

**Report of:** Head of Property Services

**Report to:** The Director of City Development

**Date:** 8 September 2014

**Subject:** NIGHTINGALE PRIMARY ACADEMY, FLORENCE STREET, LEEDS, LS9 7AX

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Gipton and Harehills
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

### Summary of main issues.

1. The purpose of this report is to seek approval to the leasehold disposal of land at Florence Street shown on the attached plan 17344/E to the Co-operative Academies Trust to run a new school to be called the Nightingale Primary Academy, for use as an academy school in pursuance of the Academies Act 2010 and, if necessary, initially the entering into a tenancy at will for Nightingale Primary Academy in pursuance of the Academies Act 2010.
2. Nightingale Primary Academy will be a new-build primary school facility in East Leeds. Local authorities are no longer permitted to construct and operate new maintained schools. Under the Academies Act 2010 an authority must run a competition to find a suitable candidate to operate a new school which achieves academy status on opening. The Department for Education has approved the establishment of the new school and its academy status and has granted an Academy Order. Before the Academy opens, the DfE requires confirmation that the Council has agreed to grant a leasehold interest in the building and site to the Academy.
3. Due to the timescales for the Academy opening on the 1 September 2014 the whole of the new school build will not be completed before the school opens. Only part of the new school build will be available for occupation by the Academy (marked A on plan 17344/F). This will necessitate a two staged handover of the site as detailed below before the whole site is leased to the Academy. Given the fact that there are a number of minor issues outstanding in relation to collateral warranties the Council may not be in a position to grant lease(s) before 1 September 2014 but can enter

into a tenancy at will to meet the deadline. The outstanding issues will be resolved as soon as possible thereafter and the tenancy at will shall then terminate.

4. If documentation relating to warranties for the new school is not completed before the 1 September 2014 it will be necessary to enter into a tenancy at will as a temporary measure, the other leases being agreed once the tenancy at will terminates.
5. The wording for the tenancy at will, if required, is to follow the model agreement issued by the Department for Education. Advice from Legal Services has confirmed this model document to be sufficient for the Council's needs and protection.

## **Recommendations**

6. The Chief Officer Resources and Strategy is requested to agree to the leasehold disposal of part of the school site to be used by the Academy for the proposed Nightingale Primary Academy on a short-term lease to subsist until the whole of the new school site is ready for occupation. The short term lease will then terminate and the Co-operative Academies Trust will enter into a 125 year lease with the Council. The Chief Officer Resources and Strategy is therefore also requested to agree to the leasehold disposal of the whole of the school site for a term of 125 year lease at nil consideration when the whole of the new school build is constructed and ready for occupation on the basis outlined within this report. Additionally the Chief Officer Resources and Strategy is requested to agree, if necessary, to enter into a tenancy at will with the Co-operative Academy Trust as outlined within this report.

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## **1 PURPOSE OF THIS REPORT**

- 1.1 The purpose of this report is to seek approval to the granting of a short term lease of part of the school site (marked A on plan 17344/F) and following termination of the short term lease ultimately to the granting of a 125 year lease in respect of the whole of the school site (marked A and B on plan 17344/F) to the Co-operative Academies Trust for the Nightingale Primary Academy, in pursuance of the Academies Act 2010. Also to approve entering, if required, into a tenancy at will with the Co-operative Academy Trust in pursuance of the Academies Act 2010.

## **2 BACKGROUND INFORMATION**

- 2.1 Local authorities are no longer permitted to construct and operate new maintained schools. Under the Academies Act 2010 an authority must run a competition to find a suitable candidate to operate a new school which achieves academy status on opening.
- 2.2 At its meeting in July 2011, Leeds City Council's Executive Board approved public consultation on a number of proposals to meet a growing demand for primary school places in the city. One of these proposals was to create extra places in the Harehills planning area by holding a competition to create a new primary school on the Florence Street site. The location was approved as part of the overall

specification for the new school by Executive Board in January 2012. There then followed a statutory process to establish who would run the school, and in October 2012, the Executive Board approved the Co-operative Academies Trust as the preferred bidder to run the new 420 place school and nursery.

- 2.3 The DfE has approved the establishment of the new school and its academy status and has granted an Academy Order under section 4 of the Academies Act 2010.

