

Report No.

London Borough of Bromley

PART ONE - PUBLIC

Decision Maker: **Executive with pre decision scrutiny from Children, Education and Families**

Date: **24 November 2021**

Decision Type: Non-Urgent Executive Key

Title: **DISPOSAL OF DORSET ROAD INFANT SCHOOL**

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Chief Officer: Director of Education

Ward: Mottingham and Chislehurst North

1. Reason for report

The Executive is asked to approve and agree to the property transaction for the disposal of the Dorset Road Infant School following the amalgamation of the school with Castlecombe Primary School.

2. **RECOMMENDATION(S)**

- 2.1 **That the Executive notes that the amalgamation of the Dorset Infant School and Castlecombe Primary School academies, operated by The Spring Partnership Trust, has been approved by the Department for Education. The new amalgamated school will be called Elmstead Wood Primary School and will be based at the Castlecombe Primary School site.**
- 2.2 **To authorise the Director of Education to apply and obtain formal consent from the Secretary of State for Education to dispose of the Dorset Road Infant School site.**
- 2.3 **To authorise the Council disposing of the Dorset Road Infant School once the 125-year academy lease has been terminated, and the land has reverted to the Council and subject to obtaining the requisite consent and approval of the Secretary of State for Education.**
- 2.4 **To authorise the reinvestment of the capital receipt obtained from a disposal of the property at Dorset Road, estimated at £500,000, to improve the facilities at Castlecombe Primary School site in accordance with Section 77 of the Schools Standards and Framework Act 1998 and Schedule 1 of the Academies Act 2010.**
- 2.5 **To authorise that the Council's contribution to support the amalgamation of the schools be capped at the value of the capital receipt achieved from the disposal of the Dorset Road Infants School site.**
- 2.6 **To delegate authority for the Director of Education, in consultation with the Director of Corporate Services, Director of Finance and Director of Housing, Planning, Property and Regeneration, and the Portfolio Holder for Children Education and Families, to agree and settle the commercial terms of the disposal and to enter into all relevant legal agreements and any other ancillary legal documentation relating thereto and to deal with publicising, if appropriate, any Open Space Notices and considering representations received**
- 2.7 **That the Executive notes that Secretary of State for Education's consent to dispose of Dorset Road Infants School does not change the Local Plan designation of the site for education use and that any planning application relating to the site will have to demonstrate how relevant Development Plan policies, notably Local Plan Policy 27 Education and Policy 20 Community Facilities, have been addressed.**

Impact on Vulnerable Adults and Children

1. Summary of Impact: The works will benefit over 420 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:
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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): 420 children and their parents.
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Ward Councillor Views

1. Have Ward Councillors been asked for comments?

Yes

2. Summary of Ward Councillors comments:

Ward Members are supportive of the amalgamation of Dorset Road Infants School and Castlecombe Primary School and to the proposal that the proceeds from the disposal of the Dorset Road Infants School site fund the works at Castlecombe Primary School required to admit the cohort of the larger amalgamated school.

3. COMMENTARY

- 3.1.1 The Council has worked with the Department for Education (DfE) and The Spring Partnership Trust to support the trust's request to amalgamate the Dorset Road Infants School and Castlecombe Primary School.
- 3.1.2 As a result of the amalgamation of creation of the new amalgamated school the Dorset Road Infants School site, currently leased to The Spring Partnership Trust on a 125-year academy lease, will be surplus to the requirements of the trust and revert to the Council. The future use of the site and the proceeds from any disposal is governed by legislation protecting school land and any change requires Secretary of State for Education consent. The approval of the amalgamation was conditional on proceeds from the sale of the Dorset Road Infant School being allocated to support capital works required implement the amalgamation.
- 3.1.3 In June 2020 the DfE's Regional Schools Commissioner for South East England and South London's Head Teacher Board (HTB) approved 'in principle' the amalgamation of the schools subject to conditions relating to the capital works required at Castlecombe Primary School. Following the trust providing information on the capital works, the RSC formally approved the amalgamation in February 2021. The new amalgamated 2 FE primary school will be named Elmstead Wood Primary School.
- 3.1.4 The DfE approval to the amalgamation was made on condition that the Trust could access funding to deliver the required works. This funding would be obtained through a combination of the capital receipt from the disposal of the Dorset Road Infant School site and through trust reserves, without any additional funds being provided by the DfE.
- 3.1.5 On 20 October 2021 the DfE confirmed in writing to the Spring Partnership Trust that the Secretary of State for Education does not intend to make a direction in relation to the land under Schedule 1, Part 3 of the Academies Act 2010 and provided consent to the Trust surrender the lease. Dorset Road Infant School site will return to the Council 30 days after the lease is surrendered by the Trust.
- 3.1.6 The Council needs to make an application under section 77 of the School Standards and Framework Act 1998 and Schedule 1, Part 1 of the Academies Act 2010 to dispose of the freehold of Dorset Road Infants School site and to direct any proceeds from the disposal of the land to expansion works at Castlecombe Primary School.
- 3.1.5 The Council has communicated to the Spring Partnership Trust that its contribution would be capped at the value obtained through disposal of the Dorset Road Infants School site.

