

# **Proposed Decision to be made by the Leader of the Council on or after 11 September 2020**

## **Memorandum of Understanding: Kenilworth School**

<b>Portfolio Holder</b>	<b>Leader of the Council</b>
<b>Date of decision</b>	<b>September 2020</b>
	<b>Signed</b>

### **Decision taken**

The Leader is recommended to approve a Memorandum of Understanding providing for Warwick District Council to be reimbursed forward funding provided by it towards the relocation of Kenilworth School to the Southcrest Farm site, on terms acceptable to the Strategic Director for Resources.

### **Reasons for decision**

- 1.1 Warwick District Council has agreed to enter a forward funding agreement with the Kenilworth Multi-Academy Trust ("the MAT") under which it will provide an expected £11,870,000 towards the cost of expanding Kenilworth School and relocating it from its current two sites to a single site on Southcrest Farm on the edge of Kenilworth. Other funding will come from the Housing Investment Fund ("HIF") and the sale to WDC of the existing sites (which have been allocated for housing). The project will provide an additional 400 places to meet increased demand for secondary education expected from a number of allocated housing sites in and around Kenilworth, as well as improving the educational offer by locating the whole school on a single site and meeting housing needs by releasing the existing sites for housing. The relocation of the school and the release of its existing sites for housing was approved in the Warwick Local Plan because of the multiple public benefits.
- 1.2 It is proposed that the County Council enter a non-legally binding Memorandum of Understanding with WDC which provides for the section 106 contributions for secondary education from the allocated housing sites to be paid to WDC as reimbursement for the

forward funding. This will provide WDC with the reassurance it needs in order to commit the forward funding required to enable a project which will help the County Council to meet its duty to provide sufficient school places as well as achieve other public benefits.

## Background information

- 2.1 Although the statutory duty to secure sufficient school places falls on the County Council, WDC has interested itself in helping to deliver the relocation of Kenilworth School and Sixth Form to a new site in order to achieve a wider range of planning objectives. Allocations of housing sites in and near Kenilworth mean that an estimated 400 extra secondary school places will be required in coming years. There is potential to provide these at the existing two school sites on Leyes Lane and Rouncil Lane but the proposed relocation to a single site on Southcrest Farm enables both parts of the school to occupy one integrated campus and releases two more housing sites in Kenilworth. The County Council has given informal indications of support for the project, including the principle of dedicating section 106 income to it, on the understanding that it will not be able to provide any further financial resources beyond the section 106 income.
- 2.2 Funding for the project, including land acquisition and building works, will come in part from the sale of the existing school sites (to WDC) and from the HIF. This funding amounts to £44,471,000 with a further £11,870,000 expected by WDC from section 106 contributions from local allocated housing sites (totalling £56,340,000). A value engineering exercise is currently taking place which will ensure that the total project costs are contained within the funding available. WDC is finalising a forward funding agreement in which it will promise to provide the MAT with the balance of the required funding in advance of section 106 contributions being received. This balance is currently projected to be £11,870,000 but the DfE has required that WDC commit to providing whatever amount proves to be necessary.
- 2.3 WDC has asked the County Council to sign a Memorandum of Understanding ("MoU") formalising its agreement to the principle of dedicating future secondary education contributions from the allocated housing sites to repaying WDC for the forward funding. The relevant housing sites are (on present day figures) capable of yielding £10,140,000 in secondary education contributions payable to the County Council. The remainder of the £11,870,000 (£1,730,000) would come from sports and land contributions payable directly to WDC. It is expected that the section 106 income will be received over approximately 10 years.
- 2.3 WDC will take the risk that the section 106 income is not sufficient to repay its forward funding, which might be the case if WDC has to provide more than £11,870,000 to the MAT or if there is a shortfall in section 106 contributions from the housing sites.
- 2.4 The MAT has now received the statutory consents that it requires from the DfE in order to sell the current sites and acquire and move to the new site. WDC and the MAT are currently focussed on design analysis and value engineering for the construction of the new school so that the building contract and the forward funding agreement can be costed and finalised. Accordingly, WDC and the MAT are eager to agree the MoU as soon as possible.
- 2.5 Although the County Council will not be responsible for delivering the project, and would not fund it from its own resources or assume any financial risk, it clearly has an interest in its successful outcome and is being asked to agree that a large amount of public funding be dedicated to it for the next 10 years or more. Even though WDC is agreeing to assume

all of the funding risk, if the project suffered some major setback the County Council would not realistically be able to stand back from any rescue initiative. Therefore, your officers have been anxious to satisfy themselves that the project is in principle deliverable and affordable and that it will be well-planned and well-managed. This has been the subject of dialogue with WDC during the past few months.

- 2.6 WDC and the MAT have made improvements to the arrangements for project management and governance and introduced new advisers to review the designs and costings. The projections of what each housing site is capable of delivering in section 106 contributions are reasonable but recovery of the forward funding in full will depend on all those sites being fully developed and paying standard contributions without deductions for viability or other reasons. WDC have also invited the County Council to take the role of Project Monitor as an additional reassurance.
- 2.7 Legal Services have drafted a MoU and this is nearing its final version. The MoU is relatively short and is not legally binding (it cannot be legally binding because it concerns the future exercise of statutory functions and may depend on support from planning inspectors). The main provisions of the MoU are summarised in the Appendix together with a list of the relevant housing sites.
- 2.8 WDC and the MAT intend that work on the construction of the new school will commence in Q1 of 2021 and be completed by Q1 of 2023.

