

CABINET	AGENDA ITEM No. 6
JULY 2024	PUBLIC REPORT

Report of:	John Gregg, Executive Director for Children’s Services
Cabinet Member(s) responsible:	Councillor Katy Cole, Cabinet Member for Children’s Services.
Contact Officer(s):	Simon Lewis, Service Director Commercial, Property and Asset Management

KEN STIMPSON ACADEMISATION

RECOMMENDATIONS	
FROM: Executive Director for Children’s Services	Deadline date: July 2024
<p>It is recommended that Cabinet:</p> <ol style="list-style-type: none"> 1. Approves that the area of land to be demised to Ken Stimpson Academy, in addition to the main school site (Area B), and under the new 125-year academy lease, should be all the land designated for education use and as shown as Area C in the plan on the next page. 2. Agrees to the request from Ken Stimpson Academy, for the council to erect a fence around all of the area of land in Area C. This is to support the academy’s safeguarding requirements and to enable it to deliver its outdoor education curriculum. 3. Agrees for the council to pay for the costs associated with the supply and installation of the fence. 4. Approves that the council enters into a Community Use Agreement with the academy to enable continued community use of the playing fields outside of school hours. 	

1. ORIGIN OF REPORT

1.1 This report is submitted to Cabinet following meetings of the council’s Corporate Leadership Team (CLT) on 28 May and Cabinet Policy Forum (CPF) on 3 June 2024.

2. PURPOSE AND REASON FOR REPORT

2.1 The purpose of this report is to report the findings of the review of Werrington Fields matters and to seek approval on recommendations and next steps.

2.2 Part 3, section 3, of the Constitution delegates the responsibility for executive functions to the Leader, who may then delegate further to the Cabinet, Committees of the Cabinet, Cabinet Members and officers.

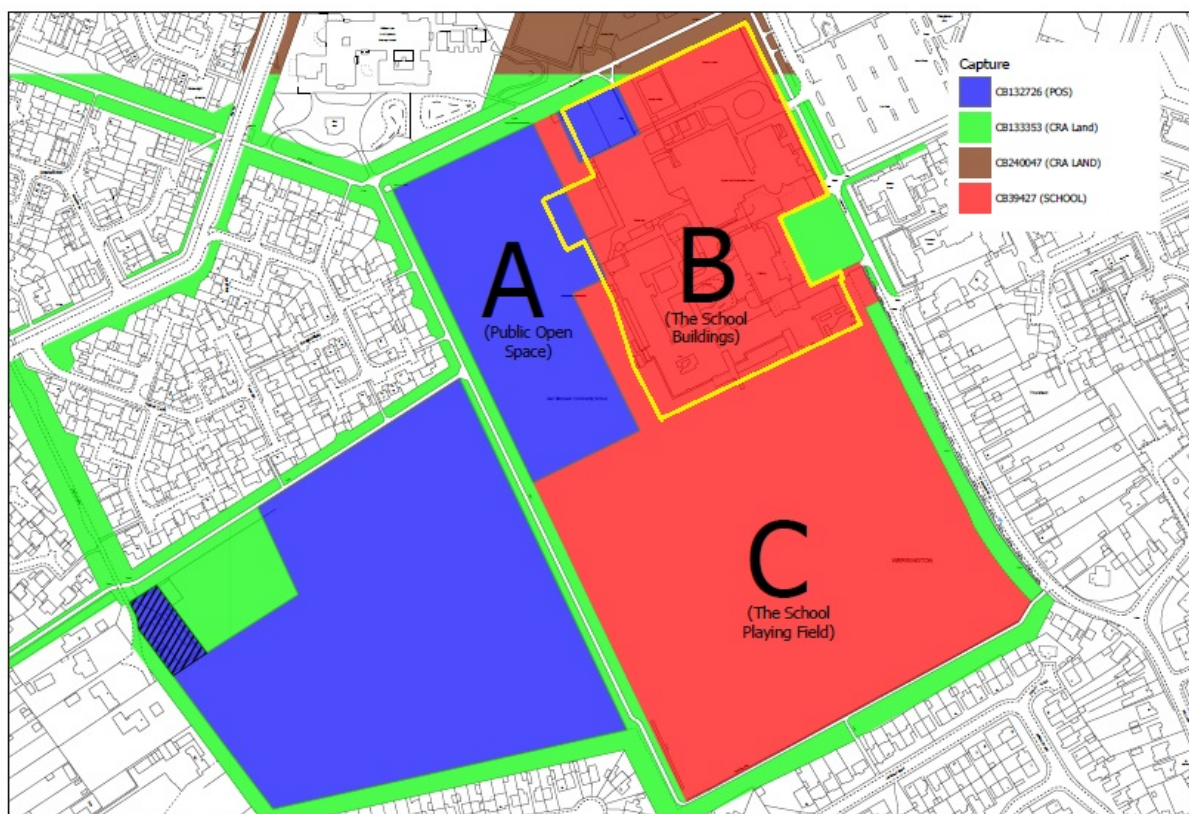
Under the council’s scheme of delegations, the Council’s Executive Director for Corporate Resources has the authority, under 3.14.12.(j) of the Constitution, to negotiate and settle terms for new, and variations to, leases, in consultation with the Director of Legal and Governance. However, given the significance of the matter in hand the matter has been referred to Cabinet for decision.

