

Report No.  
CEF 21038

## London Borough of Bromley

### PART 1

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**Decision Maker:** **Executive**

**Date:** **22 September 2021**

**Decision Type:** Non-Urgent                      Executive                      Key

**Title:** **HARRIS KENT HOUSE FREE SCHOOL INCLUDING  
ASSOCIATED PROPERTY TRANSACTION**

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**Chief Officer:** Director of Education

**Ward:** Penge and Cator

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1. Reason for report

Harris Kent House was approved as a new secondary school, entering the Department for Education's Free School programme in Wave 12. The new school will be constructed on the Kentwood site. In addition to the new secondary school the project will see new accommodation provided for the existing Harris Primary Academy Kent House and the Council's Adult Education and Adult Social Care operations on site. The report seeks agreement for the Council to enter into a number of agreements with the Department for Education and Harris Federation. The Department for Education will act as developer for the Council in constructing the new build Adult Education and Adult Social Care premises, and new academy leases will need to be provided to the Free School and existing Harris Primary Academy Kent House.

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2. **RECOMMENDATION(S)**

- 2.1 **That the Executive notes the progress of the Harris Kent House Free School Project which will provide a new secondary school and new accommodation for Harris Primary Academy Kent House and the Council's Adult Education and Adult Social Care facilities**
- 2.2 **Note the progress in conversations with Harris Federation about the organisation of the new school and relationship with Harris Bromley to ensure Harris Kent House meets the Council's future need for school places.**

**2.3 That the Executive authorises:**

- **The entering into negotiations of the relevant Heads of Terms (“HOTS”).**
- **a delegated authority for the Director of Education in consultation with the Director of Corporate Services, The Director of Finance and the lead member for Education to finalise the HOTS and enter into any ancillary legal agreements relating thereto with the Department for Education and Harris Federation.**

### Impact on Vulnerable Adults and Children

1. Summary of Impact: The works will benefit approximately 100 children and their families.
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### Corporate Policy

1. Policy Status: Existing Policy
  2. BBB Priority: Children and Young People Excellent Council :
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### Financial

1. Cost of proposal:
  2. Ongoing costs: None
  3. Budget head/performance centre: Education Capital Programme
  4. Total current budget for this head: £N/A
  5. Source of funding: DfE School Capital Allocation (SCA)
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### Staff

1. Number of staff (current and additional): N / A
  2. If from existing staff resources, number of staff hours: N / A
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### Legal

1. Legal Requirement: Statutory Requirement
  2. Call-in: Applicable
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### Customer Impact

1. Estimated number of users/beneficiaries (current and projected): 100 children and their parents, up to 150 school staff.
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### Ward Councillor Views

1. Have Ward Councillors been asked for comments? Yes
2. Summary of Ward Councillors comments:

### **3. COMMENTARY**

- 3.1.1 In 2017 the Department for Education (DfE) approved Harris Kent House a new secondary school as part of Wave 12 of its free school programme.
- 3.1.2 It is proposed that the school will be based at the Kentwood site in Penge, previously identified for a new secondary school within the Council's Local Plan adopted in 2019. As part of the Local Plan adoption process, consultation was undertaken with residents and all interested parties.
- 3.1.3 The Kentwood site accommodates a number of existing users; Harris Kent House Primary Academy, a school nursery and PVI early years provider, the Kentwood Adult Education Centre and premises for Adult Social Care. Under the current proposals these uses will remain on site and operational throughout the proposed construction works.
- 3.1.4 The project has taken several years to reach the stage where Heads of Terms could be agreed, due to the difficulties finding solutions to various property issues on the site, work to confirm the continued need for the school and awaiting a decision from the DfE on the previous SHaW Futures Academy Free School proposal.
- 3.15 Over the past year high level feasibility work has been undertaken and Heads of Terms developed. If this report is agreed, it will allow detailed feasibility works to commence. The DfE will act as developer for the project and the delivery of the scheme is subject to the receipt planning consent.

