

## Notice of KEY Executive Decision

<b>Subject Heading:</b>	To approve land transactions for implementation of the new special school on St Edward's Church of England Academy site
<b>Cabinet Member:</b>	Councillor Robert Benham, Deputy Leader of the Council, Cabinet Member for Education, Children & Families
<b>SLT Lead:</b>	Robert South, Director Children's Services
<b>Report Author and contact details:</b>	Pooneeta Mahadeo School Organisation Manager <a href="mailto:pooneeta.mahadeo@havering.gov.uk">pooneeta.mahadeo@havering.gov.uk</a> 01708 431092
<b>Policy context:</b>	The local authority has a legal duty to meet the special educational needs of those children for whom it is responsible. The needs of pupils who require <i>provision additional to or different from that generally available</i> is determined by a formal assessment pursuant to the Children and Families Act 2014.
<b>Financial summary:</b>	<p>There will be financial implications to the land swap and the contribution given due to Stamp Duty Land Tax (SDLT). There has been no valuation of the land swapped which would have provided the market value to be used in the calculation of the SDLT.</p> <p>Additional contribution approved to St Edward's Church of England Academy is reduced from £0.800m to £0.400m.</p> <p>Given lack of market value of the land swapped a scenario approached calculation can be provided (table below). For an increase of c£1m in market value, the increase of SDLT will be c£50k.</p>

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	Assumed Land market value £'m	Contribution £'m	Total Value of the transaction £'m	SDLT £'k	Market Value Incremental £'m	SDLT Incremental £'k
	1	0.4	1.4	59.50	0	0
	2	0.4	2.4	109.50	1	50
	The full financial implication will be the total of contribution (£400k), the surveyor costs (£2k) and the SDLT (to be calculated based on market value provided). The financial implication will be covered by the budget of £800k allocated to this project.					
<b>Reason decision is Key</b>	Substantial change to the Cabinet decision on the 17 April 2019 on the proposal for the new special free school on St Edward's Church of England Academy site					
<b>Date notice given of intended decision:</b>	10 September 2021					
<b>Relevant OSC:</b>	Children and Learning					
<b>Is it an urgent decision?</b>	No					
<b>Is this decision exempt from being called-in?</b>	No					

### **The subject matter of this report deals with the following Council Objectives**

Communities making Havering	<input checked="" type="checkbox"/>
Places making Havering	<input type="checkbox"/>
Opportunities making Havering	<input type="checkbox"/>
Connections making Havering	<input type="checkbox"/>

***Place an X in the [] as appropriate***

## **Part A – Report seeking decision**

### **DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION**

To approve the following land transactions relating to the implementation of the new special school on St Edward's Church of England Academy:

- 1. A land swap of the Council's freehold interest in the land shown edged orange at Appendix 1 with St Edwards Academy's land shown edged magenta on the plan at appendix 1, in accordance with the Heads of Terms at Appendix 4. This transaction will be subject to contract and due diligence being undertaken on the titles and all necessary consents, including Secretary of State consent.
- 2. Subject to recommendation 1 for the Council to grant a 125 year lease on the land shown edged magenta on the plan at appendix 1 for the SEN school to Unity Schools Partnership together with granting a right of way through the Council's adjacent car park in accordance with the Heads of Terms at Appendix 4.
- 3. For the Council to grant a licence for 30 years duration to Unity Schools Partnership to use the adjoining Westlands Playing Fields to the west in accordance with the Heads of Terms and Appendix 5 with the Council reserving the right to restrict the licensee's activities to those parts of the playing fields outside the land that might be required for the proposed football club development.
- 4. To delegate authority to the Assistant Director Education to finalise all necessary arrangements set out at recommendations 1-3 and to enter into the legal documentation to give effect to the transactions.

### **AUTHORITY UNDER WHICH DECISION IS MADE**

Part 3, section 2.5, paragraph (t) of the Constitution gives the Lead Member the power to approve the 'in principle' decision of the Council disposing of or acquiring an interest in property or land where the disposal or acquisition receipt is not considered likely to exceed £1,000,000."

### **STATEMENT OF THE REASONS FOR THE DECISION**

1. Cabinet approved the new Havering SEND School to be sited on St Edward's Church of England Academy (St Edward's Academy) site at the meeting on 17 April 2019.

