

CABINET MEETING – 13 July 2023
EXECUTIVE SUMMARY SHEET – PART I

Title of Report:

Land Exchange to Facilitate the Rebuild of St Patrick's Primary School, Ryhope

Author(s):

Executive Director of City Development and Executive Director of Children's Services

Purpose of Report:

To seek approval to enter into agreements with the Diocese of Hexham and Newcastle and the Bishop Chadwick Catholic Education Trust to facilitate the Department for Educations' rebuilding of St Patrick's RC Primary School, Ryhope through the exchange of freehold land, and the surrender and grant of new a lease of land for playing fields.

Description of Decision:

Cabinet is recommended to:

- i. Agree in principle to dispose of the properties identified as Property 1 and Property 2 on the plan attached at Appendix A and authorise the Assistant Director of Law and Governance to advertise the disposal of open space in accordance with section 123 (2A) of the Local Government Act 1972.
- ii. Authorise the Executive Director of City Development in consultation with the Leader of the Council, the Cabinet Secretary, and the Chief Executive to consider and determine any objections made in response to the advert for open space disposal referred to in point i. above.
- iii. Subject to the responses to the advertisement referred to at point i. above being considered and determined, authorise the transfer of the Property identified as Property 1 on the plan attached at Appendix A to the Diocese of Hexham and Newcastle (the Diocese) for a consideration that is less than the best consideration that can reasonably be obtained in the market and otherwise on terms to be agreed by the Executive Director of City Development in consultation with the Leader of the Council and the Director of Finance.
- iv. Subject to the responses to the advertisement referred to at point i above being considered and determined authorise the Council to grant a 125 year lease to the Bishop Chadwick Catholic Education Trust (the Trust) over the property shown as Property 2 on the Plan attached at Appendix A for use as school playing fields on terms to be agreed by the Executive Director of City Development in consultation with the Leader of the Council and the Director of Finance.

- v. Authorise the Council to take a transfer of the freehold interest in the Property identified as Property 3 on the plan attached at Appendix A on terms to be agreed by the Executive Director of City Development in consultation with the Leader of the Council and the Director of Finance.
- vi. Authorise the Council to accept a surrender of the existing lease of the current playing fields shown as Property 4 on the plan attached at Appendix A from the Trust on terms to be agreed by the Executive Director of City Development in consultation with the Leader of the Council and the Director of Finance.

Is the decision consistent with the Budget/Policy Framework? *Yes

If not, Council approval is required to change the Budget/Policy Framework

Suggested reason(s) for Decision:

The re-building of St Patrick’s RC Primary School will improve the education facilities and increase the number of school and nursery places within Ryhope.

It is not feasible to build a new school building on the existing school site. Agreement to the proposals will enable the project to remain part of the Department for Education’s (DfE) School Rebuilding Programme which will deliver economic, social and well-being benefits for the Council and Sunderland residents.

As the proposed land swap results in the Council obtaining land of a lower value than the land it is releasing as part of the transfer, the Council is technically not receiving the best consideration reasonably obtainable and as such the approval of cabinet is required. It should be noted however that in supporting the project the Council is also receiving additional financial benefits as set out in the body of the report.

Alternative options to be considered and recommended to be rejected:

Not to complete the proposed land swap. This would prevent the delivery of a new school building for St Patrick’s Catholic Primary School as part of the Department for Education’s School Rebuilding Programme and the additional primary and nursery school capacity which this project will realise at DfE and Diocese cost would be lost and demands for an increase in capacity would have to be delivered by the Council at its cost

Impacts analysed;

Equality No **Privacy** No **Sustainability** Yes **Crime and Disorder** No

Is the Decision consistent with the Council’s co-operative values? Yes

Is this a “Key Decision” as defined in the Constitution? Yes

Is it included in the 28 day Notice of Decisions? Yes

CABINET – 13 JULY 2023

Report of Executive Director of City Development and Executive Director of Children's Services

1. Purpose of the Report

- 1.1 To seek approval to enter into agreements with the Diocese of Hexham and Newcastle and the Bishop Chadwick Catholic Education Trust to facilitate the Department for Educations' rebuilding of St Patrick's RC Primary School, Ryhope through the exchange of freehold land, and the surrender and grant of new a lease of land for playing fields.

