
Cabinet Member for Jobs and Regeneration

7 March, 2018

Name of Cabinet Members:

Cabinet Member for Jobs & Regeneration – Councillor J O’Boyle

Director Approving Submission of the report:

Deputy Chief Executive, Place

Ward(s) affected:

Henley

Title:

Lease Consent to Change User and Variation to Proposed Seva Free School, Walsgrave Triangle Coventry

Is this a key decision?

No

Executive Summary:

The Seva Education Trust (“the Trust”) was established in Coventry in September 2014. It was originally accommodated in temporary accommodation on the site of the former Dartmouth Primary School at Tiverton Road.

It moved to its current location at Link House, Walsgrave Triangle Business Park from September 2015 following a long search for a suitable site in the City.

The Council own the freehold interest of Link House and in November 2014 the Council formally agreed to facilitate the school moving to this building by agreeing to vary the head lease that required the building was only used as an office. The building had previously been occupied by Barclays Bank.

The Trust subsequently moved to Link House in September 2015.

The Trust now wishes to expand and are looking to occupy and use 1 Eden Road near to Link House. In order to facilitate this expansion, it is proposed that Department for Communities & Local Government (DCLG) will take an assignment of the existing leasehold interest and will grant an under lease to the Trust.

In order to permit the use of 1 Eden Road as a school, the Trust require the Council, acting as landlord and freehold owner, to agree to consent to a change of use under the terms of the long lease dated 21 January 1992 of 1 Eden Road (“the Lease”).

The Trust intend to use Class K permitted development rights to secure the necessary planning consent to permit 1 Eden Road to be used for educational purposes. Permitted development rights give the Council as Local Planning Authority limited grounds to resist the change of use, (transport & highways impacts; contamination risks and noise impacts).

The Trust also wish to take a co-terminus lease from the Council over land at the rear of the building (outlined on the plan attached) to be used as a school playing field in association with 1 Eden Road.

Authority is therefore sought for the Council giving consent to the School to change the use from offices to educational use in accordance with the terms of the Lease and to vary the Lease in line with the DfE standard model academy lease where appropriate to facilitate 1 Eden Road being used for educational purposes from September 2018 on the terms contained in this report and to negotiate the terms of the leasehold disposal of the land at the rear of 1 Eden Road for use as a school playing field, subject to a satisfactory planning permission being obtained.

Recommendations:

Cabinet Member for Jobs and Regeneration is recommended to:-

1. Subject to the Seva Education Trust gaining a lawful change of use planning consent under permitted development rights, allow the use of 1 Eden Road, Walsgrave Triangle Business Park for Educational use. Any such consent will give Coventry City Council the legal right to withdraw such consent after a minimum of 15 years in the event that the school does not comply with either their current obligations under a green travel plan or any new green travel plans imposed as a condition of any planning consent.
2. Delegate authority to the Deputy Chief Executive, Place to grant consent to change of use in respect of the existing long lease dated 21 January 1992 made between the Council and Ashford Developments Ltd so as to allow the proposed change of use, together with any other necessary variations to the said Lease for educational purposes to proceed.
3. Delegate authority to the Director of Finance and Corporate Services and officers within Legal Services, to complete the necessary legal documentation in this matter.
4. Authorise officers to negotiate the terms of the lease of the land at the rear of 1 Eden Road to be leased to Seva Education Trust for use as a school playing field and for officers in Legal Services to complete the lease subject to a satisfactory planning permission being obtained.

List of Appendices included: A site plan is referred to in the report.

Other useful background papers:

None

Has it been or will it be considered by Scrutiny?

No

Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?

No

Will this report go to Council?

No

Report title:

Lease Change of Use and Variation to proposed Seva Free School, Walsgrave Triangle Coventry

