

Executive

29 August 2019

Report of the Corporate Director, Children, Education & Communities
Portfolio of the Executive Member for Education, Children & Young People

The Danesgate Community – Academy Conversion

Summary

1. The Danesgate Community has received approval from the Regional Schools Commissioner to convert to academy status and wishes to join the South York Multi-Academy Trust. It is usually the case in an academy conversion that all designated Education land transfers to the MAT.
2. Following discussions between officers of the Local Authority and representatives of the South York Multi Academy Trust, four areas of land have been identified where Member approval is required to resolve matters and enable the conversion to proceed.

Recommendations

3. The Executive is asked to:

3.1 *Area 1 – Road next to Triangle (grassed area)*

Exclude this area from the 125 year lease to the Multi Academy Trust.

3.2 *Area 2 – Triangle (grassed area) of land*

Exclude this area from the 125 year lease to the Multi Academy Trust.

3.3 *Area 3 – road to south of the site*

Approve that the road area is split, with the car parking area on the northern edge remaining education land and therefore being included in the 125 year lease to the Multi Academy Trust (reserving a right of way over it in favour of the council), and the remaining area of road is

excluded from the 125 year lease and is designated a Public Right of Way.

3.4 *Area 4 – Walled Garden*

Approve that this area is leased to the South York Multi Academy Trust as part of the 125 year lease (excluding the storage facility which is currently leased to the Yorkshire Museum Trust).

3.5 *Delegated Authority to Officers*

To give delegated authority to officers:

- (i) Where appropriate, to obtain Academies Act 2010 Schedule 1, and School Standards & Framework Act 1998 Section 77 approval, to allow the transfer of land around this conversion to take place;
- (ii) When consents are obtained, to agree future budget responsibilities;
- (iii) To report back to members on the Public Right of Way application/process in due course.

3.6 *Transfer of Land*

To approve, in the event that academisation of Danesgate does not take place or is delayed, that areas 1 & 2 are no longer designated as land currently used for educational purposes and are therefore removed from being part of the school site and become adopted by the Council

Background

4. The school is currently programmed to convert to academy status on 1 November 2019. In line with the requirements of the Department for Education (DfE), the deadline for agreement and completion of the Commercial Transfer Agreement, and the 125 year lease, is 2 October 2019.
5. At the Executive meeting of 27 January 2017, the Corporate Director, Children, Education & Communities, and the Assistant Director, Legal and Governance, in consultation with the Executive Member for Education, Children & Young People, were given delegated authority to negotiate and conclude both the Commercial Transfer Agreement and any Land Leases relating to an academy conversion for a York School,

where there were are no proposals to change the designation of land currently used for educational purposes. In circumstances where the Council intends to apply for a change of use for land formerly used for educational purposes, the decision to apply for disposal will be taken by members of the council's Executive.

6. Where approvals under Section 77 of the School Standards & Framework Act (SSFA) 1998, and under the Schedule 1 of the Academies Act 2010, may be required, these can be sought post academy conversion. For the purposes of the academy conversion, the red line plan, which shows the areas of land to be transferred as part of the 125 year lease to the MAT, is what is required to be agreed.
7. Appendix A shows the area of existing education land on the Danesgate site.
8. Appendix B shows the proposed area to be included in the 125 year lease to the Academy
9. Appendix C shows the areas for consideration, numbered as per below:

Areas of Land to be considered for Inclusion/Exclusion in the Academy Lease

10. *Area 1 – road next to Triangle (grassed area)*

Current Position

This is currently education land. The proposal is that this piece of road is excluded from the 125 year lease. Issues to consider:

- Danesgate and the South York MAT have stated that they are in favour of removing this from the lease.
- Ward Members have stated that they want to extend a proposed Residents Parking Scheme to this area of road
- The road is not currently adopted. An assessment of the road will be required to ensure the road is up to adoptable standards before being transferred from Education Land to the Council.

Analysis

- Whilst this area is currently designated as Education Land, it is a small strip of road outside of the school's perimeter fence and has therefore never been used by the school for educational purposes.
- The recommendation to exclude the area from the 125 year lease means that a proposed residents parking scheme could be extended to cover this area, to benefit residents.
- It is recognised that pending the outcome of an assessment of the road there may be some cost implications to bring the road up to adoptable standards. This would be met from the education capital maintenance budget. If the road is adopted and is excluded from the 125 year lease there will be on-going maintenance costs. These costs would then fall under the responsibility of highways maintenance budgets.

11. Area 2 – Triangle (grassed area) of land

Current Position

This is currently Education land. The proposal is that this area of land is excluded from the 125 year lease. Issues to consider:

- Danesgate and the South York MAT have stated that they do not have a use for this area of land and are in favour of it not being included in the lease.
- The school have sufficient outdoor space to meet DfE requirements on site if this area of land is excluded
- There is currently play equipment on the site which has been maintained by the Council

Analysis

- Whilst this area is currently designated as education land, it has not been used by the school.

- Excluding the area from the 125 year lease would not present any risks in terms of sufficient outdoor play space for the school.
- It is recognised that responsibility for any maintenance and/or replacement of the play equipment on the area would be the responsibility of the council, with potential costs incurred.
- Although it is education land, the Council have been paying for the maintenance of the equipment (£200 per year) and grass cutting during spring & summer (approximate costs £300 per year), hence there will be no additional costs from those already incurred.

