

**Report of** Director of City Development and Director of Children's Services

**Report to** Executive Board

**Date:** 25<sup>th</sup> June 2014

**Subject:** Transfer of the former Fir Tree Primary School, Lingfield Drive, Leeds 17 to the Khalsa Education Trust

Are specific electoral Wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, name(s) of Ward(s):	Alwoodley	
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 checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, Access to Information Procedure Rule number:		
Appendix number:		

### Summary of main issues

1. The council owns land and buildings in Alwoodley previously used as the Fir Tree Primary School which was being prepared for disposal under the council capital receipts disposal strategy.
2. The council has been approached by the Khalsa Education Trust and by the Department for Education (DfE), and their executive agency the Education Funding Agency (EFA) to use the ex-Fir Tree primary school site to house the Khalsa Science Academy. This is an established Free School currently operating from premises in Chapeltown, Leeds.
3. The EFA has declined to offer payment to the council in compensation for the site. The EFA has set out options which could be used through which the site would be transferred to the Khalsa Education Trust; these include compulsion using provisions contained in the Academies Act 2010.

### Recommendations

4. Executive Board is requested:
  - i. to consider the issues and options set out in this report and to determine the approach to be taken by officers in dealing with these matters.

## **1 Purpose of this report**

- 1.1 To outline to the Executive Board the background to the use of and potential disposal of the site previously used for Fir Tree Primary School, Alwoodley.
- 1.2 The report will also explain the approaches made by the Khalsa Education Trust and the Department for Education for the transfer of the site.

## **2 Background information**

- 2.1 The council owns the site at Lingfield Drive in Alwoodley Leeds which was until 2007 used by Fir Tree Primary School. Since then the site has been used to support the council in managing its basic need programme. It has been used by Allerton High School during 2009/10 and to assist with the decant of pupils for the new Bankside Primary School during 2010/11.
- 2.2 In July 2013 the site was declared surplus by Children's Services having considered at that time whether there would be a requirement for new school places at this specific location. Whilst there is a significant basic need requirement for the city it was determined that this was not an optimal site.
- 2.3 Once a site is declared surplus by the vesting department it is normally considered for other uses by the council or it is scheduled for disposals as part of the council's capital receipt programme. No other use has been identified for the council to use the site and the site was being prepared for consideration for disposal. The site has been valued and it is considered that it would realise a capital receipt of at least £900k for the council to reinvest in services. The site is most likely to be sold for housing and this would contribute to the council's Core Strategy housing targets with the site estimated to be able to deliver some 40 new homes.
- 2.4 As the site has been used as a school within the last eight years the council would be obliged to seek approval from government for the disposal of the site.
- 2.5 Members will be aware that government has introduced a new form of school, Free Schools, the organisation funding and support for which is provided directly by the DfE through the EFA. Free schools are state schools independent of the local authority and are academies (under the Academies Act 2010). Anyone can apply to set up a Free School by application to the DfE. Free School applications have been submitted by groups of parents, education charities, businesses, and community and faith groups. The educational impact of the Free School policy itself has not yet been fully reviewed nationally. However, the National Audit Office (NAO) looked at the establishment of Free Schools in their report in December 2013. The findings of the report were mixed. On the one hand they found that by implementing the Free Schools policy at pace the DfE has achieved clear progress on a policy priority. Balanced against this however, the NAO raised a number of concerns about issues which needed attention by the DfE including the capital cost of the programme to date and value of money. The Executive Summary of the NAO report is included as Appendix A.

### **3 Main issues**

- 3.1 The former Fir Tree Primary school site is in Alwoodley, Leeds and is considered to be suitable for disposal for housing or other uses. In total the site covers 4.5 acres and a plan of the site is attached as Appendix B. The amount of land which could be redeveloped would be subject to decisions on the retention or re-provision of the open and play spaces included in the site. Part of the site is protected playing pitches (2.01 acres) so for the valuation it is assumed that at least 2.49 acres could be redeveloped and this would realise a capital receipt to the council of at least £900k which the council would reinvest in services.
- 3.2 Members will be aware that the council is managing a programme of changes to the school estate in the city to deal with the demand of school places under the Basic Need programme. Since 2008 the council has delivered 1,133 new reception places in those parts of the city where demand for places has exceeded the established school admission limits. Despite rising demand in Leeds the requirement to provide new school places can be quite localised. In Alwoodley Children's Services assessed the need for new school places to be provided and determined at that time that it would not pursue the option to provide new places through a new school in the area. In July 2013 therefore it declared the Fir Tree primary school site surplus to its requirements. This has the effect of releasing the site to be considered for other uses and to be considered for disposal through the council's capital receipts programme.
- 3.3 This ward is considered to be attractive to developers and officers consider that there would be strong interest from developers to acquire the site for redevelopment. Once it was declared surplus to requirements by Children's Services in July 2013 the site was considered for other uses. As it would be considered attractive for disposal, steps were taken to assess the most effective route to enable the council to sell the site. In order for this to happen it was noted that the council would have to seek the approval of the government (through the Secretary of State for Education) and preparation for this route had been made.
- 3.1 The Khalsa Education Trust founded the Khalsa Science Academy in 2013 and opened in the Sikh Centre on Chapeltown Road in Leeds on the 2<sup>nd</sup> September 2013. The school is a primary school with an admission capacity of 210 pupils or one form of entry (30 pupils per year group). It is not designated by the DfE as a faith school but the Trust and DfE note that its teaching will operate with core Sikh values.
- 3.2 The Academy in conjunction with the DfE has identified the ex Fir Tree site as suitable as a permanent home for the school. There is no requirement in law for the council to provide land for Free Schools and officers initially sought to understand how the council would be compensated for the loss of this valuable site. The stance taken by the DfE is that there would be no benefit to the overall public purse if they compensated the council for the site and sought a transfer of the site at nil cost. The DfE was asked to confirm that it was prepared to direct the council that it was required (in law) to make such a transfer.
- 3.3 In response to this request, the Parliamentary Under Secretary of State for Schools, Lord Nash, wrote to the Director of Children's Services on the 29<sup>th</sup> April 2014 setting out the legislation which he could use to enforce the transfer of the

