

11 July 2018		Item 10 (Decision 110472)
Cabinet		
Delivering our Free School Programme – Land Disposal		
Wards and communities affected: All	Key Decision: Key	
Report of: Cllr Mark Coxshall, Portfolio Holder for Regeneration and Cllr James Halden, Portfolio Holder for Education and Health		
Accountable Assistant Director: Detlev Munster, Assistant Director of Property and Development; Michele Lucas, Interim Assistant Director Learning and Skills		
Accountable Director: Steve Cox, Corporate Director of Place; Rory Patterson, Corporate Director of Children’s Services		

Executive Summary

Thurrock is a place of choice to live, and demand for school places continues to increase. The Council has a statutory duty to ensure there are enough school places to meet demand and therefore needs to be proactive in ensuring we have high quality school accommodation that provides choice for parents and supports the educational outcomes for our children.

A Council priority is to increase choice of pupil school places by supporting the development of new schools within the borough. This is done by way of supporting Multi-Academy Trusts (MATs) in their bids to the Education Skills and Funding Agency (ESFA). The Council does not build new schools itself.

This report seeks to gain the approval for the disposal of Council owned property at Elm Road Open Space to the ESFA in order to deliver the current free schools programme, and ensure there are enough places to meet growing demand.

The free schools programme will see an investment by the ESFA of c £58 million into the borough, which would otherwise be funded, by way of expanding current school capacities which are limited.

1. Recommendations:

That Cabinet;

- 1.1 Notes the Free Schools Programme progress to date and the partnership working with the ESFA;**
- 1.2 Subject to the outcome of any consultation pertaining to the disposal of open space land, approves the disposal of the Elm Road Open Space to**

the Department for Education (acting through the ESFA) for the purposes of building and establishing a new Free School on the site;

- 1.3 Authorises the Corporate Director of Place, in consultation with the Portfolio Holder for Education and Health and the Portfolio Holder for Regeneration to dispose of the Elm Road Open Space on terms to be agreed with the ESFA, in accordance with Section 8, recognising that the disposal of the site is subject to the Secretary of State for Housing, Communities and Local Government consent;**
- 1.4 Delegates authority to the Corporate Director of Place in consultation with the Corporate Director of Children’s Services and Assistant Director of Law and Governance, and in consultation with the Portfolio Holder for Education and Health and the Portfolio Holder for Regeneration, to agree heads of terms for the disposal of the identified site to the DfE/ESFA and to take all necessary steps to complete the transactions.**
- 1.5 Endorses authorised officers to undertake consultation for the proposed disposal of open space land at the site where applicable and delegates authority to those officers and members identified in 1.4 above to consider any pertinent objections to the disposal of open space land and to determine whether or not the disposal should proceed in the light of such objections.**
- 1.6 In the event that the Elm Road site is not deliverable that delegated authority be given to the Corporate Director of Place, in consultation with Corporate Director of Children’s Services and Assistant Director of Law and Governance, and in consultation with the Portfolio Holder for Education and Health and the Portfolio Holder for Regeneration, to identify an alternative site and to dispose of it on terms to be agreed with the ESFA for the purposes of a new free school.**

2. Introduction and Background

- 2.1** Thurrock Council has a statutory responsibility to ensure that suitable and sufficient school places are available in Thurrock for every child of school age whose parents wish them to have one. However, local authorities are limited by statute and cannot provide new schools.
- 2.2** Thurrock Council received notification of the success of several Free School applications, “Wave 12”, which was confirmed by letter to the Corporate Director of Children’s Services on 12 April 2017. Two of those schools, Orsett Health Academy and Treetops Special Free School, were considered by Cabinet in June.
- 2.3** This report considers:
 - 2.3.1** Thames Park - 6FE, 900 place secondary school. The new school would be part of the Osborne Trust.

