



<b>DECISION TITLE: Stanground Academy – Deed of Indemnity</b>
<b>Councillor John Howard, Cabinet Member for Corporate Governance and Finance.</b>
<b>Deadline date: APRIL 2024</b>

Cabinet portfolio holder: Responsible Director:	Councillor John Howard, Deputy Leader and Cabinet Member for Corporate Governance and Finance Cecilie Booth, Executive Director for Corporate Services.
Is this a Key Decision?	NO
Is this decision eligible for call-in?	<i>With approval from the Monitoring Officer and the Growth, Resources and Communities Scrutiny Committee Chair, the urgency provisions to waive the 28-day Forward Plan, 5-day consideration and 3-day call in period have been approved.</i>
Does this Public report have any annex that contains exempt information?	NO

**RECOMMENDATIONS**

It is recommended that the Cabinet Member approves:

- 1) The grant of an indemnity to Greenwoods Academies Trust (Academy) to deal with the reported building defect as outlined in this report.
- 2) Delegates authority to the Executive Director for Corporate Services and Section 151 officer to take all necessary steps to give effect the decision in 1 including entering into any legal agreements.

**1. PURPOSE OF THIS REPORT**

- 1.1 This report is for the Deputy Leader and Cabinet Member for Corporate Governance and Finance to consider exercising delegated authority under paragraph 3.4.2 of Part 3 of the constitution in accordance with the terms of their portfolio at paragraph 3.4.9
- 1.2 The attached report/background information is NOT FOR PUBLICATION in accordance with paragraph (s) 3 of Schedule 12A of Part 1 of the Local Government Act 1972 in that it contains information relating to the financial or business affairs of any particular person (including the authority holding that information). The public interest test has been applied to the information contained within the exempt annex and it is considered that the need to retain the information as exempt outweighs the public interest in disclosing it as to do so.

## 2. BACKGROUND AND KEY ISSUES

- 2.1 Stanground College was a foundation school that converted to Academy status in or around 2012. Greenwood Academies Trust have occupied the site under licence granted by the Council since converting to an Academy status.
- 2.2 As part of the expansion project, the Council expanded the school pursuant to a Development Agreement dated 30<sup>th</sup> March 2012. Pursuant to the Development Agreement, the Academy will accept the novation of the design and build contract (between the Council and the Contractor who undertook the works relating to the expansion project) to accept the benefit and the burden as though it was a party to the design and build contract and not the Council, provided that the Council is not aware of any liability (actual or prospective) which may arise and become the liability of the Academy under the design and build contract. The Development Agreement, which is a contract entered between the Council, Academy and Developer to deliver the school expansion, sets out that the Council will grant the Academy Trust a 125-year lease. The lease is a contract between the parties setting out the rules and responsibilities for occupying the land and buildings.
- 2.3 Part of the Council's adjoining land is leased to a third-party organisation, and a small section of land under that lease is to be included in the Academy lease. The Council in February 2024 agreed terms to surrender part of the third-party leased land to enable completion of the Academy lease. The completion includes the novation of a design and build contract.
- 2.4 In March 2024, a building defect was identified by the Academy and investigated. The Academy does not have to accept the novation of the design and build contract when there is a known defect. The Academy want an indemnity from the Council in relation to the known defect before they agree to enter into the lease. In the absence of a completed lease, the Council remain responsible for building as freehold owner. Furthermore, whilst the Council is a party to the design and build contract, it is for the Council to pursue any claims under the warranty.
- 2.5 There is pressure from the Academy to complete the 125 year lease by the end of April 2024 to enable them to enter into four subsequent agreements including accessing solar array grant funding. As part of that grant funding the Academy must register a charge against the leasehold title, which is not possible without a lease.
- 2.6 Legal advice sought has confirmed the 125 year lease can complete without novating the design and build contract, but the Council will remain liable for claiming against the design and build contract warranties up to the point of novation.
- 2.7 The Academy has confirmed that a Deed of Indemnity, in respect of any rectifications of the known defects at the Academy Site up to the end of the liability period under the warranty, or such time as the building contract is novated, would satisfy their position and enable them to agree to enter into the 125 year lease. This report recommends agreeing terms to grant an indemnity to the Academy until the known defects works are rectified and the deed of novation is completed.