## Financial implications

- 3.1 The MoU commits a substantial amount of future income to the Kenilworth School project. However, this is all income which would in any event be reserved (under the terms of planning obligations) for the purpose of meeting the need for extra secondary school places which the new school will meet. The County Council will make no commitment to provide any other funding and the new school is expected to provide all the places which the County Council is obliged to secure to meet demand from the relevant housing sites.
- 3.2 Kenilworth School and Sixth Form is a former trust school which owns the freehold of its land. The County Council is not disposing of any land or undertaking or procuring the construction of the new school or acquiring any asset. Therefore, the project does not need to be added to the Capital Programme.

## Environmental implications

- 4.1 There are no direct environmental implications from agreeing to the MoU. The creation of the new school and the construction of housing on the existing sites will have environmental impacts which have been or will be the subject of strategic and site-specific environmental assessments as part of the planning process.

<b>Report Author</b>	Ian Marriott, Corporate Legal Service Manager
<b>Assistant Director</b>	Assistant Director Governance and Policy
<b>Lead Director</b>	Strategic Director for Resources
<b>Lead Member</b>	Councillor Hayfield

<b>Urgent matter?</b>	No
<b>Confidential or exempt?</b>	No
<b>Is the decision contrary to the budget and policy framework?</b>	No

<b>List of background papers (If applicable)</b>
None

<b>Members and officers</b>
<p>Portfolio Holders – Councillors Hayfield and Clarke</p> <p>Corporate Board – Mark Ryder, Rob Powell and Nigel Minns</p> <p>Legal – Sarah Duxbury</p> <p>Finance – Andrew Felton</p> <p>Equality – Keira Rounsley</p> <p>Democratic Services – Paul Williams</p> <p>Councillors – None</p>

# Appendix

## Summary of Memorandum

Agreed wording will be used in planning obligations required from the developers of the housing sites specified below, which will commit the County Council to pay secondary education contributions to WDC until the forward funding has been reimbursed. SEN contributions are not included in this commitment. The County Council would pay WDC within 21 days of receiving a contribution.

There is no minimum or maximum amount of money which will be paid to WDC but it can only come from the specified sites. The County Council may agree to windfall sites being added to the list so long as they do not generate a need for additional places that cannot be met at Kenilworth School.

If the number of dwellings permitted on a specified housing site exceeds the number predicted in the Local Plan, so as to generate a need for additional school places beyond the 400, the County Council and WDC will explore whether that need can be met by expanding the new Kenilworth School and, if not, agree an alternative destination for the additional income.

The value of secondary education contributions will be calculated with regard to the County Council's guidance on the subject and other education contributions will not be reduced below the guidance amount so that the secondary education contributions can be increased above the guidance amount.

The parties commit to good faith discussions if (contrary to current expectations) a need arises for temporary secondary school places (otherwise than a need related to social distancing) before completion of the new school and in any such discussions the use of secondary school contributions from the specified sites will be an option.

The parties commit to good faith discussions if a developer proves that reduced planning requirements are necessary to make a development viable with a default position that other education contributions will not be reduced by a greater proportion than secondary education contributions are reduced.

The Memorandum does not commit the County Council to provide any funding or agree to any other source of section 106 income being used in the event that there is a shortfall from the amount required to repay the forward funding.

WDC will provide the County Council with programme and financial briefings to allow monitoring of the project.

The specified housing sites are as follows:

<b>Local Plan Reference</b>	<b>Site Name</b>	<b>Number of Dwellings in Plan</b>
H06 (in part)	East of Kenilworth (Thickthorn) – Barwood site	495
H06 (in part)	East of Kenilworth (Thickthorn) – Kenilworth Rugby club site	159

	(leasehold)	
H06 (in part)	East of Kenilworth (Thickthorn) – Kenilworth Rugby club site (freehold)	37
H06 (in part)	East of Kenilworth (Thickthorn) – Kenilworth Wardens	110
H07	Crackley Triangle *	93
H09	Leyes Lane	250
H12	Rouncil Lane	130
H19	Baginton – Land north of Rosswood Farm **	80
H24	Burton Green – Burrow Hill ***	90
H40 (in part)	East of Kenilworth (Crewe Lane, Southcrest Farm and Woodside Training Centre) - Catesby site	640
H40 (in part)	East of Kenilworth (Crewe Lane, Southcrest Farm and Woodside Training Centre) – Gleeson site	100
H41	East of Warwick Road, Kenilworth	100
H42	Westwood Heath ***	425
DS22	Leek Wootton – Former Police HQ	115

\* Crackley Triangle – education contribution only required if developer net profit is greater than 20.01%.

\*\* Likely to go to Kings Hill but possibility of some of contribution towards Kenilworth School places.

\*\*\* Payments for these sites are likely to be split between new Kenilworth School and new school at Kings Hill – assumption 50-50 split.