

<b>Cabinet Member for Education and Skills</b>	<b>Ref No: ES04 (20/21)</b>
<b>July 2020</b>	<b>Key Decision: Yes</b>
<b>Transfer of Section 106 Funding to the Department of Education for Bohunt, Horsham</b>	<b>Part I</b>
<b>Report by Director of Property and Assets and Director of Education and Skills</b>	<b>Electoral Division: St Leonard's Forest</b>
<p><b>Summary</b></p> <p>In April 2017 the Department for Education approved a new Free School for the Horsham area under their Wave 12 Programme. The Sponsor is Bohunt Education Trust and the approved School is Bohunt Horsham. The co-educational all-through school which caters for children from the ages of four to sixteen opened in September 2019 on a temporary site in Hurst Road, Horsham.</p> <p>The School's permanent site will be on land on the East of Rusper Road, Horsham and was secured by the County Council through a Section 106 Agreement dated 1<sup>st</sup> March 2018 as part of the North of Horsham development. On its new site the school will provide places for the children from the North of Horsham development and will also offer school places for young people in the locality.</p> <p>Under the Section 106 Agreement, the developer is obligated to mitigate the impact of the development in terms of the increase in school places it will generate, and so the developer has agreed to pay financial contributions to the County Council. The financial contributions will be paid by the developer at agreed trigger points as the development progresses. As the Department for Education (DfE) will be responsible for delivering the new school, the County Council will need to transfer these financial contributions to the DfE upon receipt.</p> <p>This report also references the previous decision taken by the Cabinet Member for Finance and Resources (<a href="#">FR10(18/19)</a>) in relation to the purchase of land to facilitate the permanent site for Bohunt Horsham and the previous funding arrangements which include the reimbursement of 90% of the purchase price of the land upon the latter of either the date of the lease agreement or the date which falls sixty days after the Acquisition date of the land.</p> <p>This report sets out the case to transfer the Section 106 funds to the Department for Education as a contribution towards the School. Funds will only be transferred when the triggers agreed within the Section 106 have been reached and the funds received by the County Council. No further funds are to be transferred.</p>	
<p><b>West Sussex Plan: Policy Impact and Context</b></p> <p>This proposal is in accordance with the Best Start in Life Policy within the West Sussex Plan. It will ensure access to education meeting the needs of the community.</p>	
<p><b>Financial Impact</b></p>	

There is no financial impact on the Council's finances. The transfer of funds received from the developers will only transfer to the Department for Education after these are received.

### **Recommendations**

That approval is given to the use of Section 106 Development Agreement funds received in relation to the North of Horsham development, for transfer to the Department for Education towards the permanent school site and accommodation for Bohunt Horsham as detailed in the report and for officers to have authority to enter into such agreements as are required to give effect to the proposal.

## **PROPOSAL**

### **1. Background and Context**

- 1.1. The County Council has a statutory duty to provide sufficient primary and secondary school places for all children who need a place.
- 1.2. In its strategic role as commissioner of school places, the County Council must respond to changes in demand over time by increasing or removing capacity. It discharges this duty in partnership with diocesan authorities, Academies and Free Schools. In deciding the need for places it considers the capacities of existing schools and the forecast number on roll within a locality (family group of schools).
- 1.3. School places need to be available to pupils for the start of each school year, with projects planned and delivered, wherever practicable, by the summer in the relevant year. The Basic Need requirements are reviewed annually to identify the next tranches of projects and to ensure planned projects are still required following reviews of projection data of pupil numbers.
- 1.4. The DfE has responsibility to design and construct Free Schools. However, WSCC has responsibility for ensuring the availability of sufficient school places.
- 1.5. Bohunt Horsham was approved in April 2017 under the DfE's Wave 12 Programme and opened in September 2019 in temporary accommodation in Hurst Road in Horsham. The DfE have now secured planning permission from Horsham District Council for the permanent site on land to the East of Rusper Road, Horsham and are responsible for the design and construction of the new school.
- 1.6. Whilst Bohunt Horsham is a Free School outside of Local Authority control, financial contributions payable to the County Council have been secured through a Section 106 Agreement relating to the North of Horsham development. These contributions are intended to mitigate the impact of the development in terms of the increase in school places it will generate.
- 1.7. A previous decision by the Cabinet Member for Finance and Resources, ref. FR10(18/19) approved the purchase of additional land for Bohunt Horsham, to be funded 10% from the County council's School's Basic Need budget and

90% to be reimbursed by the DfE upon the latter of either the date of the lease agreement or the date which falls sixty days after the Acquisition date of the land.