12. Area 3 – Road to south of the site

Current Position

- This is currently Education Land and the road provides access to the allotments, a residential property, the Walled Garden (Area4), school playing field, and public and cycle access to the riverside path
- The proposal is that this area of road is split, with the car parking area on the northern edge remaining education land and being included in the 125 year lease to the Multi Academy Trust, and the remaining area of road is excluded from the 125 year lease and is designated a Public Right of Way
- Danesgate and the South York Multi Academy Trust have stated support for this proposal.
- The road is not properly surfaced, as only a small number of vehicles use it. There will be some small cost implications for future maintenance but these will be shared with the South York Multi Academy Trust and the residential property.

Analysis

- The Multi Academy Trust is requesting that the car parking area of this road is included in the 125 year lease, remaining as Education land. This would mean that they would be responsible

for the maintenance of this area. The council would seek to reserve a right of way over this area within the terms of the lease.

- If the remaining road area were excluded from the 125 year lease, then the Council, along with the Multi Academy Trust and residential property owner, would be jointly responsible for any future maintenance. There has been limited expenditure on maintaining this road over the last 10 years totalling less than £1k
- If this area was included in the 125 year lease, the lease would include clauses to ensure that current rights of access and egress are maintained.
- The car parking area is used by the school to facilitate the curriculum and differing timetables of its' pupils, enabling its' most vulnerable young people to be picked up and dropped off in a secure location, giving direct access to the site.

13. Area 4 – Walled Garden

Current Position

This area is under Council ownership but not currently designated as education land. The proposal is that this area of land is leased to South York MAT as part of the 125 year lease. Issues to consider:

- Danesgate and the South York MAT have stated that they wish to retain use of this area
- The area is currently used to deliver education provision on site, for the varied curriculum required to support pupils
- It has been used for educational purposes for more than 10 years, and has a locked gate
- Community groups have shown an interest in using this area
- There is a storage facility within this area which is owned by the Council and currently leased to Yorkshire Museums Trust. The current lease for this between the Council and Yorkshire Museum Trust expires in 2023

Analysis

- This area is currently not designated as Education land, but it is recognised that Danesgate use it, and will continue to need to use this area to deliver their curriculum. Including this area in the 125 year lease would ensure this provision can continue.
- Legal advice is that as the school have been using this area for more than 10 years, it is not classed as public open space and as such would be viewed as part of the school site.
- Any requests for community use of this area could be made to the Multi Academy Trust and formal community use agreements would be between the Multi Academy Trust and the third party.
- The interests of current users, Yorkshire Museum Trust, will be protected as the lease will stay with the council, and the area of their storage facility will be excluded from the 125 year lease. However access rights will be required and this will be included in the lease.

Consultation

- 14.** All of the issues raised within this report have been discussed with representatives of The Danesgate Community and the South York MAT. Further consultation and advice has been sought from representatives of the Academies Group within the Department for Education.
- 15.** Ward Councillors have been involved in discussions relating to the land proposals, along with the implications of a proposed Residents Parking Scheme in the surrounding areas of the school site.

16. Council Plan

A council that listen's to residents – the proposed Residents Parking scheme detailed in paragraph 10 is at the request of local residents.

17. Implications

- **Financial** – It is recognised that there will be cost implications for the Public Right of Way process and road and play equipment

maintenance. The road maintenance and play equipment costs have incurred minimal expenditure over the past few years. More details are contained within the relevant sections of this report.

- **Human Resources (HR)** – None
- **One Planet Council / Equalities** – Please see attached one planet document
- **Legal** –
 - (i) Section 77 & Academies Act Approval is required for areas 1, 2 & 3 if the recommendations are approved;
 - (ii) Where land is held specifically for Education purposes or has been used for education purposes in the last eight years and is not included in the Academy lease then the land is still subject to the Academies Act 2010 Schedule 1 and can be called upon to be used for Academy purposes – even if it was by another academy elsewhere;
 - (iii) Where land not included in the Academy lease is identified as playing field then in addition to the position under the Academies Act 2010 the land, if required for another use or transfer to another party for a different use, would require both consent under the Academies Act 2010 and s77 of the School Standards and Framework Act 1998.
 - (iv) Where land is Public Open Space (that is to say that for the purposes of S.123 of the LGA 1972 land is ‘open space’ within the meaning of S.336 of the TCPA 1990 if it falls within any of the following 3 categories:
 - Land laid out as a public garden or
 - Used for the purposes of public recreation or
 - Land which is a disused burial ground and a change of use or disposal is envisaged then the statutory process of public consultation through advertisement in the press will have to be made.
- **Crime and Disorder** - None.
- **Information Technology (IT)** – None

- **Property** - Property Implications are included in this report.
- **Other** - None

Risk Management

18. The recommendations proposed reflect the appropriate due diligence which has been carried out, and the requirement of the Academies Act to not disadvantage a school when it converts to academy status. If agreement cannot be sought between the council and the MAT, this could cause a delay to the conversion process.

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All

For further information please contact the author of the report

Background Papers:

All relevant background papers must be listed here.

Annexes

All annexes to the report must be listed here.

Appendix A shows the area of existing Education Land on the Danesgate site.

Appendix B shows the proposed area to be included in the 125 year lease to the Academy

Appendix C shows the areas for consideration

List of Abbreviations Used in this Report

Multi-Academy Trust (MAT)

Public Right of Way (PROW)

Department for Education (DfE)

York Museums Trust (YMT)

City of York Council (CYC)