

13 June 2018		ITEM: 10 Decision 110469
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: Michele Lucas, Interim Assistant Director Learning and Skills; Detlev Munster, Assistant Director, Property		
Accountable Director: Steve Cox, Corporate Director of Place; and Rory Patterson, Corporate Director of Children’s Services		
This report is Public		

Executive Summary

Thurrock is becoming 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 cannot build new schools itself.

This report seeks to gain the approval for the disposal of two Council owned properties to the ESFA in order to deliver the current free schools programme, and ensure there are enough places to meet growing demand.

The sites identified for new school development, detailed in this report are currently unused, but one of the sites is identified for alternative uses.

1. Recommendations:

That Cabinet:

- 1.1 Notes the Free Schools Programme progress to date and the partnership working with the ESFA;**

- 1.2 Approves the disposal of the Treetops site and the Orsett Heath site to the Department for Education (acting through the ESFA) for the purposes of building and establishing new Free Schools on each of the sites;**
- 1.3 Authorises the Corporate Director of Place, in consultation with the Cabinet Member for Education and Health and the Cabinet Member for Regeneration to dispose of (i) the Treetops site and (ii) the Orsett Heath site, if required, at negotiated value or rent, taking into account, as outlined in section 8 of the Report, the need to provide new school places, subject to obtaining the consent of the Secretary of State for Housing, Communities and Local Government if required in either case**
- 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, in consultation with Cabinet Member for Education and Health and the Cabinet Member for Regeneration to agree heads of terms for the disposal of the identified sites to the DfE/ESFA and to take all necessary steps to complete the transactions.**
- 1.5 Request Officers urgently bring forward papers to address the Thames Park Free School and the Reach 2 free school for September Cabinet.**

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 build 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 12th April 2017.
- 2.3 The successful Free Schools include:
 - 2.3.1 Orsett Heath Academy - mainstream, 8FE, 1,200 place secondary with a sports specialism. The new school would be part of the South West Essex Community Education Trust.
 - 2.3.2 Thames Park - 6FE, 900 place secondary. The new school would be part of the Osborne Trust. A site is yet to be identified for this school and will be the subject of a separate Cabinet Report.
 - 2.3.3 Reach 2 - 2FE, 420 place secondary. The new school would be part of the Reach 2 Academy Trust. The Council is working with ESFA to identify a suitable site for this school, as the proposed site for Brandon Groves is both logistically and strategically problematic and will be the subject of a separate Cabinet Report.
 - 2.3.4 Treetops Special Free School; special, all-through school with 140 places for pupils between the ages of 4-16 catering for Moderate Learning Difficulties and Autistic Spectrum Condition.

- 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 schools 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 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 the Council feels 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 June/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 provide 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.
- 2.18 In addition to new free schools, the Council has also embarked on a number of school expansions to support the growing demand for school places.
- 2.18.1 St Clere’s School is in the process of expanding by 1 FE. This will provide an additional 30 year 7 spaces and a total additional whole school capacity of 150 places. The programme of works is being phased to enable the classrooms to be ready for the Year 7 intake in September 2018.
- 2.18.2 The Ockendon Academy has expanded by 1FE and works are due to complete this month. This will provide an additional 30 year 7 spaces and a total additional whole school capacity of 150 places.

2.18.3 East Tilbury Academy is currently in the process of expanding by 1FE. This will provide an additional 30 Reception spaces and a total additional whole school capacity of 210 places. The programme of works is being phased to ensure delivery of the classrooms for September 2018.

2.18.4 Corringham Primary is expanding by 1FE. This will provide an additional 30 Reception spaces and a total additional whole school capacity of 210 places. The project is currently at detailed design stage with the programme due to complete August 2019.

3. Proposed Development Sites

The ESFA has proposed to locate two of the Free Schools on Council owned land, which are detailed in the tables below and illustrated on the map in Appendix 1.

3.1 Orsett Heath Academy (Secondary)

Plot (Title)	Description
EX214429 And EX242165	Land lying to the North West of Stanford Road, Grays. The land is in the Council's freehold ownership and is currently open space with playing fields on part. These playing fields are currently used by the Thurrock Rugby Club and this arrangement will need to be reviewed. Sports England will need to be consulted regarding the discontinued use of these playing fields.

3.2 Treetops Special School

Plot (Title)	Description
EX746111	Former site of Torrells County Secondary School For Girls, Buxton Road, Grays (RM16 2XW), which closed in 2003 and was subsequently demolished in 2009. The Treetops Special School was built on part of the former Torrells School site and subsequently converted to an Academy on 1 st April 2017

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 sites 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 consequence of failing to dispose of land, to enable the new schools 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 In relation to Lower Thames Crossing, there is uncertainty at this stage of the overall impact on the Orsett Heath site. Further consideration will need to be undertaken whilst the proposal for the new crossing is being further developed. Initial discussions with Highways England (HE) suggest a willingness to amend the Lower Thames Crossing red line boundary to accommodate the school. This would be a matter for the ESFA and HE to progress.

5. Reasons for Recommendation

- 5.1. Approval to dispose of the required sites 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. This will place Thurrock in a strong position when the next round of free school bids is announced.
- 5.2. Given the draft nature of the 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 and the Assistant Director of Legal Services to finalise the HoTs and enter into the necessary agreements to dispose the sites 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

The two sites are owned by the Council within the General Fund as open space, albeit they could be considered for alternative uses.

Section 123 of the Local Government Act 1972 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 these sites at less than best consideration. Secretary of State consent will be required if disposal of any of the sites shall be for a price that is more than £2m less than the price achievable as best consideration.

In this regard the Council needs to be mindful of the cost of forgoing the opportunity of other uses. The sites have been independently valued by a registered valuer.

The draft HoTs for the two sites can be summarised as follows:

- 125 year leases for each site;
- ESFA to seek all statutory consents and to apply for planning permissions;
- 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;
- Where appropriate, the playing fields and parking facilities are to be kept open for public use after school hours and are to be insured and maintained by the ESFA for such purposes;
- Assignment or subletting only with the landlord's consent;
- Properties may only be used for education purposes;
- Land for the Orsett Heath School to be disposed at negotiated value
- Land for the Treetops School to be on a peppercorn basis.

The sites 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

The free schools programme enables investment in the borough by the ESFA to provide additional capacity to meet growing demand. This would otherwise need to be met by expanding current school capacity at additional cost to the council. The additional accommodation required to meet the statutory requirement to provide places for the increasing pupil numbers would have to 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. In-depth feasibility studies would have to be undertaken and funding requirements quantified and confirmed. This would 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. Site

valuations and opportunity costs need to be considered against the alternative cost of provision.

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 sites 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 Kemsley (2018): Valuation Advice for Free School Sites – exempt

The above background document item numbers 10.1, 10.2 and 10.3 while not part of this report 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 plans

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