

MAYOR AND CABINET		
Report Title:	Appropriation of land at rear of Ashmead Primary School, Ashmead Road, London, SE8 4DX	
Key decision:	Yes	Item no
Ward:	Brockley	
Contributors:	Executive Director for Children & Young People (Service Group Manager – Capital Programme Delivery), Head of Law, Acting Group Finance Manager	
Class	Part 1	14 February 2018

1. **Purpose of the Report**

This report seeks agreement from the Mayor to the appropriation of land at the rear of Ashmead Primary School, Ashmead Road, London SE8 4DX (adjacent to 265 Lewisham Way, London SE4 1XF) for education purposes.

2 **Recommendations**

That the Mayor:

- 2.1 notes and considers the responses to the notices published pursuant to Section 122(2A) of the Local Government Act 1972;
- 2.2 agrees to the appropriation of the small parcel of land (68 m2) at the rear of Ashmead Primary School, Ashmead Road, London SE8 4DX (adjacent to 265 Lewisham Way, London SE4 1XF, (Appendix 1, Area 2) from open space to education purposes under Section 122 of the Local Government Act 1972; and
- 2.3 notes the position in relation to the planning application and the proposed works at Ashmead Primary School as set out in this report

3. **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 priority '*Ambitious and Achieving: where people are inspired and supported to fulfil their potential*'.
- 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 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 Approval to proceed with consultation for a one to two form of entry expansion at Ashmead Primary School was given by the Mayor on 11th January 2017. Further to this the Mayor approved the expansion of the school and the award of a two stage design and build contract to Keepmoat Regeneration Ltd on 24th March 2017, with a view to ensuring the additional 150 pupil places were ready for September 2018.
- 4.2 A planning application for the expansion of the school was submitted in November 2017 and is currently being determined. The planning application proposes a three storey extension on the school site adjacent to Lewisham Way, and the reinstatement of an additional school entrance onto Lewisham Way with a DDA compliant access. A void space will be created on part of the adjacent land (formerly of the school site) to allow light into the proposed ground floor classrooms. The area of land located adjacent to 265 Lewisham Way (edged dark blue in Appendix 1, henceforth referred to as Area 1) will be used as part of the construction site, and subsequently landscaped with the inclusion of the void space and DDA compliant access for the school.
- 4.3 Public consultation on the planning application commenced on 3rd January 2018. In order to deliver the additional school places by September 2018, officers are requesting the Mayor's approval to appropriate part of the existing land at the rear of the school adjacent to 265 Lewisham Way (edged light blue in Appendix 1, henceforth referred to as Area 2) for the proposed void space before a decision is reached on the planning application.
- 4.4 Ashmead Primary School, Ashmead Road, Deptford, SE8 4DX is a one form of entry school constructed in 2008/09 on the site of a previously demolished 1970s school building. It has subsequently received two bulge class expansions to accommodate 270 pupils in total, and the school continues to be oversubscribed year on year. In the primary admissions round for 2016/17, Ashmead Primary School received 80 first and second preference applications, far outstripping the 30 places available by 133%, and has therefore been identified as suitable for expansion to meet this pupil places requirement.
- 4.5 While the primary roll numbers have not grown as expected across London over the last year, with a possible 'Brexit effect', the schools in the area around Ashmead have very few vacancies and the extra Form of Entry at Ashmead will fill with pupils without any deleterious effect on neighbouring schools. It is important to note that Ashmead Primary School continues to be oversubscribed year on year. In the primary admissions round for 2016/17, Ashmead Primary School was oversubscribed by 133% based on 1st and 2nd preference applications. Even in 2017/18, when the borough as a whole suffered a shock reduction in primary applications the school was still oversubscribed by 77% as to a 1FE school.
- 4.6 The school is located within the St John's conservation area, and is also bounded by the Brookmill and Brockley conservation areas. The school is located adjacent to The Stone House, which is a building of historic interest within the borough. The school's main entrance is located on Ashmead Road, SE8 which is a quiet residential street, with its southern boundary running along Lewisham Way, which is a designated red route. The school site boasts a woodland area, many trees, and a variety of external

play spaces not often found within an inner city school location, although it has a less well utilised tarmac area at the southern end of the site.

