



Leicester
City Council

**WARDS AFFECTED:
NEW PARKS WARD**

**CHILDREN & YOUNG PEOPLE SCRUTINY COMMITTEE
CABINET**

**16 NOVEMBER 2010
23 NOVEMBER 2010**

**NEW COLLEGE STRUCTURAL SOLUTIONS FOR NATIONAL
CHALLENGE SCHOOLS - LAND TRANSFER**

Report of the Strategic Director, Children

1. Purpose of Report

- 1.1. Following the report to this Committee on 13th April 2010 and Cabinet on 19th April 2010 to update Members on the Land Transfer process and seek approval for the disposal of the New College School site to the Trustees at nil consideration.

2. Recommendations

- 2.1. That the Children and Young People Scrutiny Committee notes the report and makes any observations to Cabinet.
- 2.2. That Members consider the terms proposed for the transfer of the school site and confirm approval for a disposal at nil consideration.

3. Summary

- 3.1. This report outlines progress to date and proposals for the asset transfer to Trust Status requiring Cabinet approval for a disposal at nil consideration.

4. Report

- 4.1. The report to this Committee on 13th April 2010 and Cabinet on 19th April 2010 recommended a further report on the process involved in Land Transfer if the colleges proposed in that report gained National Challenge Co-operative Trust Status.

4.2. When a school's proposal to change governance category has been approved, all land held and used by the transferor immediately before the implementation date for the purposes of the school will transfer to and vest in the transferee to be held for the purposes of the school. Normally this will include the school's buildings, hard and soft play areas, all weather sports areas, games courts, playing fields, habitat areas, roads, paths and car parks. Where a shared school community facility (e.g., leisure centre or sports hall) is transferred to the school, it will have to honour any existing contracts or agreements. If they make any reference to maintenance or other requirements, then the school is bound to honour them.

4.3. The Governing Body met to consider the consultation responses on 14th April 2010 and considered the issues raised.

The consultation was promoted widely and approximately 2,000 consultation documents were distributed when consultation officially opened

There were 16 response forms returned, 13 of these were supportive of the proposed change, 2 were unsure and 1 was against.

4.4. At the staff meeting there were no general objections to the proposals, although there were significant numbers of queries and comments about the appropriateness of the rationale behind the proposals given the college's current perceived stage in its development journey.

The members of the New College Trust are:

CfBT Education Trust	4 Trustees
Wyggeston and Queen Elizabeth 1 College	2 Trustees
Leicester Children & Young People's Services	1 Trustee
The Co-operative College	1 Trustee
Stakeholder Forum (to be established during 1 st Yr)	1 Trustee

4.4.1 The Stakeholder Forum is to be made up of:

- learners attending the college;
- parents and carers of those attending the college;
- staff working at the college;
- members of the local community; and
- local community organisations

4.5 Governance Structure

Governor type	Proposed
Local Authority	1
Parent	4
Staff	2
Community	2
Trust/Foundation	10 (2)*
Total	19

*Under the Trust/Foundation category, the number in brackets is the number of Trust appointed governors who, at the time of their appointment, are eligible for election or appointment as parent governors to ensure that at least one third of governors are parents.

4.6 Statutory Notices

Statutory notices for New College were issued and published at noon April 19th starting the 4 week Statutory Representation period which ended at noon on May 17th.

No representations were received at New College during the four week period allowed for representations and the Proposals have not been referred to the Schools Adjudicator.

The Interim Executive Board (IEB) at New College voted to progress to Trust status to take effect on June 1st at their meeting on Wednesday May 19th.

The Trust will be known as

New College Leicester Trust

Final stages: The documents listed below are to be completed and sent to Companies House to register the Trust as at May 28th:

Articles of Association agreed
Memorandum of Association signed
Trust registration document ION1 signed

On June 1st 2010, the following were enacted:

- The Trust was established
- The category of the school changed from Community to Foundation.
- Staff became employees of the Governing Body

4.7 Once the Trust was established, Cobbetts Solicitors, acting for the school, moved to agree the conveyance terms with the local authority Legal Department to determine the Land and Buildings to be transferred. This

process can take up to six months and has taken up to two years in some instances.

If agreement cannot be reached the decision will then be referred to the School's Adjudicator to make the final decision.

- The school's land and buildings will transfer to that Trust to be held in trust for the duration of its relationship with the school. Trust schools will be in the same situation as existing foundation schools whose foundations (or Trusts) already hold the land, and also similar to existing voluntary aided (VA) schools.