- 2.4 In October 2017, a Free Schools project board was formed to include colleagues from Education, Property, Planning and Legal which meets regularly to work together to progress the programme.
- 2.5 The Council is working closely with the ESFA to support the delivery of the new schools within the borough.
- 2.6 The Council is keen to ensure additional pupil places are created in a timely manner so as to meet increasing demand for pupil places. The pressure for pupil places is particularly acute where there is pupil transition from primary to secondary over the coming years.
- 2.7 It is important to note that the delivery of the new school will not adversely impact on the current schools capital programme as the new schools are required in addition in order to meet future demand.
- 2.8 The Council's priority is to build more capacity, and move to a position where there is more choice for parents and whereby more parents are obtaining their first preference schools.
- 2.9 This year, parental 1st and 2nd preferences for their child's secondary school places increased due to putting in temporary classes in current secondary schools for September 2018. 76.7% of parents were offered their first preference, up from 73.4% in 2017, while second preference offers increased from 10% to 12%. The Council's aim is to further increase these percentages by increasing spaces in 'good' and 'outstanding' schools. Having sufficient places is a crucial part of this.
- 2.10 94% of all primary and secondary schools in Thurrock are judged by Ofsted to be 'good' or 'outstanding', and demand for places remains high.
- 2.11 The current Pupil Place Plan 2017-21 outlines the local need, as well as the ways in which we feel each of the bids complements, and does not compete with each other. The plan shows what impact on the demand for school places over the next four years will be and vitally how the Council needs a strategic vision of how the Free School bids will complement the wider need, and not just an ad hoc support of individual bids to alleviate a crisis in under provision.
- 2.12 The new Pupil Place Plan 2018-22 will replace the current Pupil Place Plan dated 2017-21 when it is released in July 2018. This new plan will set out the strategic vision, including a forward look at potential and preferred locations. Indicative forecasts based on the autumn school census data show there is a significant demand for pupil places from September 2019 onwards.
- 2.13 The table below sets out the indicative number of pupil places required in year 7 over the next five years based on the latest autumn school census data. The table also includes the whole school (across all year groups) indicative

school places required, which includes housing developments and 3% in-year admissions applications.

	2019/20	2020/21	2021/22	2022/23
Year 7 places required	114 - equivalent to 4 FE	146 – equivalent to 5 forms of entry	107 – equivalent to 4FE	227 – equivalent to 8 FE
Whole school places required	329	996	1532	2121

- 2.14 The Council is keen to build more new ‘good’ schools in deprived areas and ensure new schools are located geographically where they are required.
- 2.15 The new Pupil Place Plan 2018-22 indicates that the schools planning area under the most pressure is in the ‘central area’ of the borough, therefore by building the new schools in Grays this will help resolve this forthcoming pressure.
- 2.16 The Council is fully aware of the rising numbers of pupils that are receiving school transport where there is no capacity in the nearest schools to their home address. Many parents are required to travel or seek support from the Council with transport. The Council is committed to increasing capacity across the borough and is currently undertaking a review of school transport in the bid to reduce the financial burden this is placing on the Dedicated Schools Grant (DSG).
- 2.17 The Strategic Housing Market Assessment indicates a need to provided 32,000 new homes in the borough over the next 20 years. Analysis for the local plan also indicates that 24,500 new jobs will be created. The Council’s ambition is for these jobs to go to Thurrock families and ensure that children leave school with the right level of qualifications to place them at the top of the list for jobs.

3. Proposed Development Site

The ESFA has proposed to locate a Free School on Council owned land, which is detailed in the table below and illustrated on the map in Appendix 1.

3.1 Thames Park

Plot (Title)	Description
EX880010	Elm Road Open Space accessible at its north west corner at the junction of Elm Road and Maple Road. The 6.04 acre land is freehold and is occupied by playing fields, a children's play area and basketball court

4. Issues, Options and Analysis of Options

- 4.1 The table below provides details of the current pupil capacity as well as information on the size, in acres of each secondary school site within the borough.