- 4.7 A feasibility exercise was undertaken during 2015 by Pollard Thomas Edwards architects, which suggested that the site could accommodate a one form of entry expansion through construction of a separate building on the site. Three design proposals were initially considered with the final outline proposal selected as the most feasible due to the considerable site constraints. Design consultation with stakeholders, parents and residents has taken place throughout concept and feasibility stages, and through into the design phase.
- 4.7 During design consultation the school indicated that it would like to have a more visible presence within the community, and requested the re-opening of an old access on to Lewisham Way. This would also alleviate increased pedestrian traffic on Ashmead Road. The school also requested the minimal loss of external play areas, and parents in particular were keen to keep the woodland areas and avoid the loss of any trees within the site. The currently proposed design takes all of these considerations into account.
- 4.8 Area 1 was originally part of the 1970s school site and has a total area of approximately 474m². Area 1 was originally occupied by terraced houses running along Lewisham Way, which were demolished in the 1970s to make space for the school. During the 1980s the school requested that Lewisham take responsibility for maintenance of this external area due to excessive fly tipping and general high cost of maintenance. Since this time Area 1 has been maintained as a green space by the Council, currently under the remit of the Glendale open spaces maintenance contract. During the demolition of the 1970s school and construction of the existing school in 2008/09 the site access along Lewisham Way was closed up and the new main entrance located on Ashmead Road.
- 4.9 Area 1 as existing contains low maintenance planting, trees, cobbled and grassed areas, a low boundary railing, and some benches. It is located immediately adjacent to a busy major road, pelican crossing, and a bus stop, and within close proximity of two parks.
- 4.10 The southern part of the school site (adjacent to Area 1) is 1.2 metres below the level of Lewisham Way. In order to provide DDA compliant access to the site from Lewisham Way a ramp and steps will be required.
- 4.11 The design team propose the use of Area 1 to locate a DDA compliant access ramp and steps, which will allow access into the school site for parents and pupils during drop off and pick up times (approximately 8:30 to 9:00 and 15:00 to 15:30). This will save a significant amount of outdoor educational space for the school (approximately the size of a multi-use games area). In order to address concerns regarding the loss of green space within a conservation area, it is proposed that two enhanced areas for the general public be provided.
- 4.12 In order to save the school further outdoor educational space it is proposed that Area 2 (approximately 30m by 2m - 68msq total) be appropriated for education purposes and brought within the management of the school to provide the void space for the new school extension. The Area 1 site access and open spaces will continue to be maintained by the Council, and the Area 2 void space will fall within the secure boundary and responsibility of the school (see Appendix 3 for proposed revised school secure boundary, edged in green).

- 4.13 The school expansion project team propose, where possible, to work with the local community, the school and other groups to re-design the open space within Area 1 as high quality communal space, improving what is there currently.
- 4.14 All of these proposed works are detailed within the planning application DC/17/104714, which is currently being determined.

5 Public Consultation

- 5.1 A public notice was placed in the News Shopper on 13 December and 20 December 2017 and also on the Council's website. A range of objections were received and copies of these with personal information (names, addresses and private email addresses) redacted are annexed at Appendix 4. Unredacted versions have been made available for members to view in the members' room. The concerns raised can be summarised as follows, and are then addressed in detail below:

1	Loss of inner city green space adjacent to a busy major road artery (Lewisham Way)
2	Loss of public amenity (green space, benches, planting)
3	Loss of public land if school is academised
4	A new school entrance adjacent to Lewisham Way will lead to an increased road safety risk for the public and students
5	Pollution from the road with new school entrance
6	Prejudicing the planning process by also posting this public notice and the Council assuming the application should or would be granted.

