



**REPORT OF CHAIRMAN OF CHILDREN AND YOUNG PEOPLE'S  
COMMITTEE**

**EARLY YEARS PROVISION IN NOTTINGHAMSHIRE COUNTY COUNCIL  
OWNED PROPERTIES – OCCUPATIONAL COSTS**

**Purpose of the Report**

1. To seek approval to the framework and terms of new leases and licences to be granted to childcare (early years) providers over Council sites including Schools and Children's Centres.
2. To delegate authority to the Service Director Investment & Growth (or their nominee), in consultation with the Chairman of Policy Committee to determine the sites and details of each letting.

**Information**

3. The Childcare Act 2006 and 2016 places statutory duties on Local Authorities for the provision of childcare and early education. The Act requires Local Authorities to assess the local childcare market and secure sufficient childcare for children. This requires Local Authorities to shape and support the development of childcare in their area in order to make it flexible, sustainable and responsive to the needs of the community. In order to achieve current and imminent statutory duties, the expansion of childcare provision in many localities is a priority.
4. The provision of high quality childcare enables children to be ready for school, improves attainment levels, and closes the attainment gap; whilst the provision of funded childcare for eligible children removes the barrier to work for parents by removing expensive childcare costs. The longer term impact of providing sufficient childcare therefore improves economic and social well-being for the residents of Nottinghamshire.
5. Statutory duties placed on the council are in relation to early years provision for 0 – 4 year olds, with additional requirements to ensure there is sufficient childcare for school age children through breakfast and after school provision (wrap around care), and holiday care. Childcare providers vary from pure commercial ventures to not for profit organisations which can be in the form of community interest companies, private enterprises, voluntary run, not for profit and charities; maintained schools and Academy Schools also provide childcare in Nottinghamshire.
6. Using Local Authority properties provides an opportunity for the council to create childcare

places by letting premises to childcare providers. There is a wide range of childcare provision within council owned premises; the vast majority of which is located on school sites with increasing provision located within Children's Centres. Provision is located in different properties ranging from purpose built, modern facilities to shared use being made of school halls and other spaces such as Children's Centres.

7. Where there are surplus Council properties or appropriate space within Children's Centres, a procurement exercise is undertaken to identify a suitable provider with a proven track record of service delivery; the successful provider is allocated use of the property under a lease or licence. If however the property is on a school site, the school is invited use the property for early years provision documented in a Service Level Agreement (maintained schools) or a lease/licence (Academy Schools).

### **Review of the lettings and case studies**

8. The Council's current process for agreeing property charges with providers, was based on an average cost based approach to broadly cover outgoings. This process applies a blanket approach to the level of charge irrespective of site specific running costs, and any capital investment that may have been made by childcare providers and does not take into account market rent, the potential income of a childcare provider, the maximum number of children a setting can accommodate and whether the location is considered to be serving a disadvantaged community.
9. Charging a market rent, can, in many circumstances, create financial challenges for childcare providers which could result in poor childcare sufficiency. Property Services and Children and Family Services (CFS) propose that all early years providers who deliver funded childcare places for eligible children are charged a peppercorn rent, thus enabling the Council to fulfil statutory duties whilst recouping costs associated with the maintenance of properties.
10. **Children's Centre Case study** – a Children's Centre property is already used by a voluntary sector provider, who are keen to expand their provision to accommodate more children eligible for funded childcare. This would require expansion into an additional room in the property. As the Children's Centre service only operates from the property for 2 sessions a week, it was more appropriate for the childcare provider to be the lead tenant and therefore take on the management of the property. The running costs for this property are £25,000 per annum which are currently funded by 'CFS', the current childcare provider pays the Council £6,000 per annum for service costs. In this case, the childcare provider would be unable to pay the full running costs as well as a rental charge due to the forecasted income which is based on the number of funded children that the property can accommodate safely. A business case has been completed and proposes that the property is leased at a peppercorn rent whilst the childcare provider pays all running costs and a service charge offsetting the costs currently incurred by the Council.
11. **Academy School Case Study** – a surplus caretaker's house on the site of an Academy School was renovated using early years capital funding to change its use for childcare. A private provider was appointed to provide childcare from the property, however were unable to pay the market rent which was set at £18,000; this would be in addition to running costs. As the property is located in an area of disadvantage, increasing take up of funded childcare places is challenge, especially for the first few years of operation until the provision is

established and trusted by the community. The childcare provider vacated the property after only a few months and the property has remained empty for over a year. The Academy School is keen to provide childcare for eligible children from the property, however will only do so if the costs incurred are manageable. A business case has been completed and proposes that a peppercorn rent is issued with the school paying all occupational costs. The property has been redlined which means that it remains the property of the County Council rather than the Academy and therefore protects the capital investment and the continued use of the property for childcare.

