

| <b>Cabinet Meeting</b> |  | <b>Agenda Item: 11</b> |
|------------------------|--|------------------------|
| <b>Meeting Date</b>    | 7 December 2016  |                        |
| <b>Report Title</b>    | Lease of Land at Staplehurst Road to Grove Park Academies Trust  |                        |
| <b>Cabinet Member</b>  | Cllr Duncan Dewar-Whalley, Cabinet Member for Finance  |                        |
| <b>SMT Lead</b>        | Mark Radford, Director of Corporate Services   |                        |
| <b>Head of Service</b> | Anne Adams, Head of Property Services  |                        |
| <b>Lead Officer</b>    | Anne Adams, Head of Property Services  |                        |
| <b>Key Decision</b>    | Yes  |                        |
| <b>Classification</b>  | <b>Open with restricted appendix</b>   |                        |
| <b>Forward Plan</b>    | <b>Reference number:</b>   |                        |
| <b>Recommendations</b> | <ol style="list-style-type: none"> <li>1. To enter into a lease for 125 years on land at Staplehurst Road with the Grove Park Academies Trust for the provision of a school for children with Autistic Spectrum Disorder,</li> <li>2. To delegate the agreement of the final terms of the lease (including the site area) to the Head of Property Services in consultation with the Head of the Legal Partnership and the Cabinet Member for Finance.</li> </ol> |                        |

## **1 Purpose of Report and Executive Summary**

- 1.1 This reports seeks approval to enter into a 125 year lease with Grove Park Academies Trust on a site at Staplehurst Road (known as the Meads school site) for the provision of a school for children with Autistic Spectrum Disorder (ASD) and children with SLCN (Speech language communication needs).

## **2 Background**

- 2.1 The site at the Meads was transferred to the Borough Council under a section 106 agreement dated 20 January 1998 in exchange for other land. The s106 agreement stated that the land should be used for educational use and that, upon the occupation of 700 dwellings, ownership of the School Site should transfer to KCC if it was required by them for a new school. In the event that ownership remained with the Borough Council due to it not being required by KCC, the s106 agreement states that the site should be planted out as a Community Woodland within twelve months.
- 2.2 KCC has not requested the site to be transferred to them for use as a school and the trigger for planting of the Community Woodland has now passed. The planting was not

done partly because the site was also considered as a possible location for the community hall but this was eventually built elsewhere. Also, the s106 agreement does not address the question of funding for either the planting or the ongoing maintenance of the woodland and consequently the lack of a budget together with the other options for the site that were being considered has meant that the planting has not been carried out. The site has been maintained since then as an informal public open space and this provides a different type of wildlife habitat to the adjacent community woodland. It has also been used for biodiversity mitigation in connection with the adjacent development site.

- 2.3 More recently, an approach was received from the Aspire Free School requesting that the site be allocated as the location for a proposed new school for children with ASD and children with SLCN, catering for 112 pupils. The Council offered its support in principle to this use and following several unsuccessful funding bids, the Aspire Free School has now, in partnership with Grove Park Academies, received the funding required to proceed with the project. Initially, Aspire were also looking at the former Southlands Assessment Unit as a suitable location but this has since been sold and is no longer available.
- 2.4 The former owners of the site and parties to the s106 agreement have approached the Council and requested that consideration be given to allowing the site to be developed for housing. This would realise a significant capital receipt for the Council and the former owners would also benefit as they would be entitled to a proportion of the receipt to reflect their interest in the land.
- 2.5 However, due to the social benefits that the proposed school use will provide it is considered that it is a higher priority for the Council to facilitate the creation of the new school than to receive a capital receipt. Furthermore, there is a restrictive covenant on the land which prevents it from being used for any purpose other than educational use, community woodland or for nature conservation purposes and there would be a risk of challenge from the beneficiaries of the restrictive covenant were the site to be developed for housing.
- 2.6 Notwithstanding the potential difficulties concerning the restrictive covenant, an independent valuation of the land has been obtained from the District Valuer to ascertain the possible amount of any capital receipt that the Council might receive in the event that the site were sold to Redrow Homes as a special purchaser for housing development. This has been estimated at the figure set out in the restricted appendix on the basis that the beneficiaries of the restrictive covenant would seek a payment of one third of the uplift in value from the existing open space use to a site for residential development. This figure is, however, highly speculative as there is a high degree of uncertainty, in particular regarding who benefits from the restrictive covenant and the cost of its removal.
- 2.7 The valuation is subject to a number of special assumptions including that:
- The site has the benefit of planning permission for residential development.
  - The site is to be sold to Redrow Homes who own the adjacent Archers Park Estate and thus are a 'Special Purchaser'

- Compensation will be sought by the beneficiaries of the restrictive covenant from Redrow Homes for its removal comprising a proportion of the resulting uplift in the value of the land.
- No allowance is made for the ransom strip owned by Redrow Homes as the land is to be sold to them.
- The Section 106 Agreement for The Meads development may be varied if required by the Planning Authority to permit the residential development of the land.
- Redrow Homes will not incur abnormal development costs associated with any archaeological investigations required to be undertaken.