### **3.2 The need for a new secondary school in north west Bromley**

- 3.2.1 There is strong evidence to support the need for a new secondary school in northwest Bromley. Currently, although there are some surplus school places in the east of the borough, schools in other parts of the borough are operating at or above their capacities. It is not practicable that children in Penge could access surplus places in the east of the borough. Journeys from Penge to Harris Orpington and Kemnal are over 7 miles based on straight line measurement, require several changes and would not comply with the DfE's home to school travel guidance.
- 3.2.2 Historically NW Bromley has had significantly fewer school places than need, relying on places being available in adjacent areas either in other parts of Bromley or neighbouring boroughs. Additional capacity made available at Eden Park High School has had marginal impact on available places in Penge and Anerley, with less than 15% of the new places added at the school going to children living in SE19/20/26.
- 3.2.3 Admissions preference data for Penge and Anerley differs from other areas of the borough, with fewer applicants getting a high preference and over 60 pupils being directed to a school out of borough in 2020. This number has increased to 103 for September 2021 entry.
- 3.2.4 Whilst the shortage is most acute for boys' places, analysis of the admissions data indicates that both boys and girls are more likely to get a lower preference offer or be directed to a non-preference school compared to other parts of Bromley.
- 3.2.5 Progress in the delivery of Harris Kent House and the need to make sufficient places available in north west Bromley has been a concern of the Council's School Places Working Group that most recently considered this matter in April 2021.

### **3.3 Ensuring that the new secondary school meets need**

- 3.3.1 The Council and Harris Federation are currently working in partnership on the proposals for the new school. Harris would like the new facility to be organised as a boys' only school in years 7 to 11 with a mixed sixth form. The free school proposal approved by the DfE was for a mixed school, and the proposal for a new single sex school would need DfE consent.
- 3.3.2 The Council has communicated its willingness to consider Harris preference for a boys' school, subject to the solution providing additional boys' and girls' places, in line with data on the need for school places as outlined above. There are limited alternative opportunities for the Council to add additional places in Penge and Anerley to meet need. As Harris has had its free school proposal approved and operates the only other local secondary school (Harris Bromley) the Council is seeking to work with the Harris Federation on proposals that cover both schools.

### **3.3 Next steps**

- 3.3.1 Formal sign-off of the Heads of Terms from the Council's Executive and LocatED's board (The Government-owned property company responsible for acquiring and developing sites for new schools) will enable the DfE to progress the project to detailed feasibility. This will allow the development of the design of the facilities to enable the DfE to appoint a contractor and submit planning permission in due course. The detailed proposals of the scheme will be subject to consultation at the appropriate time.
- 3.3.2 The Heads of Terms will set out key considerations with regards the delivery of the project, and in this instance with particular regard to the phasing of the delivery of the project and associated changes to leases and the location of LBB's services on site. However, the property transactions, phasing and construction of the project are complicated and there could be changes to delivery arising from the detailed feasibility.
- 3.3.3 The Heads of Terms will contain commercially sensitive information relating to the proposed property transaction(s) involving the Council, Department for Education and Harris Federation. These along with commercially sensitive terms are included within the Part 2 report.

## **4 IMPACT ON VULNERABLE ADULTS AND CHILDREN**

- 4.1 The project will benefit 420 pupils at Harris Primary Academy Kent House, approximately 52 children at the school's nursery and PVI early years provider, vulnerable adult learners at BAEC and an estimated 900 pupils at the new secondary free school.

## **5. POLICY IMPLICATIONS**

- 5.1 Bromley Council has an established policy for the review and strategic planning of school places and related school organisation. The need to ensure sufficient school places, the quality of those places and their efficient organisation is a priority within the Council's strategy 'Building a Better Bromley' and contributes to the strategy to achieve the status of An Excellent Council. This policy also contributes to key targets within the Education Portfolio Plan.
- 5.2 The Council is an authority that aspires to managing its assets well.

## **6. FINANCIAL IMPLICATIONS**

- 6.1 The free school project is funded by the Department of Education. This includes the cost of re-providing the Adult Education and Adult Social Care facilities on site. However, funding

does not cover the cost of loose furniture, or IT equipment. If either service is planning to update either furniture or IT equipment, they will need to make specific budgetary provision.

- 6.2 Other costs arising from the delivery of this project that are the Council's responsibility will be funded from the secondary bulge classes budget, agreed by the Executive as part of the Basic Need Capital Programme on 31 March 2021.

## **7. PROPERTY COMMENTS**

- 7.1 The project is being delivered by the DfE. The Council is facilitating the project by making its freehold land available and once works are completed, granting new leases to the Harris Federation.
- 7.2 As is pointed out above, the project is at a reasonably early stage with a second phase of feasibility needing to be undertaken by the DfE and its appointed advisors. Therefore, the Heads of Terms finally agreed will be subject to change when further detailed information is received for each phase of the scheme including whether it is delivered in two or three phases.
- 7.3 In granting leases to the Harris Federation for longer than 7 years, we anticipate the best value considerations set out in S123 of the Local Government Act 1972 will apply. The Council will therefore need to take into account best consideration in effecting these disposals which are proposed on the basis of the DfE's Academy model lease i.e., for a term of 125 years at a peppercorn rent in line with the Government's "Land Transfer Advice" (April 2013).