3.2 Background

- 3.2.1 Dorset Road Infant School and Castlecombe Primary School are both academies controlled by the Spring Partnership Trust. Trust are responsible are responsible for consulting and taking decisions on proposals to change the organisation of its schools. For significant decisions, such as amalgamations, trusts are required to seek the approval of the Regional Schools Commissioner following determination and before changes can be implemented.
- 3.2.2 The Council retains the freehold for both the Dorset Road Infant School and Castlecombe Primary School sites which are leased to The Spring Partnership Trust on standard 125-year academy leases.
- 3.2.3 There are linked admissions arrangements in place between Dorset Road Infant School and Castlecombe Primary school, introduced following consultation by the trust in Spring 2016, to

ensured that every pupil leaving Year 2 at Dorset Road Infant School had a guaranteed KS2 place at Castlecombe Primary School.

- 3.2.4 The introduction of an admissions link between the schools was supported by the Council. As the Council is statutorily responsible for ensuring sufficient school places are available, it funded and delivered the required physical expansion of Castlecombe Primary School by 120 places in KS2.
- 3.2.5 Planning consent for the expansion of Castlecombe Primary School was granted on 17 November 2016 and the capital scheme was included in the Basic Need Capital Programme approved by the Executive on the 23 March 2016. The Executive approved the award of contract for the associated capital works on 8 February 2017
- 3.2.6 Following receipt of a site survey undertaken on behalf of the trust by a structural surveyor that identified significant structural issues with the Dorset Road Infant School Hall, The Spring Partnership took the decision in October 2019 to temporarily move the operation of the school to Castlecombe Primary School for health and safety reasons.
- 3.2.7 Following a consideration of options available, including available support from the DfE and the outstanding, health and safety, condition and suitability issues at the Dorset Road site, the trust decided to formerly consult on the amalgamation of Dorset Road Infant School and Castlecombe Primary School.
- 3.2.8 The trust consultation on the proposed amalgamation of the schools took place early in 2020 and closed on 8 March 2020. The Director of Education wrote to the trust to support the proposal. The formal decision to amalgamate the two schools was approved by the RSC on 16 February 2021.
- 3.2.9 The RSC placed conditions on the Trust to ensure that the school was able to accommodate the children from Dorset Road Infant School in a building that met the DfE BB103 standards for a 2 FE school. The plans for the school were reviewed and a cost-effective option of internal remodelling was identified that met the DfE requirements, was affordable and could be delivered from combination of the trust's contribution and the estimated proceeds from the sale of the Dorset Road Infant School site.
- 3.2.10 The works have been costed at circa £750k with the estimated LB Bromley contribution circa £500k being realised from the sale of Dorset Road and the remainder funded by the Trust. Two separate valuations were undertaken by LB Bromley and LocatED, the DfE's property company at c.£500k in 2018. The full capital receipt realised from the sale is to be reinvested in the Castlecombe remodelling per the agreement with DfE, less disbursements. No additional capital funding is being provided from the council's budgets.
- 3.2.11 Following final checks, the DfE has now confirmed that the Trust can implement the amalgamation. This will result in the Trust's funding agreement for Dorset Road being terminated and the Trust will enter into a new funding agreement with the DfE for the newly amalgamated school on the Castlecombe Primary School site. The Trust are naming the new amalgamated school as Elmstead Woods Primary School. This will end the 125 Years Academy Lease on Dorset Road which will revert to LB Bromley on completion of a Deed of Surrender by both parties.
- 3.2.12 Once the Dorset Road site returns to the Property Division of the Council, on condition that the Secretary of State consents to the disposal of education land at the school, the site will need to be disposed.
- 3.2.13 Officers have engaged with the Council's Regeneration Team about the possibility of utilising the site for the self-delivery of affordable homes via the Council's Housing Revenue Account.

