

Public Document Pack

EXECUTIVE BOARD

9TH MAY 2013

**LATE ITEM TRANSFER OF SCHOOL SITES UNDER THE SCHOOLS STANDARDS
AND FRAMEWORK ACT 1998 AND THE SCHOOLS ORGANISATION (PRESCRIBED
ALTERATIONS TO MAINTAINED SCHOOLS) (ENGLAND) REGULATIONS 2007**

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Report of: Director of Children’s Services & Director of City Development

Report to: Executive Board

Date: 9th May 2013

Subject: Transfers of school sites under the Schools Standards and Framework Act 1998 and the Schools Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007



Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" 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. Under the School Standards & Framework Act 1998 (“the Act”) the Council is required to transfer land (other than playing fields) which is held or used by a local authority for the purposes of the school to the governing body, the foundation body or the trustees of any school that falls within the remit of the Act (“the Holding Body”). The land is to be transferred for nil consideration, to be held by them for the purposes of the school. For the purposes of this report, land includes the building structures attached to it.
2. Schools which fall within the remit of the Act are usually, but not limited to, the following: foundation schools, voluntary controlled and voluntary aided schools and foundation special schools (Applicant Schools).
3. The requirements of the Act override the Council’s duty under section 123 of the Local Government Act 1972 to secure best consideration.
4. In this regard the transfer is not discretionary or a matter for Leeds City Council to approve, but is required by legislation. The transfer of land that is required by the Act only relates to land that is used or held for the purposes of a school and this excludes playing field land. However, it may be agreed between the Council and a school that on a specific site the school playing field land will transfer subject to and in accordance with section 77 of the Act. This section protects school playing fields against disposal, unless with the consent of the Secretary of State. Any requests for other land not covered by the act will be considered on their individual merit, including whether to

dispose of land at full market value or at less than best – this will be at the Council's discretion.

5. The Applicant Schools can, in accordance with the Act, require a local authority to provide land to form part of their school premises and the Council is required to transfer this land for nil consideration.
6. A report relating to land transfers under the Act was previously approved at the Executive Board held on 20th June 2012, however colleagues in legal services have advised that the report only covered C of E Diocese schools. Further approval is therefore sought to wrap up all transfers of land under the SSFA, covering all faith schools to include C of E, Catholic, Jewish and any other applicable faith under the Act.
7. It is proposed that the Executive Board approve the transfer of land to the Applicant Schools as required by the Act. A Governing Body of a school will be responsible for insurance and for internal and external repair and maintenance.
8. A local authority does not have to transfer school playing fields unless both parties agree and the local authority has obtained the written consent of the Secretary of State for Education.
9. The Controlling Body cannot dispose of any of the land without notifying the Council and obtaining the written consent of the Secretary of State for Education (under Schedule 22 of the Act). The Secretary of State may do one or more of the following:
 - (a) require the land or any part of the land to be transferred to such local authority as he may specify subject to the payment by the authority of such sum by way of consideration (if any) as he determines to be appropriate; and
 - (b) give the Governing Body when the land or any part of the land is disposed of:
 - (i) a direction to pay, either to him or to such local authority as he may specify, the whole or any part of the proceeds of disposal; and
 - (ii) a direction as to the use to which the whole or any part of the proceeds of disposal should be put.
10. Subject to the above being approved, it is also proposed that Executive Board delegate approval of the detailed terms for the transfer to the Director of City Development in consultation with the Director of Children's Services, Executive Member for Children's Services and appropriate ward members.
11. This report has been entered as a late agenda item for the 9th May Executive Board Meeting, as there is one specific transfer that needs to be progressed by the end of May in relation to Brodetsky Primary School, as detailed under Section 3.0 (Main Issues). Executive Board approval to transfer land under the act is therefore required in May.

Recommendations

1. Executive Board is requested to approve the transfer of Council owned land to Applicant Schools, as set out in this report and to delegate approval of the detailed terms for the transfers to the Director of City Development in consultation with the Director of Children's Services, Executive Member for Children's Services and appropriate ward members.
2. Executive Board is asked to approve the principal of transferring land to Applicant Schools on the basis set out in this report and to delegate final approval of the terms of such disposals to the Director of City Development.

1.0 Purpose of this report

- 1.1 The purpose of this report is to seek approval in principle from the Executive Board, for the transfer of land to Applicant Schools under the control of Leeds City Council, in accordance with the Act.