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2. An initial feasibility carried out by the Council identified that it would be possible to accommodate the new Havering SEND on the St Edward's Academy site by demolishing the music block at the front of the site and re-providing the music block, either via a new build block or within existing accommodation.
3. Cabinet approved additional funding of £800,000 to Unity Schools Partnership Trust for remedial works needed to St Edward's Academy arising from the proposed use of part of the school site by Havering SEND.
4. The DfE conducted their own feasibility and approved a revised location for the special school as shown in Appendix 1.
5. The Hornchurch Romford and Havering Educational Foundation (Foundation) are to grant a new 125 year peppercorn lease for a significant majority of the new school site to Havering SEND.
6. However, the Foundation was unable to grant a new 125 year peppercorn lease for part of the school site the Charities Commission were not prepared to approve the transaction as being within the charity's powers. Three alternative options were put forward by the Foundation:
  - (a) Swapping Foundation land for part of the St Edward's playing field (on the assumption that a like for like swap will take place i.e. that the Foundation will end up with an unencumbered freehold (which will necessitate a surrender of the LA's lease to Unity Schools Partnership (USP))
  - (b) Foundation leasing this land to USP for use for the new SEN school (as valuable consideration will need to be provided to the Foundation then this lease (presumably a 125 year lease) will need to be granted either for a premium or reserving a market rent (which it is presumed the DfE would need to fund))
  - (c) Foundation simply selling the required land to either USP or the DfE (to then be leased to USP on a traditional 125 year lease) (again as valuable consideration will need to be provided this would involve a price to be paid by the DfE to the Foundation representing the market value of land being sold)
7. Option (a) was more favourable for the LA as there is limited LA's funding for that school. As part of the bid the local authority was required to provide a site for the new SEN school. The SofS would provide the capital funding for the build.
8. Property services commissioned a land valuation the subject of which comprises two parcels of land that, are currently within the use and curtilage of the St Edwards Church of England Academy and are subject to a proposed "land swap" in order to facilitate the development of a SEND school, catering for both primary and secondary school pupils with social, emotional and mental health needs and Autistic Spectrum Disorder needs.

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9. The valuation report stated that either parties' position is not considered to be materially enhanced or disadvantaged through completion of the transaction at nil consideration – Appendix 2.
10. This was shared with the Foundation who also carried out their own valuation which concluded both sites to be of equitable value and therefore the Foundation has agreed the land swap.
11. The land swap has resulted in the following transactions in accordance with the agreed Heads of Terms (appendix 4):
  - St Edwards Academy will surrender their lease with the Council on the land shown edged orange to LBH as shown on the attached plan – Appendix 1.
  - The land edged magenta on the plan to the north owned by the St. Edwards Academy will then be swapped with the land edged orange to the south owned by LBH.
  - The Council will then grant a 125 year lease on the land edged magenta to SEN. The lease will include a right of way through the adjacent Council car park (outlined in green at Appendix 1) .St Edwards Academy currently has a licence on this land to use it as a car park. Details of the lease is contained in Appendix 4
12. St Edward's Academy currently has a licence for use of Westlands Playing Fields during school hours and term time. As the Special school has a deficit of outdoor space the DfE requested that a 30 year licence is done for the Special school to allow the use of the playing field land by the school. Details of this licence are contained in Appendix 5.

## **OTHER OPTIONS CONSIDERED AND REJECTED**

Do nothing – This risks the Authority not being able to fulfil its statutory duty to provide suitable, sufficient education for the children it is responsible for. Without this significant capital investment from the ESFA, the Council does not have the financial resource available to be able to fund a new special school to meet the needs of these children. The Average annual cost (excluding Level 1/2 funding where appropriate) for pupils with ASD/SEMH in out of borough provision is £33,132. As the number of children with SEMH/ASD is set to increase, the cost of sending SEMH/ASD children to out borough provision will only increase further. There are currently no ARPs established in Havering to meet the needs of children with SEMH.

## **PRE-DECISION CONSULTATION**

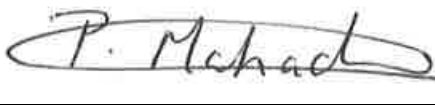
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Considerable negotiations and discussions have taken place with the DfE, Unity Schools Partnership Trust, The Hornchurch Romford and Havering Educational Foundation and the LA to conclude the way forward to secure the site for the special school.

**NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER**

Name: Pooneeta Mahadeo

Designation: School Organisation Manager

Signature: 

Date: 11/10/2021

## Part B - Assessment of implications and risks

### LEGAL IMPLICATIONS AND RISKS

The Council has a duty to provide sufficient provision in school places for local residents, and has the power to obtain or dispose of land in the exercise of its functions.

In law, a land swap takes effect as a disposal of land simultaneous with an acquisition. The Council's powers to voluntarily acquire, dispose and manage assets in land and property are contained within sections 120 and 123 of the Local Government Act 1972.

Under section 120, LGA 1972, the Council may acquire land by agreement for the purpose of any of its statutory functions or for the benefit, improvement or development of the area. For acquiring the St Edwards Academy land (both by the surrender of the lease and the freehold acquisition of the Academy land) the statutory function in both cases is education. The general power of disposal is found at section 123 of the Local Government Act 1972. This disposal power is invoked for the transfer of the freehold land to St Edwards Academy and the grant of the academy lease to Unity Schools Partnership.