1. Context (or background)

- 1.1 In September 2014 the Sevak(Is it Seva or Sevak) Education Trust (“The Trust”) opened a new free school in the city following approval from the Department for Education (DfE). The free school was opened in temporary accommodation at the former Dartmouth School in Wyken for a period of one academic year following which the school moved to its permanent site at Link House, Walsgrave Business Park. The Council own the freehold interest in Link House. The Trust requested that the Council support this move by agreeing to vary the lease of Link House to allow the building to be used for educational purposes. The long lease granted by the Council when the building was built restricted the use to office uses. This matter was considered and approved in November 2014.
- 1.2 The Trust approached the Council again in 2017 confirming that, to allow expansion, it had agreed to acquire the long leasehold interest in the nearby building 1 Eden Road. See plan attached at Appendix 1.
- 1.3 Following the opening of the school, concerns were raised regarding the future of the school after Ofsted judged them inadequate and put them into special measures on the grounds of Leadership & Management and Personal development.
- 1.4 However since this time the position has improved and the DfE view is that there is now a good balance of experienced trustees and a range of independence, skills, backgrounds and expertise and a common goal to make improvements. They are confident in the capacity of the new board and their approach. The board and leadership have prioritised and made good progress on safeguarding and improving education standards endorsed and supported by the LA and acknowledged in the subsequent Ofsted monitoring visit which stated the school meets all safeguarding statutory duties.
- 1.5 In addition problems were experienced in relation to the school’s implementation of the Travel Plan that was required as a condition of planning consent for Link House. A report was taken to Planning Committee to seek authority to commence enforcement proceedings. However these proceedings were not instigated as the school markedly improved its adherence to the Travel Plan.
- 1.6 The freehold of 1 Eden Road is held by the Council and the building is let under a long lease dated 21st January 1992 for a term of 150 years from 5 June 1991. The Trust has approached the Council to help facilitate their proposal by granting consent to a change of use and varying the terms of this lease where necessary.
- 1.7 Negotiations between the Council and ESFA have taken some time as the Council wishes to ensure that in granting consent to change of use and any lease variation both the ESFA and the Trust will ensure that the Travel Plan is complied with. This requirement will be incorporated into the Consent to Change of Use and Deed of Variation to the lease.
- 1.8 In addition the ESFA will pay a ground rent to the Council as market consideration for the variation to the user clause, subject to the Trust gaining full planning consent for the entire school project.

Accordingly the EFA are now proposing to:

- Use planning powers to apply for Class K permitted development in respect of 1 Eden House. In effect Class K permitted development rights gives the EFA “deemed planning consent” for educational use. The Council as local planning authority has limited grounds to resist this change of use under these powers as it only needs to be satisfied on transport and highways impacts, risks of contamination and noise impacts.
- Subject to the Trust holding a legal interest in 1 Eden House request that the Council immediately grant consent to change the user and vary the lease where appropriate to allow 1 Eden Road to be used as a school.
- This consent to change of use and any associated variation will only be permitted on grant of planning consent as set out above
- Grant a lease co-terminus with the lease over Link House over the area of land edged green on the attached plan into the Eden Road lease so as to allow this area to be used for external play space for the benefit of the school.
- It is noted that the Trust may wish to apply for planning consent to extend the school and expand the buildings at a later date if appropriate, this may involve the construction of a sports hall on the car park of 1 Eden Road. Any subsequent variation (if any) required to the lease to accommodate such proposals will need to be considered separately.

2. Options considered and recommended proposal

- 2.1 Coventry has been proactively managing the delivery of additional school places for a number of years predominantly in the primary phase. The Council’s strategy has been to expand existing provision rather than create new schools. Indeed the Council is unable to establish any new community schools. The Education Act 2011 changed the arrangements for establishing new schools and introduced section 6A (the academy/free school presumption) to the Education and Inspections Act 2006. The Seva Trust applied for a free school and the new Seva School has been approved by the Secretary of State. The Council has no powers of intervention. It is however essential that the Council works closely with any new free school sponsors and the EFA to ensure that the new provision assists the Council in fulfilling its statutory responsibilities over pupil places.
- 2.2 The additional places to be provided at the Seva School have therefore been taken into account in our overall strategic pupil places plan. In the primary phase the Council has been expanding schools since 2008, to meet growing demand particularly in the central, north and eastern areas of the city. The Seva School will have a citywide catchment area rather than serve a specific local community and therefore the impact has been felt across a broader number of schools. The school also admits some children from the outside the City.
- 2.3 Council strategy has been to expand primary schools incrementally initially from reception year only to avoid disruption to the education of older children transferring in and thereby mitigating the impact on other local schools. The full impact of the Seva School will therefore only be known once the site forming 1 Eden Road has been confirmed and admissions to all year groups has been rolled out.
- 2.4 There are currently sufficient Year 7 secondary places across the city to meet demand up to 2018/19.

