

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

Report to: Executive Board

Date: 17th September 2014

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

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

Summary of main issues

1. In June 2014 Executive Board considered the issues and options for the disposal of the former Fir Tree Primary School site in Alwoodley. Executive Board requested that a further report be brought back which provided details on the following items:
 - the educational and wider needs of the local community and how this site may be utilised in order to maximise the benefit for that community;
 - the length of time that the site had been vacant;
 - the level of contact and discussions which had been held between all relevant parties; and
 - the terms on which any potential transfer may be made and the resource implications arising from this.
2. This report provides the details requested.
3. Should Executive Board agree to the transfer:-
 - It is envisaged that a transfer would be on a 125 year lease at a peppercorn rent;
 - If the transfer is not made voluntarily the Department for Education (DfE) has indicated that it will seek to serve a 'scheme' compelling the Council to transfer the freehold of the site to the DfE. This will be at nil value;

- If the Council is not satisfied that the transfer should be made it can make 'final' written representations to the DfE.

Recommendations

4. Executive Board is requested:

- i. to determine whether the Council will agree to the transfer of the former Fir Tree Primary School site to the Khalsa Education Trust and the basis of the terms for any such proposal; or
- ii. to determine whether the Council should make further representations to the Education Funding Agency (EFA) / DfE and the basis for those representations including the Council's agreement to dispose of the site to the DfE at open market value.

1 Purpose of this report

- 1.1 To provide details to the Executive Board on the issues relating to the background to the use of and potential disposal of the site previously used for Fir Tree Primary School, Alwoodley.

2 Background information

- 2.2 The Council owns land and buildings at Lingfield Drive in Alwoodley, Leeds which were, until 2007 the site of Fir Tree Primary School. Since then the site has been used to support the Council in managing its Basic Need programme. It was occupied by Allerton High School during 2009/10 and to assist in the decant of pupils for the new Bankside Primary School during 2010/11.
- 2.3 Following closure for education purposes, the site was held as a potential alternative location for Children's Services staff from Roundhay Road. Ultimately planning issues and the cost of refurbishment were deemed to be prohibitive.
- 2.4 The Council was approached by the Department for Education (DfE), and their executive agency the Education Funding Agency (EFA) on behalf of the Khalsa Education Trust, to use the former-Fir Tree Primary School site to house the Khalsa Science Adademy. This is an established Free School currently operating from premises in Chapeltown, Leeds.
- 2.5 The EFA has declined to offer payment to the Council in compensation for the site and has not complied with the Council's request for them to demonstrate the legal powers through which it can force the transfer of the site, without compensation to the Council.
- 2.6 The Council's preferred option for the disposal, which has been offered to the EFA but declined, is for the DfE to acquire the site from the Council at open market value.

3 Main issues

Educational and wider community needs

- 3.1 Executive Board, in June 2014, considered the future use of the site and requested details on the educational and wider needs of the local community and how this site may be utilised in order to maximise the benefit for that community.
- 3.2 Taking the educational needs of the local community first. These have been reviewed a number of times in the recent past. This led initially to the agreed closure of Fir Tree Primary School, the linked closure of the Archbishop Cranmer CE (VA) Primary School and the establishment of a 1.5 FE school as a consolidated provision on the Archbishop Cranmer site in September 2007.
- 3.3 During 2012 and 2013 Children's Services considered the requirement for school places in Alwoodley and the surrounding areas. This took into account the Primary Planning Areas for Alwoodley, for Roundhay and Wigton and for Meanwood. This review came to the conclusion that, whilst there are ongoing pressures on school places in the wider locality, providing a new school on this site was not an option Children's Services wished to pursue.
- 3.4 In terms of the use of the site for community use, East North East Area Management has been working with local community groups following a deputation to full Council from Lingfield and Fir Trees Residents Group in June 2007. The group was at that time seeking community use of the site and a report from the Directors of Environment and Neighbourhoods and Children's Services allowed Executive Board to consider the issues in August 2007. Executive Board at that time agreed that as the site was required for Education use until at least 2010 it would be appropriate for Area Management to work with partner agencies, through the Moor Allerton Partnership (MAP), to lead on a programme of public consultation and partner agency work to consider the future needs of the area for community activities, provision and facilities and that the Area Management Team and MAP also work together to facilitate the continuation of community activities and provision then being accommodated at Fir Tree Primary School.
- 3.5 East North East Area Management followed up this request with work with the MAP. An update report from 2006/7 confirmed that a key priority for the MAP was to ensure the long term viability of voluntary and community groups and valuable community services in Moor Allerton and investigate the potential to extend service provision. The East North East Area Support team undertook a Service and Community Needs Assessment for the Moor Allerton Partnership area which provided a comparison with current services compared to the services and facilities called for in the deputation. This report concluded that the MAP did have extensive facilities but the poor transport links within the area and a lack of interaction between the Firtree/Lingfield area and the Cranmer Bank and Queenshill areas were barriers to accessing facilities.
- 3.6 Efforts at that time concentrated on keeping Open House Community Centre on Lingfield Approach operating. It was the key community facility in the Lingfields/Firtrees area, in a double commercial unit managed by Moor Allerton