4.8 Investing In Our Children officers have now liaised with Property and Legal officers to explore the issues of asset transfer and the following proposals have been provisionally agreed, with the exception of the Football Foundation site by the Trustees of the Co-operative Trust.

I. General Site

Subject to the specific provisions listed below it is intended that the land and buildings comprising New College (as shown edged black on the attached plan) will be subject to a freehold transfer to the Trust who will grant Leicester City Council all appropriate rights of access and provision of services in relation to its ongoing interests, subject to the following provisions.

II. Playing Fields (Area 1 on attached plan)

The Playing Fields will be transferred to the Trust subject to covenants on the land to agree that in the event of a requirement for strategic educational purposes by the Council that the Trust would permit suitable development providing that sufficient sports fields remained to provide for statutory requirements.

III. New Parks Club for Young People (Area 2 on attached plan)

The site of approximately 3.07 hectares leased to New Parks Club for Young People to be excluded from the transfer.

IV. Gymnastic Hall/Sports Hall (Area 3 on attached plan)

Subject to agreement by Sport England to the disposal and to releasing the Council from all claims and demands whatever in respect of the terms contained in the following documents ; - (i) an Award of Grant Letter dated 26th March 2008 and (ii) a Form of Acceptance entered into by the Council with Sports England and (iii) the Council's Grant Application Form whereby the Council entered into obligations for the delivery of a new build gymnastics facility (These documents together constitute "the Lottery Sports Fund Award") the gym facility would transfer to the Trust. The Trust would enter into a Deed of Novation whereby the Trust would undertake to comply with the rights and obligations contained in these

documents and to be bound by the terms. The Council will indemnify the Sports England and the Trust in full against all costs losses damages or expenses incurred as a result of any claims proceedings or actions arising from any acts or omissions of the Council prior to the release of the Council under the Novation Agreement.

There is a Community Use Agreement in respect of this facility entered into between the Governors at the School and British Gymnastics and Hinckley Gymnastics in respect of the future running and management of the facility. The Council is not party to this Deed and it accepts no responsibility for any of the matters purported to be the responsibility or function of the “Authority” under that agreement.

The facility is dedicated to Sport England for 21 years from 30th April 2009 and as such is registered against the Council’s freehold registered land title. If Sport England do not agree to the transfer of the facility to the Trust and release the Council from the terms of the Lottery Sports Fund Award then the transfer of the facility cannot take place. The Council could, however, agree to transfer the facility to the Trust once the time period has elapsed and the restriction removed.

In the meantime, the current school use of the facility would be the subject of a user agreement to be entered into between the Council and the Trust/Governing Body. This user agreement would be in terms as set out in the Lottery Sports Fund Award so as to comply with Sport England grant conditions. As between the Council and the Governing Body the current arrangements for repair and maintenance will form part of the agreement.

V. Youth Centre (Area 4 on attached plan)

Due to the proposed expansion of the Youth Centre, the area shown hatched black will be excluded from the Transfer to facilitate these proposals (10m x 28m).

VI Football Foundation (Area 5 on attached plan)

Following discussions with the Football Foundation and the Trust representatives to ensure the delivery of the councils “Football Development Strategy” with the licensee Allexton Football Club and satisfy the Trustees requirements, it has now been agreed that this area (comprising the changing rooms and all weather pitch) will be included in the freehold transfer to the Trust. The Trust will then lease back this area to the Council on a long lease suitable to comply with the Football Foundations and Councils requirements.

A tripartite agreement will also be set up between the Trust, Football Foundation and Authority to confirm service delivery requirements, shared rights and responsibilities.

VII Substation (Area 6 on attached plan)

The substation located to the north of the site leased to Central Networks on a 21 year lease from 2006 on a peppercorn rent will be included in the transfer to the Trust.

- 4.9 As the transfer is a disposal to the college at “less than best consideration” under the disposals framework, Cabinet will need to consider whether it considers the disposal justified under the following “wellbeing” provisions:-
- Promotion or Improvement of economic wellbeing
 - Promotion or Improvement of social wellbeing
 - Promotion of environmental wellbeing
- 4.10 If Cabinet confirms that the disposal can proceed at “less than best consideration”, the requirement to seek Secretary of State Consent Authority does not apply where the transfer is to:-
- a) the governing body of a foundation, voluntary or foundation special school or
 - b) persons proposing to establish such a school.