2.8 Under Section 123 of the Local Government Act 1972 the Council can only dispose of land for less than the best consideration reasonably obtainable with the consent of the Secretary of State or where the disposal is covered by the General Disposal Consent 2003. The General Disposal Consent removes the requirement for a specific consent to be sought where the proposed transaction will help to secure the promotion or improvement of the economic, social or environmental wellbeing of its area and the undervalue does not exceed £2 million. The independent valuation advice obtained suggests that the likely level of undervalue would not exceed this limit.

2.9 The use of the site for a new free school would be subject to planning permission and variation of the s.106 Agreement. The loss of the existing public open space as a community facility will need to be balanced against the need for the proposed school in planning terms. Initial consultations with Planning have indicated that in principle the proposed use for a free school would be acceptable in planning terms.

2.10 It is also likely that the site will be of archaeological interest given the Neolithic and Bronze Age finds excavated on the opposite side of the road and therefore significant costs of heritage investigation could have an impact on the development costs and timescales.

### **3 Proposals**

3.1 The construction of the school will be funded by the Education Funding Agency. The EFA has confirmed that due to the low pupil numbers (112 pupils at capacity) of this type of school it is not possible for a capital payment to be made for the land. The EFA works out its capital budget for the development of schools based on a capital cost per pupil and as such this school will have a very limited budget in which to deliver a new build school. As such, if monies are diverted to pay for land essentially this means that the build of the school has to be compromised or indeed the scheme does not add up financially for approval purposes. This is why in this instance, the application for this school was approved on the basis that the Council's land was secured at nil cost (peppercorn) to enable the school to be developed. If this land is not forthcoming, then the project will have to be reviewed again by the DfE.

3.2 The EFA normally secure land on the standard Free School 125 year peppercorn lease (which is very similar to the Academy lease). This has no rent review and is restricted to educational use. Once the school is up and running, they have to depend on their grant

funding to maintain and run their premises. If there was then to be a rent review, this would be revenue and would need to be accounted for as such. As there would be no revenue pot attached to this school, they would in all probability have to fund this “rent” from their own budget, thus diverting money from teachers and learning resources. The use under the lease will be restricted to educational use only with no commercial business activity therefore they would not have the ability to generate an income from any commercial activities to support paying a rent. The lease would also be linked to the funding for the school so should funding be withdrawn in the future then the lease would also expire and the site would revert back to the landlord.

- 3.3 Due to the low pupil numbers anticipated, it is possible that the physical size of the school will be such that the entire site originally earmarked as a school site may not be required to be transferred. The EFA are currently investigating this and will respond as soon as they can with confirmation of the site area required. In the event that the whole site is not required, it is recommended that part of the site be retained in Council ownership. This could either be retained in its current use as open space or be developed for housing subject to planning and legal considerations.
- 3.4 It is therefore proposed that the Council enters into a lease for 125 years at a nominal rent on the site edged red on the plan attached at Appendix I (or smaller site as required). The EFA will cover the Council’s reasonable legal costs in completing this transaction.

## **4 Alternative Options**

- 4.1 *Plant the site as Community Woodland:* Not recommended as there is no budget for the planting or regular maintenance of the woodland and there is already a large area of woodland adjacent to the school site.
- 4.2 *Develop the site for housing:* Not recommended as the social benefits that will be achieved from the provision of a special school for children with ASD are greater than the benefit that would be achieved from the receipt of a capital sum.
- 4.3 *Retain as informal public open space:* Not recommended as although its existing use provides community benefits and an alternative wildlife habitat to the community woodland it is considered that these are outweighed by the social benefits that will be achieved from the provision of the proposed new school. If this site is not available then it is unlikely the new school could be delivered.

## **5 Consultation Undertaken or Proposed**

- 5.1 Cabinet members and other member of the Council have been consulted on the proposal and are fully supportive of the recommendations.

## 6 Implications

| Issue                                 | Implications   |
|---------------------------------------|--|
| Corporate Plan                        | This proposal meets the “Community to be Proud Of” priority as it assists the voluntary sector in providing a much needed facility within Swale.   |
| Financial, Resource and Property      | The restricted appendix sets out the estimated capital receipt which may have been achieved in the event that the site were developed for housing.   |
| Legal and Statutory                   | Legal Services will be required to prepare and complete the lease. Further legal advice may be required in the event that it becomes necessary to vary the terms of the section 106 agreement. |
| Crime and Disorder                    | Not identified at this stage   |
| Sustainability                        | It is anticipated that every opportunity to minimise energy use and CO <sub>2</sub> emissions and maximise sustainability will be taken in the design and construction of the school.          |
| Health and Wellbeing                  | This proposal will make a positive contribution to the health and wellbeing of the children with ASD that are given the opportunity to attend the school.                                      |
| Risk Management and Health and Safety | Not identified at this stage.  |
| Equality and Diversity                | The provision of a school for children with ASD makes an important contribution towards delivering an education which is specifically designed for children with special needs.                |

## 7 Appendices

7.1 The following documents are to be published with this report and form part of the report:

- Appendix I: Plan of site
- Restricted Appendix II: Estimated value of the land if developed for residential use

## 8 Background Papers

None.