(1) Loss of inner city green space

- 5.2 The existing site consists of an open area with part cobble and part grass surfacing. There are benches, some basic planting and several trees located within the area, and a recently installed temporary bench with free wireless internet.
- 5.3 The planning submission proposes a light-well to provide additional daylight into the proposed classrooms situated on the ground floor 1.2 metres below the level of Lewisham Way. In order not to lose external play space within the school site, it is proposed to situate the 68msq of void space within Area 2, which is land that was formerly part of the school. It is proposed that Area 1 be re-landscaped to provide two areas of enhanced public space, but also to provide the DDA compliant access for the school. Again, this is in order to save the school a significant amount of educational play space.
- 5.4 The proposed use of Areas 1 and 2 will prevent the loss of valuable educational and play space within the school site, by situating the void space and DDA compliant access outside of the existing school boundary. This loss of green space will be offset with two remaining and improved landscaped public areas.

(2) Loss of public amenity

- 5.5 While some of the existing grassed open space within Area 1 will be replaced with a DDA compliant school access, two enhanced public spaces of landscaped and grassed area will remain. Consultation responses noted the space is currently used by dog walkers, runners, passers-by and students of Lewisham College. In order to ensure such uses can continue the net numbers of benches on the site will not be reduced, and the quality of the site will be enhanced. It is noted that the existing site is fairly basic public open space, and situated adjacent to a very noisy and busy main

road. There are public parks providing improved amenity located nearby at Friendly Gardens, Luxmore Gardens and Brookmill Park.

(3) Loss of public land if school is academised

- 5.6 Following its appropriation to education purposes, the land will remain in the ownership of the Council as Ashmead Primary School is a community school. Should Ashmead Primary School become an Academy, then legislation provides various protections to protect public land (which the land being appropriated is). In particular, Paragraph 15 of Schedule 1 of the Academies Act 2010 provides that where an Academy holds publicly funded land for the purposes of the Academy, and the Academy ceases to be an Academy (whether or not it also ceases to be an educational institution), the Secretary of State (SoS) may make one of the following directions (para 15(3)):
- (a) That the land be transferred to the local authority, subject to any payment by the local authority as the SoS may determine;
 - (b) That the person holding the land pay the SoS or the local authority the whole value of the land (or part of it);
 - (c) That the land or part of it be transferred to another Academy, subject to any appropriate payment;
 - (d) That the land or part of it be transferred to any governing body, foundation body or trustees of a school on payment of an appropriate sum
- Paragraph 17 provides that anyone intending to dispose of publicly funded land held for the purposes of an Academy must give the SoS notice (para 17(2)) and may not dispose of the land until directed to do so by the SoS (para 17(5)).

(4) Increased road safety risk

- 5.7 Consultees have noted that Lewisham Way is an extremely busy road, with buses, public crossings and Lewisham College situated opposite. Their concerns are that at school opening and closing times (when the re-opened Lewisham Way entrance will be in use) the large volume of parents, children, students of the college and passers-by will lead to a road traffic accident. In response to this, the proposed design solution provides sufficient space for parents to gather, and it is expected that they will then enter site to collect their children once the school gates are open. This new access will only be open and used between the hours of 8:30 to 9:00 and 15:00 to 15:30. This should reduce any risk of the pavement being blocked forcing pedestrians into the road. Pupils of the school walking home on their own would need to navigate Lewisham Way as usual via the existing pedestrian crossing. A series of road safety sessions can also be delivered to the school by the main contractor. One of the benefits of a reopened site access on Lewisham Way is a reduction in disruption for residents on Ashmead Road at the beginning and end of the school day, as the school at full capacity will have an additional 150 pupils accessing the site daily.

(5) Pollution from Lewisham Way

- 5.8 Pollution from Lewisham Way has been a key item of concern for the design development team. The proposed school extension (subject to planning approval) would look to maintain a physical wall along the boundary of the school to prevent emissions coming onto the site, and the proposed building design incorporates air filtration systems and has a mechanical ventilation system, preventing the need to open windows on the Lewisham Way elevation. It is not anticipated that the provision of a pedestrian access along this elevation of the site will lead to significant increases in pollution within the school site. The inclusion of the site entrance in this location is something that is desired by the school for practical purposes – to improve access into

the site, provide a more visible presence within the local community and along Lewisham Way, and reduce any additional disruption on Ashmead Road.