Secondary schools in Thurrock – approximate size in acres			
Name of school	Form of Entry	Published Admissions Number	Size of whole site
Gable Hall School	9	272	19.25 + 8.20
Gateway Academy	7	210	43.86
Grays Convent for Girls RC	4	124	3.41+3.46 Shared Playing Field with St Thomas
Harris Academy Riverside	4	120	6.7
Harris Academy C100	6	180	6.7
Hassenbrook	5	150	19.15
Hathaway Academy	6	180	14.48
Ockendon Academy	8	240	22.21
Ormiston Park	6	180	17.16 + 3.97
St Cleres School	7	231	29.38
William Edwards	9	250	25.14

- 4.2 If the Council does not support the disposal of the site required by the ESFA the Free Schools cannot be delivered. The local authority will then have to consider expanding current schools where feasible to do so in order to fulfil its statutory responsibility to ensure that there are sufficient places available in Thurrock for every child of school age. The potential consequence of failing to dispose of land, to enable the new school to be built, will be the financial cost of expanding current secondary schools (where possible). This burden would fall on the Council and prudential borrowing may be required.
- 4.3 However, it is important to bear in mind that the ESFA also has the potential to acquire land from the market. It is not predicated that these schools must be placed on Council land. However, it would appear to be more cost effective and speedier for the ESFA to locate schools on publicly available land where possible.
- 4.4 It is within the Council's gift to therefore seek a commercial return for its land if it so desires. The Elm Road Open Space is not held by the General Fund for Educational purposes.
- 4.5 The Council will also seek to work with the ESFA to re-provide the playground area currently on the site to a different location and seek to re-provide the open space lost in line with local planning policy. This will form part of the consultation which will follow.

5. Reasons for Recommendation

- 5.1. Approval to dispose of the required site is requested to enable the free schools programme to be delivered, so that there are enough school places available to meet demand. The Council is working closely with the ESFA to enable delivery of the current programme.
- 5.2. Given the draft nature of the Heads of Terms (HoTs), it is recommended that delegated authority is given to the Corporate Director of Place in consultation with the Corporate Director of Children's Services, the Assistant Director of Legal Services, the Portfolio Holder for Education and Health and the Portfolio Holder for Regeneration to finalise the HoTs and enter into the necessary agreements to dispose the site to the ESFA.

6. Consultation (including Overview and Scrutiny, if applicable)

- 6.1 Public consultation is to take place for the disposal of open spaces in accordance with the recommendations in this report.

7. Impact on corporate policies, priorities, performance and community impact

- 7.1 Approval of this disposal will enable the Council to continue to meet its statutory duty to provide sufficient pupil places under the Education Act 2006.

8. Property Implications

8.1 The Elm Road site is owned by the Council within the General Fund as public open space.

The disposal of this site is designated as public open space and public consultation will need to be undertaken prior to its disposal in accordance with Section 123(2A) of the Local Government Act.

Section 123 of the Local Government Act 1972 also requires the Council to dispose of land for best consideration. In most instances it would be appropriate for the Council to dispose of land at market value, but given the need to provide new school places, the Council could decide to dispose of this site at less than best consideration. Secretary of State consent will be required if disposal of the site shall be for a price that is more than £2m less than the price achievable as best consideration.

The draft HoTs for the site can be summarised as follows:

- 125-year lease for the site;
- ESFA to seek all statutory consents and to apply for planning permission;
- ESFA to build a new school and ancillary facilities and ensure these properties are fully insured and maintained with no liability to the Council;
- The ESFA will be the client under the CDM Regulations;
- The ESFA accepts the land in its current condition, will be responsible for land remediation and accepts all future environmental liabilities;
- ESFA to provide the Council with all as built plans, operating manuals and to maintain property throughout the term;
- At the end of term, or when properties are yielded up, they are to be returned to the Council in a good condition and with full vacant potential;
- That access for the proposed cycle route improvement NCN13 be maintained;
- The school's amenity space to be accessible by the public and for community use outside of school hours but the amenity space is to be insured, managed and maintained by the school;
- Assignment or subletting only with the landlord's consent;
- Properties may only be used for education purposes;
- The land to be disposed at negotiated value

The site will require planning permission and further due diligence work will need to be undertaken by the ESFA.