2.0 Background Information

- 2.1 Under the School Standards & Framework Act 1998 ("the Act") the Council is required to transfer land (other than playing fields) which is held or used by a local authority to the Controlling Body of an Applicant School for the purposes of the school.
- 2.2 The land is to be held by the Controlling Body for the purposes of the school.
- 2.3 The requirements of the Act override the Council's duty under section 123 of the Local Government Act 1972 to secure best consideration.
- 2.4 In this regard the transfer is not discretionary or a matter for Leeds City Council to approve but is required by legislation. The exceptions to this would be transfers of school playing field land, which would be dealt with where appropriate by way of a class consent from the Secretary of State.
- 2.5 Under section 77 of the School Standards and Framework Act 1998, a local authority may not dispose of school playing fields without first obtaining the consent of the Secretary of State. Subsection (5) provides that "the Secretary of State's consent may be given in relation to a particular disposal or change of use or generally in relation to disposals or changes of use of a particular description, and in either case may be given subject to conditions."
- 2.6 It is in exercise of these powers that the Secretary of State can grant a "class consent" which allows for disposal of school playing fields that fall within certain categories; subject to the local authority providing the Secretary of State with information regarding the school and school playing fields concerned. The current class consent is The School Playing Fields General Disposal and Change of Use Consent (No 4) 2012; however this may be superseded in the future by any other

relevant consent the Secretary of State has power to grant under s.77(5) SSFA 1998.

- 2.7 All school playing fields (whether they are included or excluded from a transfer) are protected under section 77 of the Act against future disposal unless with the consent of the Secretary of State.
- 2.8 Section 123 of the Local Government Act 1972 provides that, except with the consent of the Secretary of State, the Council shall not dispose of land, other than by way of a lease for seven years or less, for a consideration less than the best that can reasonably be obtained. Whilst that provision is overridden by the provisions of the School Standards & Framework Act 1998, it remains the case that transfers at less-than-best consideration for the purposes of the Council's policy on such disposals will require Executive Board approval.
- 2.9 In considering an Applicant School's request for the transfer of school playing fields, Children's Services will have regard to future education delivery and to future maintenance liabilities. Authority for inclusion of school playing fields within a transfer will be sought from the Director of Children's Services or other Officer authorised to do so through the sub-delegation scheme.
- 2.10 A report relating to land transfers under the Act was previously approved at the Executive Board held on 20th June 2012, however colleagues in legal services have advised that the report only covered C of E Diocese schools rather than all faith schools applicable under the Act.

3.0 Main issues

- 3.1 Schools can, in accordance with the Act, call for sites to be transferred to them and the Council is required to transfer this land for nil consideration.
- 3.2 As highlighted at 2.10 above, a report relating to land transfers under the Act has previously been submitted, however colleagues in legal services have advised that the report only covered C of E Diocese schools. Further approval is therefore sought to wrap up all transfers of land under the SSFA to any school so entitled (including playing fields where agreement is in place and Secretary of State consent has been given), covering all faith schools to include C of E, Catholic, Jewish and any other applicable faith under the Act.
- 3.3 It is proposed that Executive Board approve the transfer of the land to Applicant Schools as required by the Act on the basis that the land being transferred has been called for by a school in accordance with the Act;
- 3.4 Any school playing fields (whether they are included or excluded from a transfer) are protected against future disposal under section 77 of the Act unless with the consent of the Director of Children's Services and the Secretary of State.
- 3.5 A Controlling Body cannot dispose of any of the land without notifying the Council and obtaining the written consent of the Secretary of State for Education (under

Schedule 22 of the Act). The Secretary of State may do one or more of the following:

- a) require the land or any part of the land to be transferred to such local authority as he may specify subject to the payment by the authority of such sum by way of consideration (if any) as he determines to be appropriate; and
- b) give the Governing Body when the land or any part of the land is disposed of;
 - (i) a direction to pay, either to him or to such local authority as he may specify, the whole or any part of the proceeds of disposal; and
 - (ii) a direction as to the use to which the whole or any part of the proceeds of disposal should be put.

3.6 Subject to the above being approved, it is also proposed that Executive Board delegate approval of the detailed terms for any transfer to the Director of City Development in consultation with the Director of Children's Services, Executive Member for Children's Services and appropriate ward members.

3.7 This report has been entered as a late agenda item for the May Executive Board meeting. Whilst this report covers all future transfers that may be requested under the act, there is one specific transfer that needs to be progressed by the end of May in relation to Brodetsky Primary School.

3.8 We have been advised that the availability of DfE funding for the new proposed Free School on the Brodetsky Primary School site is conditional upon the remaining land held by LCC being transferred. The DfE will not sign the Funding Agreement that will allow the Brodetsky Jewish Primary School Foundation Trust to commence with construction works as programmed, to develop their free school provision in time for September 2013. Any significant delays will mean that the opening of the free school will have to be delayed until September 2014. Executive Board approval to transfer land under the act is therefore required in May, along with delegation of final approval of the terms of such disposals to the Director of City Development.