(6) Prejudiced planning process

- 5.9 The planning process is a separate process and nothing in this report affects the consideration of the planning application. Had the Council waited until after the planning application had been considered before dealing with the necessary appropriation, it would also have faced a similar criticism that agreement to the appropriation was assumed as planning permission was already in place. Should planning permission not be granted and/or the proposal not proceed for any reason, then if the land is no longer required for the purposes of the school, it could be appropriated back to its original use or to any new use proposed at that time. The land remains in the Council's ownership and control throughout.

6. Financial Implications

- 6.1 This report seeks agreement from the Mayor to the appropriation of land adjacent to 265 Lewisham Way at the rear of Ashmead Primary School from open space to education purposes. There are no direct financial implications arising from the recommendations of this report.

7. Legal Implications

- 7.1 In accordance with Section 122(1) of the Local Government Act 1972, the Council may appropriate land held for one statutory purpose to another statutory purpose, so long as it is one for which the Council is empowered to acquire land by agreement, and where the land in question is no longer required for the purpose for which it is held immediately before the appropriation.
- 7.2 A principal council may not appropriate under subsection (1) above any land consisting or forming part of an open space unless before appropriating the land they cause notice of their intention to do so, specifying the land in question, to be advertised in two consecutive weeks in a newspaper circulating in the area in which the land is situated, and consider any objections to the proposed appropriation which may be made to them.
- 7.3 The scheme remains subject to planning permission being granted and also the award of the works contract by Mayor & Cabinet (Contracts). However, it was felt appropriate to comply with the requirements referred to at paragraph 7.2 now as, if the appropriation of the land is not agreed, the scheme cannot proceed. It also enables objections to be considered by Mayor & Cabinet at a formative stage. Should planning permission not be granted and/or the proposal not proceed for any reason, then as stated at paragraph 5.9 above, the land could be appropriated back to its original use or to any new use proposed at that time.
- 7.4 Other legal implications are contained in the body of this report.
- 7.5 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.

- 7.6 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.
- 7.7 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 7.6 above.
- 7.8 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.
- 7.9 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>

8. Crime and Disorder Implications

- 8.1 Crime and Disorder implications are being considered as part of the overall planning application submission which is yet to receive a decision. The location of a low boundary fence (as existing) is in keeping with what is currently in place. The void area providing light to the proposed school extension will be bounded by a wall, topped with a fence and area of planting. This will provide a suitable level of security for the school.
- 8.2 Currently this area of land is not subject to any crime and disorder concerns, and the new school access will be monitored by security CCTV.

- 8.3 It is not expected that the proposals within this paper will lead to any increase or decrease in crime and disorder.

9. Equality Implications

- 9.1 By providing an additional access on Lewisham Way, some parents and visitors may have less distance to travel to access the school site. The access will be fully DDA compliant, with ramp for wheelchairs, prams and buggies, bright coloured hand-railings, graded surfaces and edging on the steps.

10. Human Rights Implications

- 10.1 There are no human rights implications arising from this report.

11. Environmental Implications

- 11.1 There are no environmental implications related to this report. Environmental and sustainability concerns with the expansion project are addressed in the planning application. The Council's Employer's Requirements provide the contractor with suitable responsibility to ensure sustainable practices and delivery.