## 3. CORPORATE PRIORITIES

- 3.1 *1. Prevention, Independence & Resilience*
- *Educations and Skills for All*
  - *Adults*
  - *Children*

*Agreeing the Deed of Indemnity will allow the 125 year lease to complete, and enable the Academy to enter into subsequent sub leases and access funding to improve the schools offering.*

- 2. Sustainable Future City Council*
- *How we Work*
  - *How we Serve*
  - *How we Enable*

*Agreeing the Deed of Indemnity will allow the 125 year lease to complete, and enable the Academy to benefit from solar array grant funding. This will help reduce operating costs.*

#### **4. CONSULTATION**

- 4.1 *The Executive Director of Corporate Services has consulted with the Director of Education, Executive Director for Children and Cabinet Member for Corporate Governance and Finance.*

#### **5. ANTICIPATED OUTCOMES OR IMPACT**

- 5.1 *The main outcome of agreeing to indemnify the defect is that it will allow the 125-year Academy lease to complete, and allow the Academy to enter into, subject to contract, further subsequent agreements for the benefit of the Academy and its pupils.*
- 5.2 *The Council will remain liable for the defect up to the point of novation and will pursue the defect works by following due process. The Council are likely to incur cost pursuing a claim, or if unsuccessful, completing the required works.*

#### **6. REASON FOR THE RECOMMENDATION**

- 6.1 *The reason for seeking approval is to allow the 125 year Academy lease to complete which will enable the Academy to enter into subsequent agreements, subject to contract, for the benefit of the Academy and its pupils. The lease completion will minimise the chances of any future challenge, albeit the Council will remain responsible for making a claim against the design and build contract warranty up to the point of novation. The design and build contract should be novated following completion of the defect rectification works.*

#### **7. ALTERNATIVE OPTIONS CONSIDERED**

- 7.1 *The completion of the Academy lease could be postponed until a time that the building defect is rectified. However, the timescales are unknown and it could prevent the Academy from benefiting from grant funding and entering into subsequent subleases to support the Academies function.*

#### **8. IMPLICATIONS**

##### **Financial Implications**

- 8.1 The details outlining the financial impact to the Council of granting the indemnity are still to be established and the supporting information to date is as outlined in the exempt annex (briefing note) to this report.

Some initial remedial works as outlined in the exempt annex may be met from the Council's property repairs and maintenance budget in the first instance, while further discussion takes place with interested parties.

##### **Legal Implications**

- 8.2 Once the known defects have been rectified the Academy shall be obliged to enter into the Deed of Novation for the design and build contract dated 7<sup>th</sup> December 2011 meaning the Council shall no longer owe any duty or obligation to the Contractor and the Contractor shall not owe any duty or obligation to the Council. It shall also mean the Contractor will bind itself to the Academy in terms of the design and build contract as if the Academy were and always were the named party in the design and build contract, in place of the Council.

Whilst the known defects are apparent, the Academy does not have to accept the Deed of Novation. By granting an indemnity to the Academy, the Council is agreeing to have a

contractual obligation to the Academy to compensate in the case of loss incurred by not fulfilling its promise to rectify the defect, as outlined in this report.

The Council has the power to enter into a Deed of Indemnity pursuant to Section 111 of the Local Government Act 1972. S111 enables a local authority to do anything that is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions. It provides local authorities with a general power to enter into contracts for the discharge of any of their functions.

Under the Contract (Rights of Third Parties) Act 1999 no term of the design and build contract can be enforced by a person not a party to the contract. The Council is a party to the said contract until it is novated to the Academy. Accordingly, until the novation occurs, any action required to be taken to rectify the defect, outlined in this report, must be taken by the Council.

The Deed of Indemnity should be limited to deal, only, with the defect as outlined in this report.

### **Equalities Implications**

8.3 There are no equality implications for this recommendation.

## **9. DECLARATIONS / CONFLICTS OF INTEREST & DISPENSATIONS GRANTED**

9.1 *There are none.*

## **10. BACKGROUND DOCUMENTS**

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985) and The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

10.1 *Not applicable*

## **11. APPENDICES**

11.1 *Exempt Appendix 1 – Briefing*