Paragraph 20 of Schedule 1 of the Academies Act 2010 provides that the requirements of subsections of 2 and 2a of Section 123 of the LGA do not apply where the land to be disposed of is for the purposes of an academy. Therefore there is no requirement for the Council to transfer the freehold land or grant the 125 year lease for the best consideration reasonably obtainable. An open-market valuation of both sites forming the land swap has been obtained (see Appendix 2) and confirms that the proposed land swap agreement represents an equitable marketable value for the relevant plots of land.

It is proposed that Westland Playing Fields are licenced to the SEN on a 30 year licence. The playing fields are currently under licence to the St Edwards' Academy for use as playing fields during the school year and it is understood will continue to be used. The Department for Education has advised that the field are deemed as "education land" within the scope of the Academies Act 2010 and the Secretary of State therefore has the power to direct disposal of the land to the Academy in accordance with to Schedule 1 of that Act. Disposal is not directed in this instance but could be in the future as part of a wider scheme.

As the land is education land, the Secretary of State has the power under Paragraphs 1 and 2 of Part 1 of Schedule 1 of the Academies Act 2010 to require the land to be disposed of to facilitate a scheme for the provision of education. This power includes transitional and supplementary provision per subsection 3(3). This applies to the proposed grant of the 30-year licence of the Westland Playing Fields.

Legal Services will carry out a review of the title to both sites as part of the conveyancing process, to confirm the title is good and marketable and identify any title issues or

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restrictive covenants which may hinder the acquisition of the land or the use of the land for education purposes.

### **FINANCIAL IMPLICATIONS AND RISKS**

There will be financial implications to the land swap and the contribution given due to Stamp Duty Land Tax (SDLT). There has been no valuation of the land swapped which would have provided the market value to be used in the calculation of the SDLT.

Given lack of market value of the land swapped a scenario approached calculation can be provided (table below). For an increase of c£1m in market value, the increase of SDLT will be c£50k.

<b>Assumed Land market value £'m</b>	<b>Contribution £'m</b>	<b>Total Value of the transaction £'m</b>	<b>SDLT £'k</b>	<b>Market Value Incremental £'m</b>	<b>SDLT Incremental £'k</b>
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The ESFA have agreed to fund the building of a special school on a site provided by the LA.

Cabinet approved an additional £0.800m contribution to St Edward's Church of England Academy at its meeting on 17 April 2019 to enable the successful delivery of the Special school on the site. £0.400m from Special (SEN) provision fund capital allocations and £0.400m from the current contingency budget.

However, the DfE has approved another location for the special school and hence the school will no longer have to knock down their music block. The Council has reduced the contribution to £0.400m to be funded from the Special (SEN) provision fund capital allocations.

The full financial implication will be the total of contribution (£400k), the surveyor costs (£2k) and the SDLT (to be calculated based on market value provided). The financial implication will be covered by the budget of £800k allocated to this project.

### **HUMAN RESOURCES IMPLICATIONS AND RISKS (AND ACCOMMODATION IMPLICATIONS WHERE RELEVANT)**

There are no HR implications.



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### **EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS**

The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have due regard to:

- (i) the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (ii) the need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
- (iii) foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are: age, sex, race, disability, sexual orientation, marriage and civil partnerships, religion or belief, pregnancy and maternity and gender reassignment.

The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socio-economics and health determinants.

Our aspiration for all our children and young people are the same and this is that they should all have the best opportunities to achieve and fulfil their potential. Our aim for children and young people with special educational needs (SEN) is even more ambitious in that we want them to enjoy their education in the most inclusive environment possible and be supported in participating as fully as they can in the lives of their schools and local community.

An Equalities Impact Assessment was carried out for the special school and is attached as Appendix 3.

### **BACKGROUND PAPERS**

None

**Appendix 1 - Consolidated ownership Plan**

**Appendix 2 - Land valuation report**

**Appendix 3 – SEN Strategy - EIA**

**Appendix 4 – Heads of Terms for Land Swap and Lease**

**Appendix 5 – Heads of terms for Licence of Playing fields**

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For information: Cabinet report of 17 April 2019 – Proposal for the new special free school on St Edward's Church of England Academy site

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**Part C – Record of decision**

I have made this executive decision in accordance with authority delegated to me by the Leader of the Council and in compliance with the requirements of the Constitution.

**Decision**

Proposal agreed

*Delete as applicable*

Proposal NOT agreed because

**Details of decision maker**

Signed



Name: Councillor Robert Benham

Cabinet Portfolio held:

CMT Member title:

Head of Service title

Other manager title:

Date: 11<sup>th</sup> November 2021

**Lodging this notice**

The signed decision notice must be delivered to the proper officer, Debra Marlow, Principal Committee Officer in Democratic Services, in the Town Hall.

**For use by Committee Administration**

This notice was lodged with me on \_\_\_\_\_

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Signed \_\_\_\_\_