4.0 Corporate Considerations

4.1 Consultation and Engagement

4.1.1 The Director of Children's Services, Executive Member for Children's Services and appropriate ward members in wards affected will be notified of proposed transfers required by Applicant Schools under the Act.

4.1.2 Children's Services will report back to Executive Board at six-monthly intervals with details of school site transfers undertaken on the terms outlined in this report.

4.2 Equality and Diversity / Cohesion and Integration

4.2.1 An EDCI Screening form has been completed and submitted to the Equality Team (copy attached at Appendix 1). The screening process has determined that it is not

necessary to undertake an EIA in relation to either this report or the transfer of land to faith schools, due to the requirement to transfer land being set within legislation that the Council has no control over.

4.3 Council Policies and City Priorities

4.3.1 The transfers of school land to applicant schools will impact on the “Narrowing the Gap” and “Going up a League” agendas. Applicant schools in Leeds have the potential to contribute to the targets to meet key priorities within the Children and young People’s Plan and the work on the Local Area Agreement.

4.4 Resources and Value for Money

4.4.1 Transfers at nil consideration under this legislation are not discretionary or a matter for Leeds City Council to approve, but are required by legislation except where noted at 2.4, 2.5 and 2.6 above.

4.4.2 The use of the land and buildings by a school would represent a statutory obligation 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 Legal Implications, Access to Information and Call In

4.5.1 Although the Council has a duty under section 123 of the Local Government Act 1972 to secure the best consideration that it reasonably can on a disposal of land, that obligation is overridden by the requirements of the Act.

4.5.2 This report is subject to Call In.

4.5.3 This report is being tabled as a late agenda item, as there is one specific transfer that needs to be progressed by the end of May in relation to Brodetsky Primary School as detailed under Sections 3.7 & 3.8. Executive Board approval to transfer land under the act is therefore required in May, along with delegation of final approval of the terms of such disposals to the Director of City Development.

4.6 Risk Management

4.6.1 Land is being transferred from the Council, removing it from Council control. There are several checks built in to the legislation meaning that the consent of the Director of Children’s Services and / or the Secretary of State is required, should any alterations be proposed to the way that transferred land is used.

5.0 Conclusions

5.1 The proposals set out in this report should be supported to enable the Council to meet its obligations under the School Standards & Framework Act 1998.

6.0 Recommendations

6.1 Executive Board is requested to approve the transfer of Council owned land to Applicant Schools as set out in this report.

6.2 Executive Board is asked to approve the principal of transferring land in the ownership of the Council and which an Applicant School may call for, to the Controlling Body on the basis set out in this report and to delegate final approval of the terms of such disposals to the Director of City Development.

7.0 Background documents¹

7.1 None

¹ 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.

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Equality, Diversity, Cohesion and Integration Screening



As a public authority we need to ensure that all our strategies, policies, service and functions, both current and proposed have given proper consideration to equality, diversity, cohesion and integration.

A **screening** process can help judge relevance and provides a record of both the **process** and **decision**. Screening should be a short, sharp exercise that determines relevance for all new and revised strategies, policies, services and functions.

Completed at the earliest opportunity it will help to determine:

- the relevance of proposals and decisions to equality, diversity, cohesion and integration.
- whether or not equality, diversity, cohesion and integration is being/has already been considered, and
- whether or not it is necessary to carry out an impact assessment.

Directorate: Children's Services	Service area: Contracting and Strategic Investment
Lead person: Nigel Wilson	Contact number: 22 43083

1. Title: Transfer of land to Faith Schools under the Schools Standards and Framework Act 1998			
Is this a:			
<input checked="" type="checkbox"/> Strategy / Policy	<input type="checkbox"/> Service / Function	<input type="checkbox"/> Other	
If other, please specify			

2. Please provide a brief description of what you are screening
The decision whether or not to approve the transfer of Council owned land to Faith Schools under the Schools Standards and Framework Act 1998 and for Executive Board to approve the principle of delegating that approval from the Executive Board to the Director of City Development.

3. Relevance to equality, diversity, cohesion and integration
All the council's strategies/policies, services/functions affect service users, employees or the wider community – city wide or more local. These will also have a greater/lesser relevance to equality, diversity, cohesion and integration.

The following questions will help you to identify how relevant your proposals are.

When considering these questions think about age, carers, disability, gender reassignment, race, religion or belief, sex, sexual orientation and any other relevant characteristics (for example socio-economic status, social class, income, unemployment, residential location or family background and education or skills levels).