Community Association (MACA) on a peppercorn lease from the Council. However it was starting to become financially unsustainable, and there were tensions between MACA and the Lingfield/Firtrees Tenants & Residents Association. In 2010 MACA gave up its lease on Open House and dissolved their association. Open House continued to operate, directly managed by the East North East Area support team, for a further year whilst options for keeping it open were explored.

- 3.7 Consultation undertaken in January 2012 with the local community about local facilities and activities met with very little interest both in what they would like to see in the area, and in keeping Open House operating. The only organisation interested in taking over the running of the centre was Lingfield & Firtrees TRA. The business case presented by the Lingfield TRA was not sufficiently robust to demonstrate that they could sustain the centre beyond the first year, and they turned down an offer of support from Moor Allerton Churches Together. Subsequently Open House closed down in September 2012 with the support of Ward Members and with no outcry from the local community. Services being delivered from Open House were relocated to other venues in the Moor Allerton area, but not necessarily in the Lingfields/Firtrees area.
- 3.8 Throughout this time the Moor Allerton Partnership and East North East Area Support Team have continued to work with Ward Members to encourage and support the delivering local services and activities for the area.
- 3.9 The following table shows the current facilities, services and activities in the Moor Allerton area, including walking times and distances from Lingfield Approach, the location of the former Open House Community Centre.

Facility	Distance from Lingfield Approach (miles)¹	Walking time (minutes)
Alwoodley Children's Centre, Lingfield Approach. Services for families with children under 5.	0.2	3
Northcall Community Centre, Cranmer Bank which provides a range of activities and advice sessions for children and families, including cookery classes, IT, fitness classes, youth club and a community café.	0.8	15
MAECare, Cranmer Bank. Services for people over 60 in Moortown, Alwoodley and Shadwell. Uses a variety of venues to deliver their services which include sport and leisure activities, advice sessions, and home visits. MAECare	0.8	15
Moor Allerton Library, (Moor Allerton Centre), King Lane. Lending library services, IT facilities and training plus a careers advice service.	0.5	9
FY20, next door to Moor Allerton library. Small community space. Venue for Council Youth Service sessions and available to other community groups.	0.5	9

¹ Calculated using Walk.it.com Times based on medium walking pace

St Johns C of E Church, Fir Tree Lane. Main hall available to let and can accommodate approximately 100 people. Used by uniformed groups, luncheon clubs, coffee mornings and keep fit classes.	0.6	13
Moortown Baptist Church, on King Lane. Main hall and smaller rooms for hire, and also organises a number community based activities such as a youth club and luncheon clubs for senior citizens.	0.6	13
Moortown Methodist Church, Alderton Rise. Worship and social activities. Main hall and smaller rooms available for hire. Distribution centre for the North Leeds Foodbank.	0.8	15
Marjorie & Arnold Ziff Centre, Stonegate Road. Café, restaurant, meeting and function rooms, computer suite, and facilities for younger children.	0.6	13
Former Lingfield Pub site, Lingfield Approach. Owned by the UK Islamic Mission which has planning permission for a change of use to a community and welfare centre with prayer facilities. Currently no timescales for when it will open.	0	0