2. Description of Decision

2.1 Cabinet is recommended to:

- i. Agree in principle to dispose of the properties identified as Property 1 and Property 2 on the plan attached at Appendix A and authorise the Assistant Director of Law and Governance to advertise the disposal of open space in accordance with section 123 (2A) of the Local Government Act 1972.
- ii. Authorise the Executive Director of City Development in consultation with the Leader of the Council, the Cabinet Secretary, and the Chief Executive to consider and determine any objections made in response to the advert for open space disposal referred to in point i. above.
- iii. Subject to the responses to the advertisement referred to at point i. above being considered and determined, authorise the transfer of the Property identified as Property 1 on the plan attached at Appendix A to the Diocese of Hexham and Newcastle (the Diocese) for a consideration that is less than the best consideration that can reasonably be obtained in the market and otherwise on terms to be agreed by the Executive Director of City Development in consultation with the Leader of the Council and the Director of Finance.
- iv. Subject to the responses to the advertisement referred to at point i above being considered and determined authorise the Council to grant a 125 year lease to the Bishop Chadwick Catholic Education Trust (the Trust) over the property shown as Property 2 on the Plan attached at Appendix A for use as school playing fields on terms to be agreed by the Executive Director of City Development in consultation with the Leader of the Council and the Director of Finance.
- v. Authorise the Council to take a transfer of the freehold interest in the Property identified as Property 3 on the plan attached at Appendix A on terms to be agreed by the Executive Director of City Development in consultation with the Leader of the Council and the Director of Finance.
- vi. Authorise the Council to accept a surrender of the existing lease of the current playing fields shown as Property 4 on the plan attached at Appendix A from the Trust on terms to be agreed by the Executive Director of City

Development in consultation with the Leader of the Council and the Director of Finance.

3. Background

- 3.1 The Council owns the freehold interest in Property 1 as identified on the plan in Appendix A (“Property 1”) which was the site of the former Ryhope Infants and Junior School located at Stockton Road, Ryhope.
- 3.2 The Diocese owns the freehold interest in the current site of St Patrick’s RC Primary School, identified as Property 3 on the plan in Appendix A (“Property 3”) which is operated by The Trust as academy sponsor. The Trust also occupies playing fields identified as Property 4 on the plan attached at Appendix A (“Property 4”) under a 125-year lease from the Council granted in 2021 when the school converted to academy status.
- 3.3 With the exception of a playground built on part of the former school site, Property 1 was declared surplus to operational requirements in 2018 and used as grassed amenity space.
- 3.4 Property 1 is currently identified within the Local Plan as education land but has been included within a pipeline of potential sites suitable for new residential development since it was declared surplus.
- 3.5 In July 2022 the Department for Education (“DfE”) announced that St Patrick’s Primary School, Ryhope had been included in the DfE’s School Rebuilding Programme that will replace 500 schools across the country that are in poor condition.
- 3.6 The current site of St Patrick’s Primary School identified as Property 3 on the Plan appended in Appendix A is constrained due to its size and the playing fields (shown as Property 4 on the Plan in Appendix A) are detached from the main site with poor access. This prevents a new building being built on the existing site.

4 Current Position

- 4.1 Property 1 has been identified as the only land in the vicinity of the existing St Patrick’s Primary school which can accommodate new school buildings and playing fields on a single site.
- 4.2 Subject to the Council agreeing to transfer the freehold interest in Property 1, accepting a surrender of the lease in relation to Property 4, and granting a lease for new playing fields on Property 2 the DfE will meet all costs required to deliver the new school buildings and associated playing fields for St Patricks Primary School and The Diocese will grant the Council the option to take a transfer of the freehold interest in Property 3.
- 4.3 Property 1 covers approximately 1.35 hectares and would have an estimated value of £167,000 based upon its current use. Should planning consent for residential development be secured the estimated value would increase to £675,000.

