

**REPORT OF THE LEADER OF THE COUNCIL****PROPOSED SALE OF LAND AT BRAMCOTE PARK TO WHITEHILLS PARK  
FEDERATION TRUST****Purpose of the Report**

1. To seek approval to the conditional sale of land at Bramcote Park to White Hills Park Federation Trust (the Trust) subject to the safeguards outlined in the exempt appendix, receipt of S77 consent and consent under paragraph 4 of Schedule 1 of the Academies Act 2010 and consent of the Secretary of State for Housing, Communities and Local Government, in respect of the disposal at an undervalue.
2. To grant delegated authority to the Service Director, Investment & Growth, in consultation with the Group Manager for Legal Services to negotiate and approve detailed terms of the necessary legal documentation to give effect to the decision in accordance with the safeguards set out in the report and the exempt appendix.

**Information**

3. This report contains an exempt appendix, which is not for publication by virtue of paragraph 3 of Schedule 12A of the Local Government Act 1972 (as amended) (Information relating to any individual and the business affairs of a particular person (including the authority holding that information)). Having regard to the circumstances, on balance the public interest in disclosing the information does not outweigh the reason for exemption because divulging the information would significantly damage the Council's commercial position. The exempt information is set out in the exempt appendix, disclosure of this information would prejudice the parties' commercial interests.
4. This report details the progress made between the County Council and the Trust in respect of the proposed new school build and recommends next steps in respect of the land disposal. There have been a number of previous reports to committee in October 2017 and November 2018 on this subject matter. These earlier reports differ to the approach set out here in that the Council was using the land receipts to build a new school at the Bramcote College site. Furthermore, the earlier reports relied on desktop valuations. Due to the passage of time, site conditions, changes in risk profile, land values and increases in build costs, their contents are no longer considered up to date. This report therefore is necessary to reset the current position and update Members, with a recommendation as to the land disposal and how this will be used.
5. Having said that the contents of the previous reports are not up to date, there is a continuing theme that was incorporated in those reports that remain the same today. That the land receipt is used to build a new school at the Bramcote College site. In addition, the school buildings are in a generally poor state of repair having a negative impact on the school and

pupils, with roof leaks leading to cancellation of lessons, science being taught in non specialist environments, recruitment issues and health and safety needing to be managed.

6. In 2014, the Trust exhausted the possibility of securing any Priority School Rebuilding Programme funding to address these significant problems. The Trust has also confirmed that it did not participate in the bid for the £1billion fund for 50 secondary schools, announced by government earlier this year, because they did not consider their bid would be successful when compared to the national picture. Officers understand that national funding will be diverted to those buildings of a certain type of historical construction which is not applicable to Whitehills. Furthermore, as the current spending review is annual, it is difficult to predict how schools' capital funding will be distributed and available to be accessed.
7. Given this to be the case, the Trust decided to continue to explore alternative methods of securing funding to rebuild their schools. This included dialogue with the Council with a view to combining land held by the school on a long lease together with adjacent Council owned land to maximise value which could be released to support a new replacement school.
8. The Council owns the freehold interest in plots 1 and 4 identified on the attached plan. Plot 4 is unencumbered, vacant and surplus to the Council's requirements. Plot 1 is part of a 125 year lease to the Trust. Plot 1 was formerly school playing fields which are now unused and surplus to the Trust's requirements. In addition, the Council is the freehold owner of land used for the Bramcote Primary school which sits alongside the Trust site as identified on the attached plan.
9. As Plot 4 is surplus to requirements, there was an opportunity for the Council to consider with the Trust an appropriate mechanism to maximise value from this land, and as part of this opportunity to seek expansion land for Bramcote Primary School in return.
10. The Council is not legally responsible for funding Academy Trusts or rebuilding academy buildings and will need to balance the benefits of these proposals with other responsibilities towards maintained schools. Under the terms of the 125 year lease that the Trust holds, they are responsible for the maintenance and repair of the school. However, the proposed sale is consistent with the Council Plan, would benefit a significant number of children in the area who attend the school and as identified in the exempt appendix to this report selling the Council's land on the open market would release significantly less value.
11. As Plot 1 was formerly used as school playing fields, the release of this parcel of land for development will require the Secretary of State for Education's consent under Section 77 of the School Standards and Framework Act 1998 (as amended) and under paragraph 4 of Schedule 1 of the Academies Act 2010. The surplus land comprising plots 1 and 4 are allocated in the Broxtowe Local Plan for residential use although the allocation directly links the occupation of houses with the provision of a new school, thereby limiting the Council's ability to promote plot 4 for development in isolation.
12. The school also remains fundamental to the provision of sufficient school places in the Bramcote area for the foreseeable future. The Council Plan 2017 – 20 sets the Council's vision for the county and sets out a number of commitments which through the Place Department Strategy includes provision for the new housing and a new school at Bramcote. Under the vision for 'a great place to bring up your family' the plan provides that all children and young people are to be provided with sufficient school places in their local communities and 90% of schools to be classified as 'good' or 'outstanding' by Ofsted. Under the vision for 'a great place to fulfil your ambition' it sets out a commitment that people will live in