- 3.10 The East North East Area Support Team has confirmed a willingness to provide support to the school and local communities groups to find suitable community uses within the new school.
- 3.11 In considering the proposal for Khalsa to use the site as a school it is appropriate to note that both Khalsa and the EFA have expressed a willingness for the school to work with the local community and for the new school to be open to appropriate uses by the community. The EFA has confirmed that it is content to pursue the options available and this would most likely be through the Area Management team.

Site vacancy period

- 3.12 Executive Board, in June 2014, considered the future use of the site and requested details on the length of time that the site had been vacant.
- 3.13 The site was occupied by Fir Tree Primary School until 2007. Subsequently it was used by Allerton High School during 2009/10 and to assist in the decant of pupils for the new Bankside Primary School during 2010/11.
- 3.14 Following final closure of the school for education purposes in 2011 the site was held as a potential alternative location for Children's Services staff from Roundhay Road. The site was surveyed, schemes were drawn up and estimates obtained. Ultimately planning issues and the cost of refurbishment were deemed to be prohibitive.
- 3.15 Once it became clear that the school would be unsuitable for retention as offices the site was declared surplus in July 2013 and was being prepared for disposal under the Council's capital receipts disposal strategy.

- 3.16 Whilst this work was ongoing Khalsa Science Academy, in conjunction with the DfE, identified the site as potentially suitable to accommodate the free school currently operating from premises in Chapeltown and the Council was approached with a view to making a transfer of the site to Khalsa.

Contact with the Department for Education, Education Funding Agency and representatives

- 3.17 Executive Board, in June 2014, considered the future use of the site and requested details on the level of contact and discussions which had been held between all relevant parties. What follows are details of the contacts with the DfE and the EFA on the proposals and on contacts which the Council has established with Khalsa.
- 3.18 Members should note that there have been positive discussions between the Council and Khalsa in relation to the establishment of Khalsa as a Free School. However, those discussions in connection with the proposal for Khalsa to move its school to the former Fir Tree site have been directly with the EFA. All decisions around the approvals of Free Schools are wholly matters for the DfE and local authorities are merely consultees throughout the process.
- 3.19 It is considered that legislation relating to the transfer of land to free schools is ambiguous. Therefore, following the approach by the EFA, officers sought to understand the powers upon which the DfE will rely and sought clarity as to the terms on which the transfer could take place.
- 3.20 Children's Services and City Development were approached in November 2013 by a private property agency firm acting on behalf of the EFA and Khalsa, with a view to securing the former Fir Tree Primary site for the Free School. A meeting was held between representatives of the firm, the EFA, Children's Services and City Development in early December 2013.
- 3.21 Following advice from Legal Services the EFA was asked to provide definitive details of how the legislation permits the course of action being requested, which was for the Council to dispose of the site without the EFA making a payment. Following a series of written and verbal exchanges which followed the meeting in December 2013 between the Council, the EFA and their legal advisors no significant progress was made and no clear response was provided by the DfE on the legal power they have to insist the site be transferred without compensation.
- 3.22 In February 2014 the EFA Divisional Director (Free Schools) confirmed that he was referring the matter to Ministers, who would advise on the approach they wished the EFA to take in respect of this site.. As a result the Council received a letter from the Schools Minister stating that he was minded to make a property transfer scheme in respect of the site and information relating to the site was requested.
- 3.23 It is understood that the DfE is the only Government department which can demand a land transfer without reference to a site's open market value.
- 3.24 Contact by Council officers directly with Khalsa has been limited. Arrangements for the establishment of the Free School in the first instance were matters

between the EFA and Khalsa, although Khalsa did initiate consultation with the council on their initial proposals. Once the Free School bid had been approved, the EFA led and held all discussions on the establishment of the school including any planning or other matters with council officers. Discussion for the use of the former Fir Tree site for the school were led and conducted by the EFA.