### **3 MAIN ISSUES**

- 3.1 In order for the DfE to approve academy status for the Nightingale Primary Academy, it will require confirmation that the Council has agreed to transfer the site to the Co-operative Academies Trust to run the Nightingale academy school. The Heads of Terms to be granted to the Co-operative Primary Academy of Leeds are based on the DfE model lease (which all local authorities are required to use) in respect of the short term lease and the 125 year lease are summarised below:-

#### **Draft Heads of Terms for short term and long term leases**

1. Lease: The party to the leases will be the Co-operative Academies Trust to operate the Nightingale Primary Academy.
2. Demise: In respect of the short term lease all the land within the area marked A on the attached plan (subject to the arrangements noted above).  
In respect of the 125 year lease all the land within the area marked A and B on the attached plan.
3. Term: 3 years in respect of the short term lease and 125 years in respect of the long term lease when the whole site is ready for occupation by the Academy School.
4. Consideration: The consideration payable for the grant of the leases will be nil. The annual rental for the duration of the leases will be a peppercorn (if demanded).
5. Use:
  - a) For the purposes of the provision of education services by the tenant (as set out in any charitable objects of the academy trust and in accordance with the memorandum and articles of association of the academy trust from time to time); and
  - b) For community, fundraising and recreation purposes which are ancillary to the use permitted under a) above.
6. Termination: The lease will automatically determine on the termination of the funding agreement or in circumstances where there is no other funding agreement in existence.

7. Repair The lessee will be responsible for the repair and maintenance of the premises under the lease.
8. Alienation: The lessee can assign the tenancy, sub-let or part with possession of the whole or any part of the demise under the lease.
9. Legal Costs: Each party will be responsible for their own legal costs arising from the transaction.
10. Insurance: The tenant will be responsible for insuring the premises.

### **Tenancy at Will**

- 3.2. If the Council does not have in place the paperwork to complete a 3 year lease at the date when the Academy comes into effect it should be in a position to grant a tenancy at will at that date for the whole area shown on plan17344/E.
- 3.3 In-house legal advice has been sought regarding the current position and this has confirmed that the Council, when it owns a freehold, is able to grant a 125 year leasehold interest to an academy under the Academies Act.
- 3.4 The Department for Education has made available on its website a model 125 year lease agreement and a model tenancy at will. Advice from Leeds City Council's Legal Services Section has confirmed that the tenancy at will model agreement is appropriate for use in this instance to protect the Council's interest, to permit the conversion on the proposed conversion date and to allow an extra period to resolve outstanding issues.
- 3.5 If a tenancy at will is not entered into at the date upon which the Nightingale Primary Academy comes into effect then the school may be put into a position whereby it could call for the freehold to be transferred to them by way of a scheme set up by the Secretary of State.
- 3.6 The options relating to the proposal to enter into tenancies at will for the site are detailed below:
  - i Enter into a tenancy at will for financial consideration. Legal advice is clear that the Council has no authority for this under the Academies Act 2010. Any transfer of land must be at nil consideration under the legislation.
  - ii Enter into a tenancy at will at nil consideration. This is in line with statutory requirements.
  - iii Do nothing. Legal advice is clear that this is a statutory requirement imposed on the Council and which must be fulfilled to assist those schools which aspire to academy status. The risk from doing nothing is outlined at 4.7.2 below.

## **4 CORPORATE CONSIDERATIONS**

### **4.1 Consultation and Engagement**

- 4.1.1 Children's Services advises that a public consultation was held at the Compton Centre on Thursday 16 May 2013 between 4.30pm and 6.30pm. It was advertised through 400 invitations delivered to surrounding homes and leaflets displayed in the community centres and library in Harehills. Invitations featured a telephone number for those who were not able to attend the consultation or had any questions. The Compton Centre was conveniently placed to display plans and accommodate visitors close to the location of Nightingale Primary Academy site. Representatives from Children's Services, PPPU, NPS, Highways, Planning and the Academy Sponsor were present in order to answer any queries.
- 4.1.2 A Members briefing session took place on 24 April 2013 to inform Members of the proposed Nightingale Primary School development. A further briefing session took place on 24 July 2013 for Members to review the development of the site. Members invited to the briefing sessions included Ward Members for Gipton and Harehills and the Lead Executive Member responsible for Children's Services. Feedback from Members was used to inform the design, development and the detail submitted as part of the planning application.
- 4.1.3 Children's Services advises that the Director of Children's Services and Executive Member for Children's Services are aware of the proposal.