However, given the capital receipt required from the disposal of the site, the timing of that receipt, and the requirement to use that receipt to part fund the school improvements, this route is not a viable option and has therefore been discounted.

3.2.14 To obtain Ministerial Consent for the proposed disposal the Council will need to complete a S77 Schools Standards and Frameworks Act 1998 application relating to the outdoor space and apply to DfE for a disposal consent of the site.

3.2.15 Site searches have confirmed that the Council is freeholder of the site. There are no covenants that reserve the site for education use. In 1996 the Council expanded the school by stopping up and compulsory purchasing a public footpath that ran along the north eastern perimeter of the site. At the time of the compulsory purchase the council gave the Mottingham Residents Association a non-binding undertaking that if the school was to close in the future the Council would consider reinstating the footpath. This undertaking does not commit the Council to reinstate the footpath. The Council will need to consult with the public as part of the Section 77 application to end the use of the site for statutory education. A site plan including the former footpath is included at Appendix A.

4 IMPACT ON VULNERABLE ADULTS AND CHILDREN

4.1 The project will directly benefit up to 90 pupils who formerly attended the infant school as the facilities at the Castlecombe Primary school are superior to the Dorset Road site that had only limited outdoor space and was in disrepair. The new improved facilities will benefit the whole school community of 420 pupils and their parents.

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

6.2 The cost of developing the Castlecombe Primary School site be met by both The Spring Partnership Trust and the Council. The Council's contribution is capped at the value obtained from the capital receipt from the sale of Dorset Road Infant School site. Any legal and valuation costs associated with the property transaction will be funded from monies realised from this disposal.

7. PROPERTY IMPLICATIONS

7.1 It is noted that this disposal is required as part of a wider transaction and the proceeds of the sales (less disposal costs) will be payable to the Spring Partnership Trust to help fund improvements to the Castlecombe Primary School.

7.2.1 The Education Team will need to complete a S77 Schools Standards and Frameworks Act 1998 application relating to the outdoor space and apply to DfE for agreement to disposal of the site by the Secretary of State. The Property Team advises that these processes are

undertaken and timescales for completion crystalised before any marketing campaign commences.

- 7.3 The Council's Estates & Asset Management Team will need to be formally instructed by the Education Team to manage the disposal on their behalf.
- 7.4 The Property Team will advise the Education Team on the most appropriate marketing strategy to achieve the required objectives with reference to the Council's statutory obligations under Section 123 of the Local Government Act 1972 in relation to Best Value and subsequently instruct agents to act on the Council's behalf via the Council's Professional Estates Services Framework.
- 7.5 It is noted that the outcome of any marketing process will be reported to the Director of Education as noted in of the recommendations within section 2.2 of this report for their approval to proceed with the recommended preferred party and the terms of the transaction.
- 7.6 The associated professional fees and marketing costs will be deducted from the capital receipt. These fees are estimated to be in the region of 1.5% of the sales receipt.

8. LEGAL IMPLICATIONS

- 8.1 The Council has power under s.123 of the Local Government Act 1972 to dispose of land for the best consideration that can reasonably be obtained (usually based on open market value).

S.123 of the Local Government Act 1972 confers powers to the Secretary of State to give general consent for the purposes of land disposals by local authorities carried out under their posers 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 well-being.
- iii) the promotion of improvement of environmental well-being; 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 Department for Levelling Up, Housing and Communities ("DLUHC") 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 T CPA 1990.

8.2 Disposal of Land Considered as Open Space

If there is an 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 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.

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:

- i) 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);
- ii) details of the total site area of the school or former school (in square metres);
- iii) 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.