## **8. LEGAL IMPLICATIONS**

- 8.1 Local authorities have powers under s.123 of the Local Government Act 1972 to dispose of land for best consideration that can reasonably be obtained (usually based on open market value). S.123 of the Local Government Act 1982 confers powers to the Secretary of State to give general consent for the purposes of land disposals by local authorities carried out under their powers in Part 7 of the 1972 Act.

The Local Government Act 1972: General Disposal Consent 2003 removes the requirement to seek specific consent from the Secretary for any disposal of land where the local authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of the well-being criteria in the Local Government Act 2000:

- i) the promotion of improvement of economic well-being,
- ii) the promotion of improvement of social wellbeing,
- iii) the promotion of improvement of environmental wellbeing; and the "under-value" (i.e. the difference between the unrestricted value of the interest to be disposed of and the consideration accepted) is £2,000,000 or less.

Applications for specific consent if appropriate, should be sent to the DCLG and include the following information:

- Written description of the land and buildings, the location
- Written description of how the land is currently held by the Council
- Details of any leases, encumbrances such as easements

- Summary of the proposed disposal/transaction
- Detailed valuation report signed by a qualified member of RICS. Ideally valuation should be done no earlier than 6 months before application for consent.

This only applies to land held as general fund land. It does not apply to land sold under 2.233 TCPA 1990.

## **8.2 Disposal of Land Considered as Open Space**

Section 123 (2A) states that on any disposal of land considered as open space (and land, enclosed or not, on which there are no buildings, and the whole of the remainder which is laid out as garden or is used for recreational purposes or lies waste and unoccupied) requires the local authority to give notice of its intention to dispose of the land for two consecutive weeks in a newspaper circulating in the area in which the land is situated, and they must consider any objections to the proposed disposal which may be made to them.

## **8.3 Disposal of School Land**

8.3.1 The requirement for the Secretary of State's consent to disposal of school land and playing fields applies to all maintained schools and academies. Applications will need to be made to the Education Funding Agency ("EFA") of any intended transaction to dispose of any playing field land.

There are three general consents which do not require consent and these are set out below, however if the consents are applied local authorities will also need to apply to or notify the Education Funding Agency ("EFA") of any intended transaction to dispose of any playing field land.

The Secretary of State will consider all applications and make a decision that balances the benefit to the school (or other local schools) against the loss of the playing field land.

### **8.3.2 Power to Dispose of school land**

Schedule 1 to the Academies Act 2010 (AA 2010). This applies to academies (which include Studio Schools, University Technical Colleges, Free Schools and Special Schools) seeking consent to dispose of any publicly funded land, including playing field land. It also applies to (among others) academy trusts, local authorities, governing bodies, and foundation trusts that hold land for academies.

Local authorities wanting to dispose of school land previously needed consent under Schedule 35A to the Education Act 1996. On 1st February 2012, Schedule 35A was repealed by Schedule 14 to the Education Act 2011.

Schedule 14 also substituted a new Schedule 1 to the Academies Act 2010 which extends the requirement to ask for Secretary of State consent to dispose of community school land to include all land in which a freehold or leasehold interest is held by the local authority and which has been used for any school (including any academy) in the last 8 years.

### **8.3.3 Application for consent**

When applying for consent under the new Schedule 1 to the Academies Act 2010, the following details must be provided:

- details of the location (School name and full postal address) and exact area (in square metres) of the land to be disposed of or appropriated (provide maps and aerial/satellite imagery with the land in question clearly marked);
- details of the total site area of the school or former school (in square metres);
- the date (or proposed date) of the disposal or appropriation;

- iv) the reasons for the disposal or appropriation of the land and why the local authority does not think that it is covered by 'general consent';
- v) the educational history of the land in question - when was it last used for the purpose of a school? Will a school remain on adjacent land?
- vi) the planned future use of the site?
- vii) if any potential Academy, Free School, University Technical College or Studio School proposer has approached the local authority about using this land or other land in the area?

8.4 Officers are seeking external lawyers' legal advice as to whether in the present case the Secretary of State's formal consent will apply.

<b>Non-Applicable Sections:</b>	Procurement Implications Personnel Considerations
Background Documents: (Access via Contact Officer)	