### **4.2 Equality and Diversity / Cohesion and Integration**

- 4.2.1 The proposals have no specific implications for equality, diversity, cohesion and integration.

### **4.3 Council Policies and City Priorities**

- 4.4 The proposals outlined in this report will impact on the Leeds City Council aim that Councillors are committed to improving outcomes for children and young people. *The Best Council Plan 2013-17* has, as one of its key objectives, to "build a child friendly city" by improving outcomes for children and families, with a focus on: its "obsessions" of looked after children, NEETs and attendance; raising educational standards and narrowing the gap for vulnerable groups; and ensuring enough school places as the City grows.

### **4.5 Resources and Value for Money**

- 4.5.1 Although the Council has a duty under s.123 of the Local Government Act 1972 (or the Housing Act 1995) to secure the best consideration that it reasonably can from the disposal of its property assets, this obligation is overridden by requirements of the Academies Act 2010 to enter into lease arrangements at nil consideration.
- 4.5.2 The proposed disposal at nil consideration is the Council's contribution to the delivery of the academy programme which is consistent with the educational policies and objectives of the Council.

- 4.5.3 The site is new so has not been entered in the asset register. The Council has authority to spend £10.27 million for construction of the school. Whilst the site will be leased by the Academy, ownership will remain with the Council and the premises will be required to operate as a school serving the Leeds 9 area. The Academy will be dependent on funding from the DfE. Should funding be withdrawn or the Academy cease to operate, the buildings and land will revert to the Council. The use of the land and premises by Co-operative Academies Trust as an academy school would represent value for money for the Council and as such would not have less than best implications, as it is a statutory function of the Council to provide education for children in Leeds.
- 4.5.4 The report referred to at 7.1 below, of the Chief Executive of Education Leeds to the Executive Board detailed the financial implications for the Council of the proposed academies in the process of being created in Leeds.

#### **4.6 Legal Implications, Access to Information and Call In**

- 4.6.1 Under Part 3 Section 3E Paragraph 2(a) of the Council's Constitution (Officer Delegation Scheme (Executive Functions)) the Director of City Development has authority to discharge any function of Executive Board in relation to the management of land (including disposals of land).
- 4.6.2 The Director of City Development has authority to take the decisions requested in this report under functions 1 and 10 (d) of the Director of City Development's sub delegation scheme.
- 4.6.3 The proposal constitutes an administrative decision and is therefore not subject to call in.

#### **4.7 Risk Management**

- 4.7.1 There is a risk that Co-operative Academies Trust may not proceed with the transfer. This is considered unlikely as the proposed academy is supported by the DfE.
- 4.7.2 The risk of not entering into the tenancy at will, if required, would be that the school could call for the freehold of the land and buildings to be transferred to it at nil consideration. By entering into a tenancy at will it is possible for the Council to exercise some degree of control by protecting its position as far as it is able within the limitations of the Academies Act 2010.

### **5 Conclusions**

- 5.1 The proposal should be supported in line with the DfE's making of an academy order enabling the school to convert to an academy school under section 4 of the Academies Act 2010.

### **6 Recommendations**

- 6.1 The Chief Officer Resources and Strategy is requested to agree to the leasehold disposal of part of the school site to be used by the Academy for the proposed Nightingale Primary Academy on a short-term lease to subsist until the whole of the new school site is ready for occupation. The short term lease will then

terminate and the Co-operative Academies Trust will enter into a 125 year lease with the Council. The Chief Officer Resources and Strategy is therefore also requested to agree to the leasehold disposal of the entire school site for a term of 125 year lease at nil consideration when the whole of the new school build is constructed and ready for occupation as outlined within this report. Additionally the Chief Officer Resources and Strategy is requested to agree, if necessary, to enter into a tenancy at will with the Co-operative Academy Trust as outlined within this report.

## **7 Background documents<sup>1</sup>**

7.1 None.

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<sup>1</sup> The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.