Admissions to the Khalsa Science Academy are through the Council's admission system and contacts exist to enable this statutory arrangement to operate.

The terms of a potential transfer

- 3.25 Executive Board, in June 2014, considered the future use of the site and requested details on the terms on which any potential transfer would take place and the resource implications arising from this.
- 3.26 The options available to the Council are:
- to work with the EFA to agree a voluntary transfer of the site under a leasehold arrangement on a 125 year lease at a peppercorn rent. The EFA has indicated that it will not pay a premium for the site so this option would not generate a capital receipt. As previously reported the Council would forego an expected receipt of around £900,000.
 - the EFA has indicated that, if the Council does nothing or if it does not agree to a voluntary transfer, the Secretary of State is minded to create a property transfer scheme to force the transfer of the site (as she is entitled to do under the Academies Act 2010). The EFA has stated that, if this route is followed, it would seek a freehold transfer of the site without compensation.
 - although the Council has not identified a need for a school in this area the EFA view is that the proposed transfer should be made. In this respect there appears to be little flexibility as the EFA has indicated it would find it very difficult to make any payment for the site as this would potentially create a precedent for future site transfers. Similarly the EFA would not wish to serve a scheme to transfer a leasehold interest because of potential precedents. However the EFA did suggest that the Council has an opportunity to make a "final" written case as they left this door open in their last letter. The Council may wish to make a case to resist the transfer or request certain terms be applied to any transfer.
- 3.27 Members will note that each party is responsible for its own legal and professional costs in connection with this transaction but that the Council will incur additional legal and surveyor costs to support the transfer of the site and these are estimated at around £10,000.
- 3.28 Members should also note that the EFA has confirmed that it plans for Khalsa to be able to operate from the former Fir Tree site from September 2015.
- 3.29 Children's Services' view on the proposed transfer of the site for the purposes of a free school is based on their knowledge of the local demand for school places in Alwoodley and the surrounding area. The Alwoodley and Moortown areas have pressure on school places at present, however the 2014 entry to schools in the Alwoodley area specifically represents a peak year with births in the area falling in

each of the subsequent years. Much of the ongoing pressure on places is further into Roundhay. The Fir Tree site is very close to a neighbouring school and this proximity may give rise to concerns about the future sustainability of two existing schools in the locality. Khalsa Science Academy, with its Sikh ethos, may offer an attractive alternative to families from a wider area, as well as the local community.

- 3.30 Under current legislation because the site has been used as a school within the last eight years the Council would be obliged to seek approval from the Secretary of State for Education for the disposal of the site, effectively preventing sale of the site in any event.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 The Executive Member for Children & Families and Executive Member for Transport & the Economy are aware of the proposal. Ward Members have been consulted on the proposals for Khalsa to use the Fir Tree site and support the proposals.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 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.

4.3 Council policies and City Priorities

- 4.3.1 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: ensuring the best start in life; reducing the number of looked after children; NEETs and attendance; raising educational standards; and ensuring enough school places as the City grows.

4.4 Resources and value for money

- 4.4.2 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 £900,000 and, ordinarily, 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.
- 4.4.3 As noted above the Council will also incur additional legal and surveyor costs to support the transfer of the site and these are estimated at around £10,000.