communities supported by good housing and infrastructure. In response to this Plan, each Department has produced its own strategy to embed and deliver the vision. For the Place Department Departmental Strategy 2019-2021 this includes the following which identify the Council's corporate property strategy for the land:

- i) We will bring forward development at Whitehills park at Bramcote (under the Invest in opportunity areas relating to housing provision)
- ii) We will begin the building of the replacement Whitehills Park Academy at Bramcote (this is in the Invest in skills and aspiration section).

13. The proposed heads of terms have been agreed between the parties and set out in the exempt appendix. These must be provisional until such time as the Education and Skills Funding Agency (ESFA) has approved the development proposals, as the body responsible for funding academies and any developments. The proposal includes the Council selling its freehold interest in both plots 1 and 4 to the Trust subject to the Trust surrendering one acre of land to the west of the Bramcote Primary School for future expansion purposes.
14. As the Trust is the main party with a legal interest in the site, whose buildings will be significantly affected by the redevelopment works, and given their responsibility for securing any capital funding for the works to the Trust premises, the Trust is best placed to lead in the sale of the development land and commission of works for the new school build.
15. Under the proposals, the Trust will promote the sale of the land for residential development and use the capital receipts to fund a new school preserving the same pupil places, on its retained site. This approach means the Trust holds the delivery risk and ensures receipts from the residential development fund the new school. The development of the housing will add to demand for schooling in the area but the Council's Pupil Place Planning team have confirmed that this can be provided within the existing school estate so does not lead to a need for new places.
16. The Council has an obligation under s123 of the Local Government Act 1972 to obtain the best price reasonably obtainable for the disposal of its assets. In some circumstances the Council is able to dispose of land at less than best consideration, provided certain requirements are met.
17. Based on current market values, it is anticipated that the Trust will require all of the capital receipts from the sale of the land to fund the new school build. As a result, the proposals include provisions for the Council to transfer its freehold interest in plots 1 and 4 to the Trust for £1.00 (one pound), which is less than best consideration. The procedure to be followed in such disposals is summarised below.
18. Under the General Disposal Consent 2003 councils may dispose of land for less than the best consideration when the Council considers that such a disposal will help it to secure the promotion or improvement of the economic, social, or environmental well-being of its area. When doing so it should have regard to its Community Strategy and reference to how this matter is supported through the Council Plan has been identified in paragraph 5 above. When the difference between the unrestricted value of the interest to be disposed of and the consideration accepted ("the undervalue") is over £2 million, the specific consent of the Secretary of State for Housing, Communities and Local Government is required.