- 4.4 Properties 3 and 4 have an estimated combined market value of £265,000 based on the assumption that planning consent for Property 3 could be secured for an alternative use other than a school such as conversion for residential and the reclassification of Property 4 as amenity green space.
- 4.5 The Council has a statutory duty under the Local Government Act 1972 (“1972 Act”) not to dispose of its land or properties for a consideration less than the best that can reasonably be obtained (except in the case of short tenancies for a term of 7 years or less), without the express consent of the Secretary of State.
- 4.6 Circular 06/03: Local Government Act 1972 General Disposal Consent (England) 2003 does however provide that where an authority disposes of any interest in land or property and such disposals are at less than the market value, specific consent from the Secretary of State is not needed if the authority can demonstrate that the purpose of the disposal satisfies one or more of the following relevant grounds (“the Relevant Grounds”) and the difference between the market value and the proposed consideration does not exceed £2 million.

The Relevant Grounds are:

- Promotion or improvement of economic wellbeing
- Promotion or improvement of social wellbeing
- Promotion or improvement of environmental wellbeing.

- 4.7 It is considered that the construction of the new school will promote and improve the social wellbeing of the area and in particular that of the pupils attending the school and the non-property benefits (“Voluntary Conditions”) that will be realised by the Council through the proposed transaction, including the provision of better education facilities for Sunderland residents and 35 additional school places in the area, meet the Relevant Grounds cited in the General Disposal Consent to justify a notional undervalue estimated to be £410,000.
- 4.8 It should also be noted that in addition to receiving Property 3 and Property 4 back into the ownership and control of the Council the construction of the new school on the site of Property 1 and 2 at the cost of the DfE and the Diocese will bring additional financial benefits to the Council in the form of future cost savings the Council will realise from not having to create additional primary and nursery school capacity itself in the Ryhope area. The new school is being constructed in the vicinity of the South Sunderland Growth area where additional educational capacity is required to align with the completion of new housing developments. The creation of a new nursery and additional primary school places at St Patrick’s will supplement the additional educational capacity the Council has delivered so far within the South Sunderland area to continue to meet the growing need for educational places arising from the residential developments occurring in the South Sunderland Area.
- 4.9 The 35 additional school places to be funded and created by the DfE and the Diocese as part of the construction of the new school equates to an estimated saving of £459,025 to the Council compared with the alternative option of the Council delivering this additional capacity itself.
- 4.10 In addition the new nursery being funded and constructed by the DfE and the Diocese as part of the new school will result in the creation of 30 new nursery school places at an estimated cost saving of £200,000 to the Council. The creation of this new facility will also support the delivery of the new childcare policy in the city.

- 4.11 Therefore although the Council is receiving land worth potentially £410,000 less than that it is receiving in return, by supporting the DfE to deliver the project it is estimated that the Council is saving up to £659,000 that would be required for the Council to provide the same additional primary and nursery capacity through its own resources. This is an estimated net gain to the Council (by way of future savings) of £249,000.
- 4.12 Subject to the successful outcome of the feasibility work being carried out by the DfE and the receipt of planning permission for the proposed development, it is proposed that the Council simultaneously enters into agreements for the following transactions to enable the DfE to construct the new school on Property 1:
- Transfer of the freehold interest in Property 1 from the Council to the Diocese;
 - Upon practical completion of the new school, grant of a new 125-year lease (on standard academy terms) to the Trust in relation to Property 2;
 - Enter into an agreement which enables the Council to call for the freehold interest in Property 3 to be transferred from the Diocese to the Council within 12 months of practical completion of the new school; and
 - The Trust shall surrender the existing lease of Property 4 to the Council within 12 months of practical completion of the new school.
- 4.13 If the Council take the freehold interest in Property 3 it is proposed that the site is sold for an acceptable planning use. Further cabinet approval will be sought for the disposal of Property 3 in due course.
- 4.14 Following surrender of the freehold interest in Property 4 it is proposed that the existing playing fields are used for the Council's operational requirements.