Questions	Yes	No
Is there an existing or likely differential impact for the different equality characteristics?		X
Have there been or likely to be any public concerns about the policy or proposal?		X
Could the proposal affect how our services, commissioning or procurement activities are organised, provided, located and by whom?	X	
Could the proposal affect our workforce or employment practices?		X
Does the proposal involve or will it have an impact on <ul style="list-style-type: none"> • Eliminating unlawful discrimination, victimisation and harassment • Advancing equality of opportunity • Fostering good relations 		X

If you have answered **no** to the questions above please complete **sections 6 and 7**

If you have answered **yes** to any of the above and;

- Believe you have already considered the impact on equality, diversity, cohesion and integration within your proposal please go to **section 4**.
- Are not already considering the impact on equality, diversity, cohesion and integration within your proposal please go to **section 5**.

4. Considering the impact on equality, diversity, cohesion and integration

If you can demonstrate you have considered how your proposals impact on equality, diversity, cohesion and integration you have carried out an impact assessment.

Please provide specific details for all three areas below (use the prompts for guidance).

- **How have you considered equality, diversity, cohesion and integration?** (think about the scope of the proposal, who is likely to be affected, equality related information, gaps in information and plans to address, consultation and engagement activities (taken place or planned) with those likely to be affected)

Under the School Standards & Framework Act 1998, the Council is required to transfer land (other than playing fields) which is held or used by a local authority for the purposes of the school to the governing body, the foundation body or the trustees of any school that falls within the remit of the Act.

The land is to be transferred for nil consideration and is to be held by them for the

purposes of the school. Land includes the building structures attached to it.

The requirements of the Act override the Council's duty under section 123 of the Local Government Act 1972 to secure best consideration. In this regard the transfer is not discretionary or a matter for Leeds City Council to approve, but is required by legislation. The exceptions to this would be transfers of school playing field land which would be dealt with where appropriate by way of a class consent from the Secretary of State.

As a result of the above, no groups are adversely affected by the requirement to transfer land under the relevant legislation.

- **Key findings**

(think about any potential positive and negative impact on different equality characteristics, potential to promote strong and positive relationships between groups, potential to bring groups/communities into increased contact with each other, perception that the proposal could benefit one group at the expense of another)

Owner of land and buildings (VC schools) – in most cases, a charitable foundation owns at least some of the land (except for playing fields, which are normally vested in the local authority). The foundation must be consulted before any changes can be made to the land or assets. Trustees must notify the LA of intention to dispose of non-playing field land, as well as of reinvestment proposals. The LA can object to such proposals and claim share of proceeds attributable to public investment. The Schools Adjudicator determines such proposals where there is not local agreement. May only dispose of playing fields with the Secretary of State's consent.

Owner of land and buildings (VA) – in most cases, a charitable foundation (apart from the playing fields, which are normally vested in the LA). The foundation must be consulted before any changes can be made to the land or assets. Trustees must give the LA notice of intention to dispose of non-playing field land, and reinvestment proposals. The LA can object to such proposals and claim a share of proceeds attributable to public investment. The schools adjudicator determines such proposals where there is not local agreement. Playing fields may only be disposed of with the Secretary of State's consent.

In view of the above, there are procedures in place to ensure that if a Faith school decides to sell part or all of the building and land transferred to them, then the LA can claim a share of the proceeds which can then be reinvested by the LA. There is also protection in place with regards to playing fields, to ensure that the children of Leeds can continue to benefit from access.

Public Concerns

As with any Central Government policy, there are likely to be opposing views on the policy. However, any transfers of land will just be formalising arrangements that should already be in place under the Act and it is not anticipated that there will be any public concerns with these transfers.

Effect on LCC's Services

There are no direct effect on LCC's services, however should the LA consider undertaking capital building programmes at Faith Schools, then formal legal

documentation would need to be entered into with the governing Body or Trust, granting permission/rights for the LA to enter and work on the site.

- **Actions**

(think about how you will promote positive impact and remove/reduce negative impact)

By responding to requests for land transfers under the Act in a positive and efficient way, this positive engagement by the Council will help to foster continuing good working relationships with the Faith Schools and Dioceses.

Any school playing fields (whether they are included or excluded from a transfer) are protected under section 77 of the Act against future disposal unless with the consent of the Secretary of State. Protection will also be put in place by means of placing restriction on the use of the playing fields and ensuring that existing users can continue to do so for a length of time after the transfer.

5. If you are not already considering the impact on equality, diversity, cohesion and integration you will need to carry out an impact assessment.

Date to scope and plan your impact assessment:	
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Date to complete your impact assessment	
---	--

Lead person for your impact assessment (Include name and job title)	
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6. Governance, ownership and approval

Please state here who has approved the actions and outcomes of the screening

Name	Job title	Date
Nigel Wilson	Senior Contract Manager	01/05/13

7. Publishing

This screening document will act as evidence that due regard to equality and diversity has been given. If you are not carrying out an independent impact assessment the screening document will need to be published.

Please send a copy to the Equality Team for publishing

Date screening completed	14/02/13
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Date sent to Equality Team	14/02/13
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Date published (To be completed by the Equality Team)	
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