9. Implications:

9.1 Financial

Implications verified by: **Carl Tomlinson**
Finance Manager

Additional accommodation required to meet the statutory requirement to provide places for the increasing pupil numbers will be funded from a

combination of the DfE capital basic needs grant, underspends from the current capital programme and Section 106 monies held for Education provision. Once in-depth feasibility studies have been undertaken, funding requirements will be quantified and confirmed. This will include any additional funds applied for and successfully obtained from the Education Funding Agency, under the Targeted Basic Need Programme, which supports specific place needs in Local Authorities with exceptional growth.

9.2 Legal

Implications verified by: **Benita Edwards**
Interim Deputy Head of Law (Regeneration)

The Council has a duty under the Education Act 1996 to ensure the provision of “sufficient schools” for the provision of primary and secondary education in their area. Disposal of the site to the DfE will help the Council meet its statutory duty.

The Council has the power to dispose of its land by either selling the freehold or granting a lease. When doing so, the Council is generally required to obtain the best consideration in accordance with section 123 of the Local Government Act 1972, which will normally (but not necessarily) entail the marketing of the land on the open market. In determining what price would amount to best consideration, it is recommended that advice be obtained from suitably qualified valuers. In the event that the Council decides to dispose of land for an undervalue in excess of £2m, then the Council is required to obtain consent for the disposal from the Secretary of State.

It should be noted that in the event the Council wishes to impose development obligations on the proposed owner of the land, then (depending on how the proposal is structured) that will normally trigger the EU procurement regime, which would necessitate that the proposal be put out to tender. Accordingly, as it is not proposed to go out to tender in this case, the Council will not be able to impose development obligations as part of the proposed transactions.

In addition, it is incumbent upon the Council to comply with its standing orders under the Constitution, in particular the Finance Procedure Rules and the Contract Procedure Rules (the latter of which apply where the procurement rules are triggered). Failure to comply with section 123 of the 1972 Act as well as the procurement regime could lead to challenges on those grounds and might also lead to claims that the Council has granted unlawful State Aid to a third party.

If some or all the land to be disposed of comprises or includes open space land, then prior to any final decision for disposal of the land, the Council is required to consult on the proposed disposal of the open space pursuant to section 123(2A) of the Local Government Act 1972. As provided by section 270 of the 1972 Act and section 336(1) of the Town and Country Planning Act 1990, any land that has been laid out as a public garden, or used for the

purposes of public recreation, or land which is a disused burial ground comes within the definition of 'open space' land.

9.3 **Diversity and Equality**

Implications verified by: **Natalie Warren**
Community Development Officer

There are currently no direct diversity and equality implications. However, the new schools will continue to commit to improving learning environments for young people, supporting improvements in standards and raising aspirations to give all children the best possible life chances. The provision of these projects will help to tackle inequality and social exclusion.

Equality legislation places a duty on public bodies to prevent discrimination in all aspects of service provision, including procurement. It provides a clear and positive legal duty to eliminate discrimination and ensure equality of opportunity.

10 Background papers used in preparing the report (including their location on the Council's website or identification whether any are exempt or protected by copyright):

- 10.1 Pupil Place Planning Document 2017-2021
- 10.2 James Goudie, Essex Chambers: Counsels opinion – exempt
- 10.3 Kemsleys (2018): Valuation Advice for Free School Site - exempt

The above background document item numbers 10.2 and 10.3 are confidential and exempt from publication because they fall within category 3 of rule 10.6 and category 5 of rule 10.6 of the Constitution (Chapter 8 – access to information procedure rules).

11 Appendices to the report

- 11.1 Appendix 1 - Site plan

Report Author:

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