19. The building of a new school provides significant enhanced benefits and enables provision of social well-being. It does this by providing pupils with a purpose-built learning environment, designed with 21<sup>st</sup> century teaching methodologies in mind, giving improved ICT connectivity through the building to support improved curriculum delivery, this being further enforced by the ability to suite allied subjects together in specialist rooms. A new building will provide accessibility to all students and be efficient in operation and running costs. The proximity of new housing will embed the school as a focus for the community representing a new chapter in the development of the Trust, allowing a growth in pride of place in the local community for both pupils and parents.
20. In terms of environmental well-being benefits that a new build school and new housing can contribute, it should first be noted that the current college and 6<sup>th</sup> form comprises a school split across five buildings and temporary structures with independent heating systems which the Trust consider to be nearing or past their useable life. The consolidation of the school into a single building constructed to contemporary standards would have both operational and environmental benefits to the school with key facilities and plant centralised in one location. There is potential to design classrooms to national daylight standards, heat recovery units providing sufficient fresh air while eliminating winter cold draughts and the exposed thermal mass of the upper floor structure and roof would absorb excess heat during summer. These and other measures would provide a much more energy efficient building rather than the existing collection of buildings with an internal environment much better suited to education delivery. In similar terms new build housing on the land released would give opportunity for the development of high environmental standards for the new homes. The provision of a school serving the immediate local area will reduce the need for students to travel.
21. The Council has commissioned an independent external valuation of its interest in the land in accordance with the appropriate RICS standards and guidance from the General Disposal Consent. The valuation is detailed in the exempt appendix and it is in excess of £2 million, due to the existence of a special purchaser, namely the Trust who together with the Council can meet the Broxtowe Local Plan requirements and release the full residential development value of the land. Consequently, the Secretary of State's consent will be required to this disposal at an undervalue exceeding £2m.
22. To safeguard public funds in line with standard practice, the proceeds of sale will be deposited into an escrow account and only be released to the Trust for the purpose of building a new school. The structure of the documentation with the Trust for the disposal of the land has not yet been finally agreed as it will depend on a number of issues that will only become clear as the matter progresses. In particular, the requirements and timescales of any purchasing housing developer and the EFSA (as explained above). It will also depend on additional detailed elements that need to be considered such as Stamp Duty Land Tax planning, building and planning requirements and any provisions that need to be included in the transfer of Plots 1 and 4 to protect any retained land of the Council. It will also include any clawback and/or overage provisions that the Council may consider commercially reasonable once the land is marketed. The documentation will also be structured to ensure that the receipt is used for the benefits of providing a brand new school.
23. Advice on legal, valuation and risk issues in respect of the proposed arrangements with the Trust is included in the exempt appendix.

24. The Council also needs to comply with the requirements of its own constitution. Since this would be a sale that has been negotiated with one party on the basis of it being a special purchaser. The Council needs to ensure that this is consistent with the requirements of section 17.5.5 of the Council's Financial Regulations.
25. As a private treaty disposal to one party, in accordance with the Constitution, the Group Manager Legal Services and Section 151 officer have been consulted in respect of this proposed transaction and whether it is appropriate for it to proceed. They are satisfied that subject to the safeguards outlined in the report, the decision is one which Members may determine provided careful consideration is given to all the issues, including the financial impacts as well as the anticipated benefits to the social and environmental wellbeing of the Council's area.

### **Way Forward**

24. Committee is asked to consider the sale of land at less than best consideration based upon;
- (i) the transaction leading to the sale of residential development land and the construction of a new school by the Trust and;
  - (ii) being satisfied that the value foregone (taking into account the value received by the surrender of land to the west of Bramcote Primary School) is mitigated to some extent by the well-being benefits accruing.
25. If satisfied and Committee approve the heads of terms for the sale then the Secretary of State for Housing, Communities and Local Government's consent will be sought for sale at an undervalue in excess of £2 million and Section 77 consent for release of school playing fields will be sought from Secretary of State for Education together with consent under paragraph 4 of Schedule 1 of the Academies Act 2010.