12. The proposals to charge a peppercorn rent need to be considered in relation to State Aid rules. State Aid rules prevent public authorities from using state resources on a selective basis to any organisations that could potentially distort competition and trade in the European Union. However the rules do not apply to services where both the clientele is purely local and there is no realistic prospect of competition from providers from other member states establishing themselves. On this basis we are advised that any benefit would fall outside the definition of State Aid as there is no impact on trade between member states. We understand that there may also be scope to rely on de minimis provisions, and on the exemptions for services of general economic interest, but since we have a good 'no aid' argument we do not need to rely on these.
13. The adjustment of the rent potentially represents a letting at less than best value, as defined by s123 Local Government Act 1972. The circumstances which permit the Authority to depart from the requirement to achieve best value are contained in The Local Government Act 1972: General Disposal Consent (England 2003). The Order lays down no specific process, but simply requires that the following matters are considered:-
  - i. The local authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of the following objects in respect of the whole or any part of its area, or of all or any persons resident or present in its area;
    - 13.a.i.1. The promotion or improvement of economic well-being;
    - 13.a.i.2. The promotion or improvement of social well-being;
    - 13.a.i.3. The promotion or improvement of environmental well-being; and;
  - ii. The difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2,000,000 (two million pounds).
14. The proposed terms of the lettings at a peppercorn rent, satisfy the requirement of promoting economic and social well-being and are less than £2,000,000 on a collective and individual basis. If a market rent is charged, the income would be less than £2,000,000 because of the number of properties available, the floor space used and shared use arrangements within Children's Centre Services and Schools.
15. Property Services have revised the standard head of terms for these lettings. A summary of the revised heads of terms proposed are included in **Appendix One**.

### **Current lettings**

16. Where childcare providers currently occupy Council premises under a lease or licence, it is proposed that these lettings will be revised in line with revised heads of terms appended to this report.
17. Where childcare providers currently occupy Council premises without a lease or are holding over. New leases and licences will be granted in line with the revised heads of terms appended to this report.
18. Where childcare providers occupy Council premises on a school or academy site the arrangement will be formalised in line with the revised heads of terms appended to the report with service charge payable to the Council, or the school or the Academy as appropriate. The basis of this will be determined by which party pay the outgoings for the property to be occupied by the provider.

### **Other Options Considered**

19. Apply a blanket approach to the level of charge and market rent irrespective of the actual running costs of the building or demographic factors. Many providers are located in areas of disadvantage and struggle to finance their operations, yet the County Council has an obligation to ensure there is adequate provision in each locality to meet local requirements and needs. This is not a viable option as the County Council could be obliged to provide services if it is not possible to attract other providers. This option could also provide a potentially unfair advantage to some providers who could be paying less than the actual costs associated with their premises and disadvantage other providers could be paying more than the actual costs associated with their premises.
20. Continue to allow schools to let out space for wrap around, childcare and holiday clubs in an ad-hoc manner. This however puts the County Council at risk of secure tenancies being created, (caused by schools not properly understanding their powers to enter into licences and what this actually covers) whilst allowing an inconsistent approach to the fee applied.

### **Reasons for Recommendations**

21. Acting in accordance with the principles of good estate management, the proposals set out in this report protect the County Council in terms of recovering costs of occupation, whilst maintaining and increasing childcare provision, to meet the needs of communities.
22. The proposals also take account of the Local Authority's sufficiency duties for childcare, at a time of increased demand for such provision, following the introduction of the extended free childcare entitlement in September 2017.
23. The opportunity offers a consistent approach to all occupiers across the estate and brings stability to the market, whilst providing continuity of care for families using these services. This is particularly important in securing childcare provision in areas of disadvantage.

### **Statutory and Policy Implications**

24. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty,

safeguarding of children and adults at risk, service users, smarter working, sustainability and the environment and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

### **Financial Implications**

25. Where the Council pays for utilities and services such as cleaning and maintenance, childcare providers will pay a service charge to the council to defray running costs. The service charge will be calculated based on the actual running and average repair costs.
26. Each property will be assessed on a case by case basis to confirm occupational costs. Income will be used to offset the costs currently incurred by CFS to maintain and manage properties.
27. Childcare providers working from school sites will pay the school any running costs that the school currently pays for e.g. caretaking and cleaning.
28. As with Children's Centre services, service charges for childcare (early years) providers on school sites will be paid to CFS who will progress maintenance and structural repairs jointly with colleagues in Place.

### **Safeguarding of Children and Adults at Risk Implications**

29. Safeguarding is a central focus of childcare providers, consequently safe, secure accommodation is required to enable the local authority to fulfil its duty to provide quality childcare provision. All lettings with childcare providers require the provider to safeguard children e.g. locked security gates, safe access.

### **Implications for Service Users**

30. Where childcare provision is created or maintained, children and families will be able to access a wide range of high quality accessible childcare provision. This in turn enables children to be ready for school, and removes the cost of childcare as a barrier to employment.

### **Data Protection and Information Governance**

31. All childcare providers who provide funded places for 2, 3 and 4 year olds sign an Early Years Provider Agreement annually which ensures that data protection and information governance regulations are adhered to.
32. Data held by the council such as bank details of early years providers are stored securely under General Data Protection Regulations.

## **RECOMMENDATIONS**

1. That Committee approves the framework and terms outlined within this report.

2. That approval is given to the Service Director Growth and Investment (or their nominee), in consultation with the Chairman of Policy Committee to determine the sites and details of each letting.

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### **Constitutional Comments (SSR 4.5.2018)**

12. The recommendations fall within the scope of decisions which may be approved by Policy Committee

### **Financial Comments [RWK 02/05/2018]**

The financial implications are set out in paragraphs 27 to 30 of the report.

### **Background Papers and Published Documents**

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

- None

### **Electoral Divisions and Members Affected**

- All