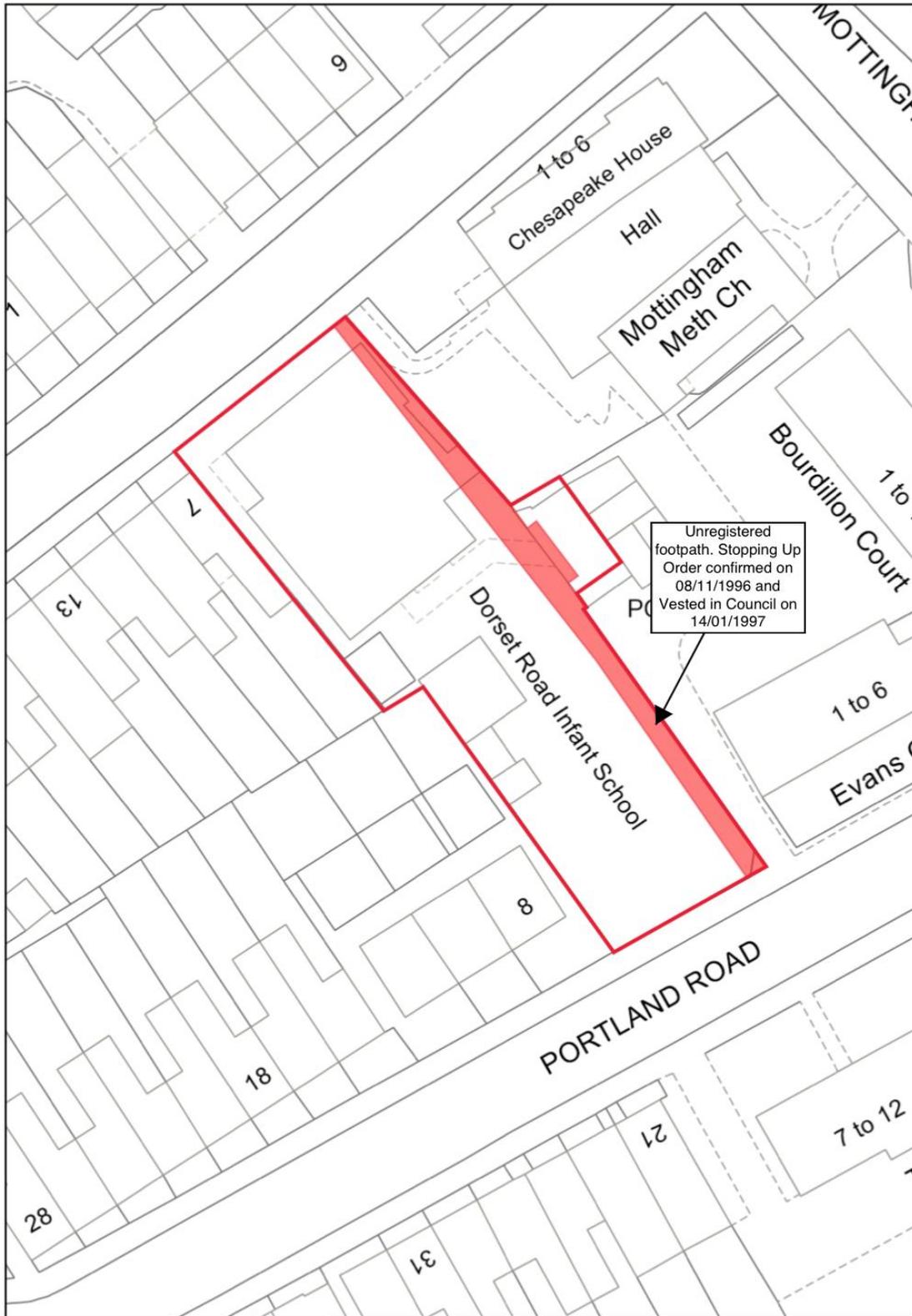
- vii) if any potential Academy, Free School, University Technical College or Studio School proposer has approached the local authority about using this land or other land in the area.

8.3.4 Non-binding commitment by London Borough of Bromley to consider the wishes of the Mottingham Residents' Association to reinstate the former public footpath in the event the school closes down

As part of the school extension in 1996, the former public footpath adjacent to the school located between Dorset Road and Portland Road was acquired by way of a Compulsory Purchase Order (CPO). At the time of the CPO, the Council agreed with the Mottingham Residents' Association by way of exchange of letters, to be held in the Deeds, to ensure that the Association's request to restore the footpath in the event that the school is closed down is kept on record and brought to the attention of Members should the situation ever arise. In accordance with this commitment, Members will need to give consideration to the views of the Association in the event that the school ceases to occupy the site.

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

APPENDIX A – DORSET ROAD SITE PLAN



Unregistered
footpath. Stopping Up
Order confirmed on
08/11/1996 and
Vested in Council on
14/01/1997

<p>Estates Management</p> 	<p>Dorset Road Primary School, Mottingham</p>	
<p>© Crown copyright and database rights 2021. Ordnance Survey 100002505.</p>	<p>Unregistered Former Footpath</p>	
<p>05 November 2021</p>	<p>1:500</p>	