5. **FINANCIAL, LEGAL AND OTHER IMPLICATIONS**

5.1. Financial Implications – Nick Booth, Extn. 297460

The transfer of the school to trust status would result in a nominal sum of £1. If the school for any reason was discontinued, the Secretary of State would have the power to direct where the land or proceeds are used. In theory, the site could be worth approximately £5.8 million excluding playing fields, but in practice there has been no expectation of any such sale.

The school is in the Council's forward Building Schools for the Future (BSF) Programme. Subject to the continuation of the current BSF framework and the necessary local and national approvals, the Council would act as agent for the Trust in respect of a future BSF scheme and the resulting on-going contracts. These contracts will include Facilities Management, Lifecycle and ICT. The funding and costs of BSF contracts are currently pooled between BSF schools and in certain circumstances shared with the City Council. This means that the costs incurred on the transferring contracts for a particular school will not match the contribution to be paid by that school under these current arrangements. This has previously been flagged as a risk and an area for further discussion with schools collectively and individually as the BSF programme is rolled out and alternative models of school governance emerge. It should also be noted in connection with BSF that individual schools have accepted on-going liability for on-going costs occasioned by school-led additions or changes to the original BSF design and facilities and the Council would expect these to continue to be honoured.

The report highlights a number of agreements with external funders such as the Sport England and the Football Foundation, and also arrangements for community use. It will be important to ensure that all parties' financial and legal interests are protected as new agreements and arrangements are entered into.

5.2. Legal Implications

The re-prohibition from making disposals of land below market value without the consent of the Secretary of State has been dis-applied, by virtue of Part 3 of Schedule 3 to the Schools Standards and Framework Act 1998 in the case of a disposal to the governing body of a foundation school.

No BSF contracts have been entered into or committed in respect of this school, although this school has been profiled within the "affordability gap" calculations to be pooled under the arrangements for contributions from schools. However, the proposed documentation available for BSF contracts will enable this school to be a BSF project, the Council entering into procurement, development and governing body agreements with the school in due course to enable this.

In this case, the Governing Body is the decision maker for the purposes of proposals for changes to local school provisions. In making a decision following the consultation, the Governing Body must follow the Statutory guidance.

If the Governing Body has failed to meet the requirements for consultation, it is possible that their decision could be open to challenge. The other route for complaints against the decision would be to the Secretary of State.

In respect of admissions, the Governing Body would be required to honour any decisions taken by the local authority for the existing admissions round.

The change in school category will result in a change of employer and staff contracts will transfer. Legal advice is being provided on staff transfers and pension arrangements in particular.

In respect of land, land held by the Council for the school transfers to the new trustees. It is not believed that the school uses land held by another body. It is not proposed to exclude any land of the school from the transfer except where identified in the report 4.8 I to VII.

5.3. Climate Change Implications

Currently under the CRC Energy Efficiency Scheme and under NI 185 (the Council's carbon emissions) schools that gain Trust Status will continue to have their carbon emissions included in the total for the Council's carbon emissions with the resultant liability this incurs under the CRC. In 2009-10 New College emitted around 920 tonnes of carbon as a result of their gas and

electricity consumption. These emissions will still be the responsibility of the Council even if the College gains Trust Status.

Helen Lansdown, Senior Environmental Consultant - Sustainable Procurement

6. Other Implications

OTHER IMPLICATIONS	YES/ NO	Paragraph/References Within Supporting information
Equal Opportunities	No	
Policy	No	
Sustainable and Environmental	No	
Crime and Disorder	No	
Human Rights Act	No	
Elderly/People on Low Income	No	
Corporate Parenting	No	
Health Inequalities Impact	No	

7. Background Papers – Local Government Act 1972

7.1. The Transfer and disposal of school land in England - DCSF

8. Consultations

8.1. As set out in the report.

9. Report Author

Eddie Beilby
Valuation Services and Operational Property Manager (Acting)
Strategic Asset Management
Extn. 298043
Email: eddie.beilby@leicester.gov.uk

Rob Thomas
School Organisation Manager
Learning Environment
Extn. 391637
Email: Rob.Thomas@leicester.gov.uk

Key Decision	Yes
Reason	Is significant in terms of its effect on communities living or working in an area comprising more than one ward
Appeared in Forward Plan	Yes
Executive or Council Decision	Executive (Cabinet)