freehold of the site. His letter stated that he was persuaded that the Khalsa Science Academy will meet parental demand and has the support of the community and he was therefore minded to enforce the transfer of the freehold of the site under powers contained in the Academies Act 2010.

3.4 The letter concluded with the offer for the council to reconsider its position and offer to voluntarily transfer the site to the Academy at no cost. This would be on the basis of a 125 year lease at nil consideration.

3.5 The council therefore has a choice on how to proceed. It can agree to the voluntary transfer of the site at nil consideration. Executive Board would need to agree to this taking account of the economic, social and well-being which the proposal could provide in Leeds and would need to delegate responsibility for the details of the transfer to the Director of City Development, subject to the agreed consultation on transfers of this type. Alternately, it can decline to agree the voluntary transfer of the site and accept that the Secretary of State is minded to create a transfer scheme under academies legislation which would enforce the transfer of the freehold of the site with no compensation.

#### **4 Corporate Considerations**

##### **4.6 Consultation and Engagement**

4.6.1 The Executive Member for Children & Families and Executive Member for Transport & Economy are aware of the proposals. At the time of writing Ward Members are being consulted on the proposals.

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

4.7.1 The proposals have no specific implications for equality, diversity, cohesion and integration. An EDCI screening has taken place on the recommendations included in the report. The screening has indicated that a full EDCI assessment is not necessary although the screening showed that there were a number of positive benefits to communities arising from the proposal though the provision of new school places and the ability of the Khalsa Education Trust to expand the provision of places in their Science Academy and although the school will promote strong ethical standards it will not implement faith requirements in admissions.

##### **4.8 Council policies and City Priorities**

4.8.1 The proposals outlined in this report will impact on the Leeds City Council aim of Councillors committing to improve 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.

##### **4.9 Resources and value for money**

4.9.2 The council is required to seek to maximise the value it achieves from the sale of land and property. The council has determined that the site has a market value of at least £900k and it has a statutory responsibility to seek to achieve this best

consideration valuation. The council has the power to dispose of sites at less than best consideration and in this case the decision maker would be Executive Board.

- 4.9.3 Members will note that the council will also incur additional legal and surveyor costs to support the transfer of the site and these are estimated at around £10k.

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

- 4.10.1 The DfE is relying on the powers set out in Schedule 1 of the Academies Act 2010 (as amended) which enables the Secretary of State for Education to make a transfer scheme in respect of local authority land formerly used as a school in order to transfer the freehold interest in the land for the purposes of an Academy.
- 4.10.2 Members should note that in the Academies Act 2010 there is no provision for local authorities to be compensated for the transfer of its land for an Academy. However, nor is there a provision that the land should be transferred at nil consideration.
- 4.10.3 The council is required to obtain the best consideration it can when disposing of land (under section 123 of the Local Government Act 1972) and a decision to dispose at less than best consideration will rely on compliance with the provisions of the Local Government Act 1972 General Disposal Consent (England) 2003 or seeking specific consent for the Secretary of State. The terms of the General Disposal Consent require that the Council is satisfied that the proposed disposal is likely to contribute to the economic, social or environmental well-being of the Council's area or of local residents and that the undervalue does not exceed two million pounds. Executive Board would need to be satisfied that a voluntary disposal at less than best consideration met these conditions.

#### **4.11 Risk Management**

- 4.11.4 A decision to accept a voluntary transfer of the site will require the council to ensure compliance with state aid. In normal circumstances as Free Schools are publically funded state schools they would not contravene state aid rules. However, the council will need to ensure that any documentation for a transfer does not include provisions which would allow commercial gain as these could risk state aid contravention.
- 4.11.1 A voluntary transfer of the site through a long lease (at nil consideration) would retain an interest by the council in the site. In the event of termination of the lease (for example for breach of the lease or failure of the academy which were not rectified) the site would revert to the council. A freehold transfer of the site through a transfer scheme by the Secretary of State would eliminate the councils interest in the site.

### **5 Conclusions**

- 5.1 The Council has two options for dealing with the disposal of the site for the use proposed by the Department for Education. It can allow the Secretary of State to enforce the transfer by making a transfer scheme under the Academies Act 2010 and this would be at nil value and would, dependent upon the Secretary of State's

decision, require the transfer of the freehold interest of the site. Alternatively the Council could voluntarily transfer the site on a 125 year peppercorn lease, retaining the Council's freehold interest in the site.

## **6 Recommendations**

6.2 Executive Board is requested:

- i) to consider the issues and options set out in this report and to determine the approach to be taken by officers in dealing with these matters.

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

7.1 None

## **8 Appendices**

- A National Audit Office report "Establishing Free Schools" – Executive Summary
- B Plan of the former Fir Tree Primary School
- C Equality Impact Screening Form

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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.