## **2. Proposal Details**

- 2.1. The proposal is to transfer £12.401m of Section 106 funds secured for the increase in Primary and Secondary places that will result from the North of Horsham development to the DfE as a contribution towards the permanent site and accommodation for Bohunt Horsham once received by the County Council.
- 2.2 This figure relates to the contributions secured through the North of Horsham Section 106 Agreement as outlined in the table in 4.1 with a reduction of £0.027m to reflect the DfE's contribution towards Land Tax for the previously approved purchase of land to support the permanent site for Bohunt Horsham.
- 2.3 As approved in the previous decision by the Cabinet Member for Finance and Resources (Decision Ref. FR10(18/19), £0.978m is to be paid to the County Council by the DfE as reimbursement for the purchase of land to support the permanent site for Bohunt Horsham.
- 2.4 The school will provide education for the children aged 4-16 who will live at the new development and will also provide places for the wider locality assisting with current and projected demands in the area.

## **FACTORS TAKEN INTO ACCOUNT**

### **3. Consultation**

- 3.1 The project has been designed by the DfE and agreed in full consultation with Bohunt Education Trust.
- 3.2 The project has received detailed planning approval.
- 3.3 The details of the proposal have been shared with the local Member representing St Leonard's Forest.
- 3.4 This proposed decision was published in the Forward Plan on [17 June 2020](#) therefore the required 28 days' notice has been given. However, due to the need for the County Council to conclude an urgent agreement with the Department for Education and the Academy Trust, the Cabinet Member for Education and Skills and the Chairman of the Children and Young People's Services Scrutiny Committee have been consulted regarding this urgent decision being taken by the Director for Law and Assurance.

### **4. Financial (revenue and capital) and Resource Implications**

- 4.1. The proposal is to transfer £12.401m from the Section 106 contributions as a contribution towards the cost of construction of Bohunt Horsham. No financial contributions have yet been received but the table below details the funds payable to the County Council. It is proposed that funds will be transferred to

the DfE within 30 days of receipt by the County Council. The table includes the sums secured for the Eastern Campus towards Early Years; Primary and Secondary places and notes the sum to be withheld by the County Council for the DfE's contribution towards Land Tax for the land purchase as outlined in Decision Ref. FR10(18/19).

<b>Section 106 Contribution</b>	<b>Amount (£m)</b>
Primary Eastern Campus	5.220
Secondary Eastern Campus	6.450
Early Years	0.758
Less 50% of Land Tax	-0.027
<b>Total overall passported to DfE</b>	<b>12.401</b>

4.2 The full cost of the new School is not known as the DfE have yet to award the contract for the works but it is estimated that the total costs could be in the order of £40m to £45m for this all-through School offering 420 Primary places and 1200 Secondary places - 1620 in total. The cost per place for WSCC is therefore £7,700 per place which compares very favourably to recent WSCC managed projects and benchmarking which are around £20k to £25k per Primary place and £25k to £30k per Secondary place.

4.3 The previous decision Ref. FR10(18/19) approved the purchase of land with 90% to be refunded to the County Council by the DfE. The sum of £0.978m will therefore be invoiced by the County Council and will be returned to County Council accounts. The total sum to be drawn down into the Capital Programme in relation to Bohunt Horsham is therefore shown in the table below. The amount in the table below will be added to the Capital Programme pipeline (subject to appropriate governance) and drawn down into the main Programme as in flight when payments are made.