- 2.5 By September 2024 however education providers in the City need to provide an additional 14 forms of entry (at year 7) across the city to meet forecast demand – these will need to be phased in from September 2018 onwards. In the longer term therefore the additional places provided at the Seva School will assist the Council in meeting its statutory responsibilities on school place provision under the Education Act 1996.
- 2.6 Whilst the site identified by the EFA/Trust is an employment site its change of use to education use was not as detrimental to the City’s employment land supply as the other sites the Trust and the EFA shortlisted. In addition the presence of adjoining land means that, subject to planning, there would be a much smaller loss of employment land than at other locations. These implications would have been addressed through a planning application if one had been submitted, but will not be initially through the use of permitted development rights.
- 2.7 The options for consideration are therefore:

Accept the proposal

Whilst the proposal is not ideal allowing it to proceed will allow the creation of additional secondary places in the city and allow the school to operate and grow on adjoining sites.

Decline the proposal

If the proposal is declined the Trust will need to revisit their search for a site as they are committed to delivering the school in the city. There is no suggestion that a more suitable and/or available site can be identified accordingly the additional secondary places would be lost to the city in the short term.

3. Results of consultation undertaken

- 3.1 The EFA and Trust would be required to undertake public consultation pursuant to the planning application that will need to be submitted to support the proposals.

4. Timetable for implementing this decision

- 4.1 The school wishes to transfer to its new premises for the start of the academic year in September 2018. Prior to then it needs to complete the purchase of the leasehold interest in the building, secure permitted development for education use and undertake any necessary physical changes to enable use as a school by then.

5. Comments from Director of Finance and Corporate Services

5.1 Financial implications

The capital receipt will contribute to corporate resources. There may be a loss of Business rates in the event that the Trust are able to claim charitable business rates relief.

5.2 Legal implications

Any consent to change of use after the first 25 years of the term of the Lease is subject to obtaining the Council's prior written consent (such consent not to be unreasonably withheld or delayed)

The Council is required to secure best consideration under Section 123 of the Local Government Act 1972 in any disposal of its property interests. Officers will negotiate and agree lease terms which meet this requirement when negotiating the proposed lease of the land at the rear for use as a playing field

The Deputy Chief Executive Place (and officers within Legal Services) will complete the legal documentation in connection with the consent to change of use and any associated variation to the Lease and will collect the agreed consideration upon the completion of the legal documentation

Officers in Legal Services will complete the necessary leasehold documentation in respect of the land at the rear for use as a playing field once terms have been negotiated and agreed

6. Other implications

6.1 How will this contribute to achievement of the Council's key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint / Local Area Agreement (or Coventry Sustainable Community Strategy)?

Local Authorities have a statutory duty under the Education Act 1996 to ensure sufficient school places are available to meet local needs. The new Seva School provides an additional 750 Year 7 to Year 11 places which would support the Council to fulfil its legal obligations from 2018/19 onwards.

6.2 How is risk being managed?

Provision of sufficient school places is included on the Corporate Risk Register. Officers regularly (weekly) review the position in relation to admissions to ensure that there are sufficient places to meet demand.

The management of the risk of procuring the building and delivering education from the building sits with the Trust and its project managers, the EFA.

6.3 What is the impact on the organisation?

In the short term the provision of additional places may have an impact on other schools in the city and will therefore need to be closely monitored. From 2018 additional secondary school places will be required in the City and this provision will contribute to that requirement.

6.4 Equalities / EIA

All public sector equality duties lie with the Trust / ESFA and no EIA is required by the Council.

6.5 Implications for (or impact on) the environment

The permitted development right to change the use of an office to a school is subject to the local planning authority determining whether the prior approval of the Council is required in respect of traffic and transport impacts, the contamination risks of the site, and the noise impacts of the development. The Trust / EFA has not yet submitted a notification of its intention to exercise permitted development rights to the Planning service.

6.6 Implications for partner organisations?

Potential impacts on other schools under the Councils control are recorded at para 6.3 above, similar impacts could be experienced by other schools outside the Councils control. Clearly the proposal as submitted impacts on the Sevak Trust's ability to provide a free school. Without a change of use on the lease, along with other considerations, they will not be able to provide education from the Walsgrave Triangle site or meet their obligation to provide adequate capacity for schooling from September 2018.

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