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 A request has been received from the DfE via the EFA for the Council to dispose of the site to the Khalsa Education Trust for use for the purposes of the Khalsa Science Academy which is a free school.
- 4.5.2 Free schools are established as academies under the Academies Act 2010. The provisions relating to the transfer of land for academies confer on the Secretary of State for Education the power to make a scheme requiring the transfer of the freehold or the lease of land from a local authority to a person concerned with running an academy. This power applies to land which at any time in the preceding eight years was used wholly or mainly for the purposes of a maintained school and is no longer so used or is about to be no longer so used or the Secretary of State thinks it is to be no longer so used. As the land in question has been used for the purposes of a maintained school within the last eight years then this seems to apply, giving the Secretary of State the power to require the Council to transfer the land.
- 4.5.3 Executive Board has previously been notified (14 December 2011) of the principles governing the conversion of schools to academy status. However legislation relating to the transfer of land to free schools is more ambiguous than that for academy transfers.
- 4.5.4 Members should note that in the Academies Act 2010 there is no provision for a local authority to be compensated for the transfer of its land to an academy, nor is there a provision that the land should be transferred at nil consideration. Additionally that there are provisions within the Academies Act 2010 for the Secretary of State to make a transfer scheme. However in the absence of such a scheme the Academies Act 2010, as currently drafted, does not compel a local authority to dispose of a school site to a free school, nor does it give a council the power to do this voluntarily.
- 4.5.5 The Class Consents given by the Secretary of State under Schedule 1 of the Academies Act 2010 and section 77 of the School Standards and Framework Act 1998 to enable local authorities to dispose of land held for school purposes and school playing fields respectively do not give consent for the disposal of land for the purposes of free schools, although there is a class consent giving consent to dispose of such land for the purposes of an academy where an academy order has been made in respect of a local authority maintained school which uses the land. As this is not the case here (because Khalsa Science Academy is not a maintained school), the Council would have to make an application to the Secretary of State for consent to dispose of the land to the Academy under Schedule 1 to the Academies Act 2010 and Section 77 of the School Standards and Framework Act 1998.
- 4.5.6 In the absence of any requirement or power within the Academies Act 2010 for local authorities to dispose of land for nil consideration to free schools, the Council would have to dispose of the land under the power granted by section 123 of the Local Government Act 1972. In order for the Council to dispose of a property at a 'less than best consideration', it would need to be satisfied that an appropriate General Disposal Consent could be used for the disposal or would need to obtain specific consent for the purposes of section 123.

- 4.5.7 A decision to dispose at less than best consideration will depend upon compliance with the provisions of the Local Government Act 1972 General Disposal Consent (England) 2003 or on 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 under-value 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.
- 4.5.8 The requirements of the Academies Act 2010 override the Council's duty under section 123 of the Local Government Act 1972 to secure best consideration.
- 4.5.9 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.
- 4.5.10 In this regard the transfer is not discretionary or a matter for Leeds City Council to approve but is required by legislation. However, it is not clear from the legislation that the DfE can force the transfer of the site without paying a premium for the transfer.

4.6 Risk Management

- 4.6.1 A decision to accept a voluntary transfer of the site will require the Council to ensure compliance with state aid legislation. In normal circumstances, as free schools are publically funded state schools they would not contravene state aid rules. However, the Council will need to be certain that any documentation for a transfer does not include provisions which would allow commercial gain as these could risk contravention of state aid provisions. A voluntary transfer of the site by way of a 125 year lease (at nil consideration) with the Council as Landlord would mean the Council retains an interest in the site and some control of it through the lease. In the event of termination of the lease (for example if the Funding Agreement is terminated and there is no other Funding Agreement in existence) the site would revert to the Council.
- 4.6.2 A freehold transfer of the site through a transfer scheme by the Secretary of State would eliminate the Council's interest in the site.
- 4.6.3 The making of a 'final' written case to the EFA/DfE may give the Council the opportunity to make representations but, unless a compelling reason can be given for not transferring the site is unlikely to be viewed favourably.

5 Conclusions

- 5.1 The Council has three options for dealing with the disposal of the site for the use proposed by the Department for Education
- It could 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.

- It could voluntarily transfer the site on a 125 year peppercorn lease, retaining the Council's freehold interest in the site.
- It could make 'final' representations to the DfE as outlined at 3.32 above.

6 Recommendations

6.1 Executive Board is requested:

- i) to determine whether the Council will agree to the transfer of the former Fir Tree Primary School site to the Khalsa Education Trust and the basis of the terms for any such proposal; or
- ii) to determine whether the Council should make further representations to the Education Funding Agency (EFA) / DfE and the basis for those representations including the Council's agreement to dispose of the site to the DfE at open market value.

7 Background documents²

7.1 None

8 Appendices

8.1 Plan of the former Fir Tree Primary School

8.2 EIA Screening Form

² 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.