<b>Additional amount to be added to the Capital Programme £m</b>	
12.428	Gross Section 106 funding
-0.978	Less lease premium paid to WSCC
-0.027	DfE share of Land Tax
<b>11.423</b>	<b>Additional amount to be added to the Capital Programme</b>

<b>Breakdown of Capital Funding</b>	<b>£m</b>	<b>Funding Source</b>
WSCC (90% of purchase price)	0.108	Basic Need
Section 106	12.428	Section 106
Land Tax	0.027	Basic Need
DfE	0	N/A
<b>Total</b>	<b>12.563</b>	

## 5. Legal Implications

- 5.1 WSCC have provisionally agreed subject to Cabinet Member Approval to enter into a contract to pass the education contributions within 30 days of receipt when received to the DfE for the DfE to use the contributions for the purposes of constructing the School.
- 5.2 The draft Agreement for Lease (AfL) also includes site remediation clauses relating to both Plots A and B in the event that the land is transferred by the developer without the required levels of topsoil, site remediation and site levelling. The AfL requires WSCC to meet 50% of any cost relating to this for Plot A and a contribution for Plot B equivalent to the percentage which the small area of Special Educational Needs makes up of the overall area of Plot B. As the current landowner of Plot A, Legal and General (Strategic Land North Horsham) Limited have provided surveys and evidence to both the DfE and WSCC which suggests this mitigation will not be required but the clauses have been inserted into the AfL to cover this eventuality.
- 5.3 Under the Section 106 Agreement WSCC have to procure the construction and completion of the school within seven years of the date of the transfer of Plot A to WSCC otherwise WSCC must transfer the land back to the developer. This is unlikely to arise but were it to do so the DfE require WSCC to enter into a clawback agreement whereby WSCC have to repay the DfE the cost of any half completed building work.
- 5.4 The project is being procured by the DfE through their Free Schools Programme. WSCC will secure the freehold estate of the site from the landowner Legal and General(Strategic Land North Horsham) Limited and then lease the site under the Academies Act on 125 year lease.

## 6. Risk Assessment Implications and Mitigations

- 6.1. The County Council is under a statutory duty to secure safe and sufficient education provision within the area. This project will ensure that the County Council meets its statutory duty by transferring funding for the securing of additional school places in the locality.

	<b>Risk</b>	<b>Mitigating Action</b>
1	Housing development does not progress and triggers not met	Funds will only be transferred to the DfE once received
2	Housing development slows and contributions delayed against current trajectory	Funds will only be transferred to the DfE once received

## 7. Other Options Considered

- 7.1. No other options have been considered as the funds must be spent on providing additional school places and the new school has been approved under the DfE's Free School Programme to provide additional capacity in the locality.

## 8. Equality and Human Rights Assessment

- 8.1. Section 149 of the Equality Act 2010 requires that public bodies, in exercising their functions, have due regard to the need to (1) eliminate discrimination, harassment, victimisation and other unlawful conduct under the Act, (2) advance equality of opportunity and (3) foster good relations between persons who share a protected characteristic and persons who do not share it. This proposal will ensure funding for provision of places for those with protected characteristic near to their home.
- 8.2. Everyone has the right to respect for private and family life, home and correspondence under Article 8 of the Human Rights Act. The impact of any proposed changes on the right to family life such as a need to travel further to an appropriate school has been taken into consideration and this proposal will provide funding for the provision of school places close to home. Article 1 of the First Protocol is the right to education. No person shall be denied the right to education. The proposals therefore support this right as funding will be transferred for the provision of school places in the local area for all children of school age.

**9. Social Value and Sustainability Assessment**

- 9.1. The DfE is responsible for the design of the new building which will meet all DfE design guides and requirements.


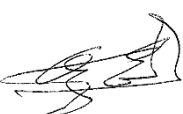
**10. Crime and Disorder Reduction Assessment**

- 10.1. None

**Contact:** Leigh Hunnikin, Education Capital Programme Manager – 0330 2223051

**Background papers**

None

Agreed

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Director of Education and Skills
Agreed

Director of Property and Assets
Agreed

*Nigel*

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Cabinet Member for Education &  
Skills

17 July 2020

Action Authorised

A handwritten signature in black ink on a light yellow background. The signature reads "Tony Kenshaw" in a cursive, slightly slanted script.

Director of Law and Assurance