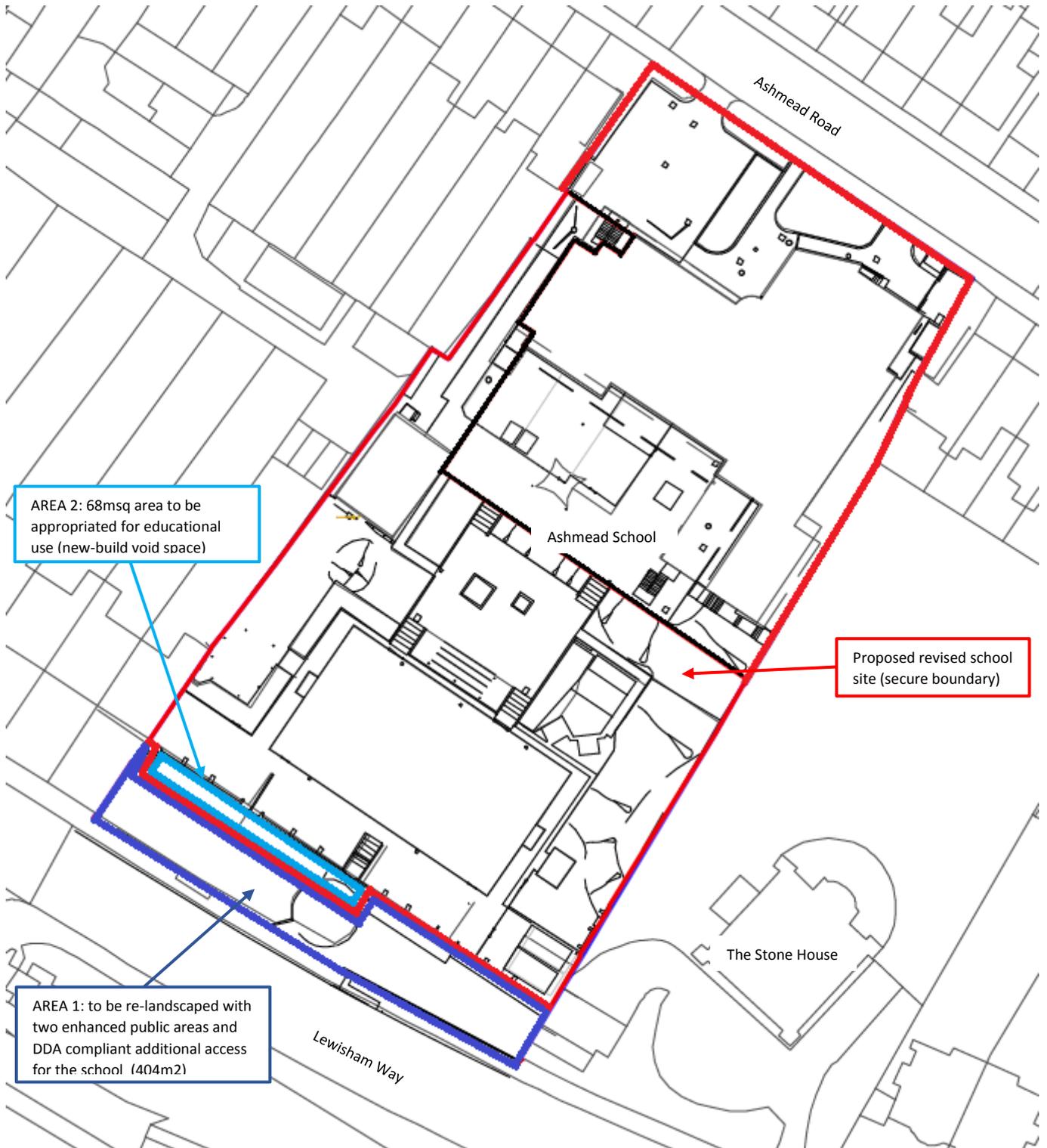
12. Conclusion

- 12.1 On the basis of the information set out in this report, Officers request that the Mayor agrees to the appropriation of the land at the rear of Ashmead Primary School, Ashmead Road, London SE8 4DX (adjacent to 265 Lewisham Way, London SE4 1XF, (Appendix 1, Area 2) from open space to education purposes under Section 122 of the Local Government Act 1972.

