfer its interest in the site to the Archdiocese under Schedule 3 para 4(1) of the School Standards and Framework Act 1998. Paragraph 12 of Schedule 3 specifically dis-applies the requirement under Section 123 of the LGA72 to obtain Secretary of State's consent for a transfer at less than market value where the transfer is made pursuant to Schedule 3. However, in this case, the Council did not provide the site extension and therefore cannot rely on this statutory provision to effect the transfer to the Archdiocese.
- 7.2 The land vested in the Council in 1990 under the general provisions for the transfer of land contained in Article 3 of the Education (Inner London Education Body)(Property Transfer) Order 1990. In accordance with Article 3, the land would have vested in the Council subject to the rights and liabilities in relation to the land. Accordingly, if and to the extent that the ILEA was liable to transfer the land to the Archdiocese, the Council is under such a liability. However, the Council has not been able to find any information in the ILEA records about the outstanding transfer of the site to the trustees.
- 7.3 The nature of a voluntary aided school is that there is a trust body who holds land for the purposes of the school. It is therefore inconsistent with the status of the school as a voluntary aided school for the Council to continue to own part of the site. It is therefore recommended that the land be transferred to the Roman Catholic Archdiocese of Southwark (as trustees for the school).
- 7.4 Under Section 123 of the Local Government Act 1972 the Council may not dispose of non-housing land otherwise than for the best consideration reasonably obtainable except with the consent of the Secretary of State. The Council will not be receiving best consideration for the transfer. However the Secretary of State has issued a general consent under Section 123 which applies where:
- the promotion or improvement of economic well-being
  - the promotion or improvement of social well-being
  - the promotion or improvement of environmental well-being; and

- (b) the difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2,000,000.

The Mayor should therefore be satisfied for the reasons set out in this report, that the transfer of the site to the trustees will contribute to the improvement of the social well-being of persons resident in the borough.

- 7.5 In accordance with Schedule 1 of the Academies Act 2010, the consent of the Secretary of State is required to enter into any disposal of land if at any time in the last 8 years it has been used wholly or mainly for the purposes of a school or a 16 to 19 Academy. There is a General Consent where the disposal is pursuant to a statutory duty, for example under the School Standards and Framework Act 1998 but as stated above, this transfer is not technically pursuant to a statutory duty. Accordingly, this consent must be obtained before any transfer can be completed.
- 7.6 Consent under Section 77 of the School Standards and Framework Act 1998 is not required as the General Consent applies as the land will continue to be used by the school following the transfer.
- 7.7 The Equality Act 2010 (the Act) introduced a public sector equality duty (the equality duty or the duty). It covers the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 7.8 In summary, the Council must, in the exercise of its functions, have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
  - advance equality of opportunity between people who share a protected characteristic and those who do not.
  - foster good relations between people who share a protected characteristic and those who do not.
- 7.9 It is not an absolute requirement to eliminate unlawful discrimination, harassment, victimisation or other prohibited conduct, or to promote equality of opportunity or foster good relations between persons who share a protected characteristic and those who do not. It is a duty to have due regard to the need to achieve the goals listed at 6.8 above.
- 7.10 The weight to be attached to the duty will be dependent on the nature of the decision and the circumstances in which it is made. This is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. The Mayor must understand the impact or likely impact of the decision on those with protected characteristics who are potentially affected by the decision. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations. The extent of the duty will necessarily vary

from case to case and due regard is such regard as is appropriate in all the circumstances.

7.11 The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at:  
<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-codes-practice>  
<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-technical-guidance>

7.12 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

- The essential guide to the public sector equality duty
- Meeting the equality duty in policy and decision-making
- Engagement and the equality duty: A guide for public authorities
- Objectives and the equality duty. A guide for public authorities
- Equality Information and the Equality Duty: A Guide for Public Authorities

7.13 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at:  
<https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance#h1>

## **8. Crime and Disorder Implications**

8.1 There are no crime and disorder implications.

## **9. Equalities Implications**

9.1 This report supports the delivery of the Council's Equalities programme by ensuring that all children whose parents /carers require a place in a Lewisham school will be able to access one.

## **10. Environmental Implications**

10.1 Every effort will be made to enhance rather than detract from school environments in the solutions to providing additional primary place

## **Appendices**

**Appendix 1:** Location Plan - Official Copy - Title Plan - LN132938.

If there are any queries arising from this report, please contact Russell Edwards, Project Manager, Capital Programme Delivery Ext 49343.

## Appendix 1: Location Plan of site to be transferred.

Land for disposal outlined in red