5. Reasons for the Decision

- 5.1 The re-building of St Patrick's RC Primary School will improve the education facilities and increase the number of school and nursery places within Ryhope.
- 5.2 It is not feasible to build a new school building on the existing school site. Agreement to the proposals will enable the project to remain part of the Department for Education's (DfE) School Rebuilding Programme which will deliver economic, social and well-being benefits for the Council and Sunderland residents.
- 5.3 As the proposed land swap results in the Council obtaining land of a lower value than the land it is releasing as part of the transfer, the Council is technically not receiving the best consideration reasonably obtainable and as such the approval of cabinet is required. It should be noted however that in supporting the project the Council is also receiving additional financial benefits as set out in the body of the report.

6. Alternative Options

- 6.1 Not to complete the proposed land swap. This would prevent the delivery of a new school building for St Patrick's RC Primary School as part of the Department for Education's School Rebuilding Programme and the additional primary and nursery school capacity which this project will realise at DfE and Diocese cost would be lost and demands for an increase in capacity would have to be delivered by the Council at its cost.

7. Impact Analysis

7.1 Sustainability

- 7.1.1 The proposed transfer will result in the development of more a sustainable, lower carbon, and safer school that is more consistent with modern methods of teaching and learning. It will also result in the creation of an additional 35 school places in Ryhope which will help meet the increased demand for primary school places that is projected from the South Sunderland Growth Area.

8. Other Relevant Considerations / Consultations

8.1 Financial Implications

- 8.1.1 There are no direct financial implications arising from this report.
- 8.1.2 Agreement to the proposals contained within the report will enable the project to remain part of the Department for Education's School Rebuilding Programme which will deliver economic, social and well-being benefits for the Council and Sunderland residents. There are also potential cost savings than from the Council delivering the additional capacity itself.

8.2 Legal Implications

- 8.2.1 The general power granted to local authorities to dispose of land is contained in Section 123 of the Local Government Act 1972. This provision provides that a local authority shall not without the consent of the Secretary of State dispose of land, unless the disposal is by way of lease for seven years or less, for a consideration less than the best that can be reasonably obtained.
- 8.2.2 Section 123(2A) of the Local Government Act 1972 states that a Council may not dispose of any land consisting or forming part of an open space unless before disposing of the land in question it is advertised for two consecutive weeks in a local newspaper and any objections to the proposed disposal which may be made to them have been considered. As Property 1 and Property 2 consists of open space this process will have to be followed for appropriate parts of the Property before a final decision to dispose of the land is made.
- 8.2.3 The proposed disposal of the currently Council owned property (being Property 1 and Property 2 on the plan attached at Appendix 1 based upon proposed terms is for a consideration less than the best that can be reasonably obtained but the consent of the Secretary of State is granted by the General Disposal Consent (England) 2003 as set out in paragraphs 4.6 and 4.7 above.
- 8.2.4 A sale of land at less than best consideration can amount to a subsidy under the Subsidy Control Act 2022 ("the Act"). It should be noted however that education services organised within the national education system, which are both funded through public funds and supervised by the UK Government, are not considered to be economic activities for the purposes of the Act. The Diocese and the Trust are parties to this arrangement by virtue of their involvement in supplying public

education and as such there are no subsidy control concerns arising from the matters detailed in this report.

8.3 Risk Analysis

- 8.3.1 The principal risk to the Council is that the anticipated value for Property 3 is not realised or becomes a financial liability. This risk will be mitigated through further due diligence on Property 3 following exchange of agreements to confirm the anticipated values can be achieved and any future demolition or holding costs would not be a financial burden to the Council.

8.4 Property Implications

- 8.4.1 The Council will be responsible for the additional maintenance liability of Property 4 once surrendered by the Trust but relieved of the current maintenance liability of Properties 1 and 2.

9. Appendices

Appendix A – Site Plan