### **Other Options Considered**

25. The Council could seek to negotiate with the Trust on the basis that the Council retains its share of receipts from a sale of the development land but this would result in the Trust being unable to progress the building of a replacement school as they would have insufficient funds.
26. The Council could do nothing which would result in the Trust having to seek other sources of funding for the new school which are currently not available to the Trust. This is likely to result in no improvement to the school site or bring forward land for development to the extent that is being proposed.

### **Reason/s for Recommendation/s**

27. The Trust believes that the existing school buildings are sub-standard and do not promote a positive learning experience. The school is currently occupying multiple temporary classrooms and the indoor gymnasium/sports space requires substantial repair or renewal.
28. The Council has for some while supported a joint approach with the Trust using the sale of the surplus land to fund the construction of a replacement school and the terms agreed provide for this by enabling the Council's existing value to be used towards funding the build. The residential development resulting will also assist in meeting the County and District's desire for new homes.

## **Statutory and Policy Implications**

29. 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 and an Equality Impact assessment has been undertaken.

## **Financial Implications**

30. The financial implications are set out in the report.

## **Implications for Service Users**

31. The provision of a replacement school on the existing school site will ensure pupils will be provided with a higher quality learning experience at their established learning location.

## **Implications for Sustainability and the Environment**

32. The provision of a school serving the immediate local area will reduce the need for students to travel.

33. The new building will be more energy efficient and will be constructed using sustainably-sourced materials.

## **Public Sector Equality Duty implications**

34. In exercising its powers, the Council must have regard to the Public Sector Equality Duty (PSED) and any implications for protected groups from this decision arising under the Equality Act 2010. An equality impact assessment has been undertaken in respect of the new school buildings. At this stage of the proposals, no specific impacts on those with protected characteristics are envisaged and broadly speaking, an improved school built to modern standards is expected to provide an enhanced environment for those with a range of protected characteristics. In the short term, some disruption during any building programme may have temporary impact but this can be mitigated as part of the building programme project delivery. Should any further impacts be identified as the project progresses mitigations should be considered and implemented wherever possible.

## **RECOMMENDATION/S**

It is recommended that approval be given to:

- 1) The conditional sale of the Council's freehold interest in the land identified as plots 1 and 4 on the attached plan on the terms and subject to the safeguards outlined in this report and the exempt appendix and subject to receipt of Section 77 consent, consent under paragraph 4 of Schedule 1 of the Academies Act 2010 and consent of the Secretary of State for Housing, Communities and Local Government in respect of the disposal at an undervalue.

- 2) Delegate authority to the Service Director, Investment and Growth in consultation with the Group Manager for Legal Services to negotiate and approve detailed terms of the necessary legal documentation to give effect to the decision in accordance with the safeguards set out in the report and in the exempt appendix.

**COUNCILLOR MRS KAY CUTTS, MBE**  
**Leader of the Council**

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**Constitutional Comments (SSR 14/10/2020)**

35. The recommendation falls within the remit of Policy Committee under its terms of reference. The Council is under statutory obligation when disposing of land or buildings to obtain the best price reasonably obtainable on the open market. Therefore, Members should satisfy themselves of this, subject to the provisions of this report in relation to when a sale at an undervalue may be permitted. Where there is a special purchaser the Service Director Investment and Growth shall consult with the Group Manager Legal Services and the Section 151 Officer regarding the circumstances of the disposal as to whether it is appropriate to proceed. If the Council has any retained land the effect on the value and use of it must be considered.

**Financial Comments (CT 16/10/2020)**

36. The financial implications of this report are contained within the exempt appendix.

**Background Papers and Published Documents**

- Report to Policy Committee on 18<sup>th</sup> October 2017 titled 'White Hills Park Federation Trust – Transfer of land';
- Report to Policy Committee on 14<sup>th</sup> November 2018 titled 'Proposals in respect of White Hills park Federation Trust at Bramcote';
- Equality Impact Assessment.

**Electoral Division(s) and Member(s) Affected**

- Bramcote and Beeston North
- Councillor Steve Carr