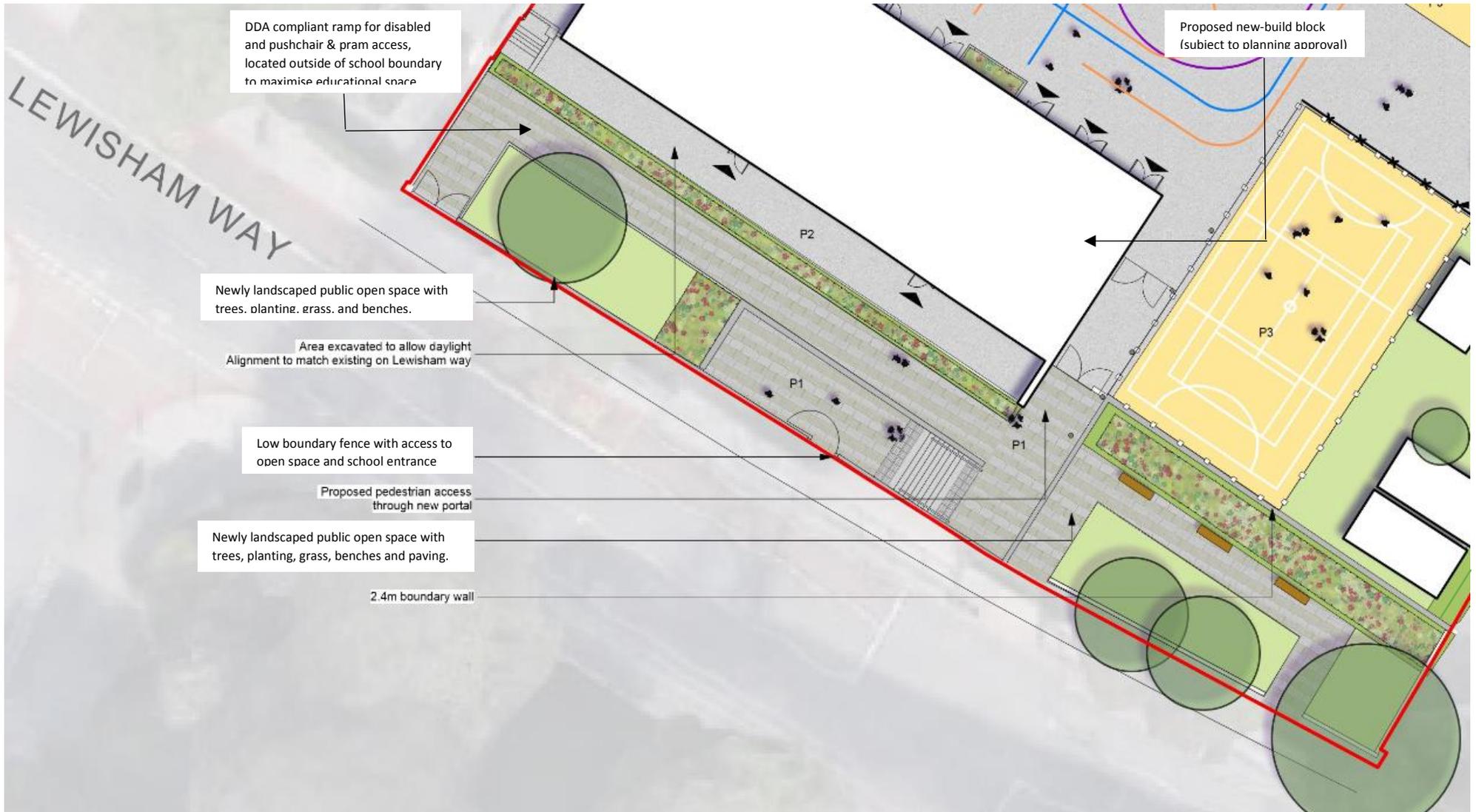
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Background Documents

Appendix 1: Proposed land uses



Appendix 2: Proposed Landscaping (Area 1 and Area 2)



Appendix 3: Proposed construction zones



Appendix 4: Consultation Responses