3. TIMESCALES

Is this a Major Policy Item/Statutory Plan?	NO	If yes, date for Cabinet meeting	N/A
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4. BACKGROUND AND KEY ISSUES

4.1 Peterborough City Council (the council) is the freehold owner of an extensive area of land in Werrington which contains the Ken Stimpson Academy (the academy). This includes an area of open space commonly known as Werrington Fields. The plan below sets out the specific areas marked as A, B & C. The remaining area hatched blue is also to be retained as public open space.



The use of area A is restricted to public open space, public gardens or for the purpose of public recreation for the benefit of the public.

Areas B & C form the site of Ken Stimpson Academy school (the academy) and their uses have been historically, and continue to be, for education purposes.

Areas A and C are presently unfenced, open fields with no physical boundary between the public open space and the school playing fields.

There is a fence around the school and leisure buildings and hard surfaced areas in Area B, with the fence line shown edged yellow.

Members of the public have had and continue to benefit from access to Area C both during and outside of school hours. It is this area which forms the focus of this item for consideration by Cabinet.

Students of the academy have not used Area C for recreational activity, including physical education, for some years. Whilst officers have been unable to locate when the decision was

made to stop using the land for education purposes, they have been able to locate two letters which provide guidance as to why.

The first letter is from the Interim Education Safeguarding Lead for the Peterborough/Safeguarding Children Adviser dated 6 December 2019. The letter was sent in respect of a planning application submitted by the school to create a fenced-in playing field to provide a secured area for recreational sports. Excerpts from the letter are below:

Having viewed the plans and visited the school site I am of the view that the current arrangements are not sufficiently robust from a safeguarding children perspective and leave the students, the school staff and the Local Authority exposed to unnecessary risk. Currently when students participate in outdoor PE lessons, they do so on a public playing field adjacent to the school. In order to access the public playing field, students are required to leave the secured school site through gated access in the perimeter fence. Creating a secure fenced area for sport's teaching would address the safeguarding concerns fully.

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The specific safeguarding issues are the potential risk posed to students/staff from contact with members of the public, the risk of pupils absconding, and the risk associated with the anti-social behaviour in the locality which has led to increased police attendance in the area in recent months. There is also a health and safety issue with the use of the public fields as they are used regularly by dog walkers and fouling of the pitches is a persistent issue. This would also be addressed by creating a secure fenced area.

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The lack of a secure fenced-in space also means that pupils could easily abscond from a PE lesson on the public playing field, which is not the case from inside the school's secured site. There have also been a number of occasions in recent months where police have been called to interrupt antisocial behaviour (from members of the public not members of the school community) on the public access playing fields. Incidents have included having to move a rough sleeper, young people riding motorbikes on the playing fields and activity linked to criminal exploitation/county lines, which again poses a risk to the student population.

The second letter is from the Special Adviser – Physical Education and School Sport to the Headteacher of the school on 29 April 2021 with explicit requirements that the school playing fields should not be used until the concern over access is resolved. Excerpt from the letter is below:

There is a serious concern over public access to the school playing fields during lessons. Clearly if the teaching space is not secure, the safety and welfare of both staff and young people is in danger of being compromised, and that is unacceptable. Until this situation is resolved, Ken Stimpson Community school must not use this area for practical use.

Various attempts have been made by the council over the past few years to resolve the matter and reach a compromise which meets the needs of the school and address concerns raised by members of the public who wish to continue to have unfettered access to the school playing fields.

The most recent action by the council was the submission of a Section 77 Application to the Department for Education in April 2023 to change the designation of part of the land from educational use to community use.

In submitting this application, the council with the soon to be academy agreed upon a compromise position where a reduced area of land would be enclosed within Area C. This compromise proposed for the unfenced area of the school playing field to be appropriated as public open space and no longer used by the school. Since then, the position has changed, and the leadership of the academy have reviewed their needs and stated that they require the whole of Area C and for it to be fenced.

The Secretary of State confirmed by letter dated 15 November 2023 that it did not consent to the council's application to remove an area of land from education land and designate it as

public open space. The whole of the area of land in Area C was to remain as educational land. There is no right of appeal against this decision.

To support the school to erect the fence and, as per the advice received from the then Head of Planning, the council began to prepare a planning application for submission at the end of February 2024 to regularise the use of the land. In providing advice, the Head of Planning had not had sight of legal advice which the council obtained in 2021 where questions had been raised and advice provided in response which confirmed that planning permission was not required.

On 21 March 2024, council officers met with the academy Principal and trust. At this meeting the Principal stated that they required all of Area C to be set aside for education use and to be fenced. The council had previously committed to fencing the entire field should this be required and to pay for the cost of the fence and its installation.

The council issued a press release confirming that the process to install the fence would now commence, however the then Leader of the Council paused the submission of the planning application and requested that officers undertake a thorough review of the matter.

That review has now concluded and involved council officers meeting again with the leadership of the academy, the new Council Leader and Cabinet and ward members, and reviewing decision making and documentation received to date. The recommendations in this report are a result of the review and in the next section the rationale for those recommendations is outlined.

4.2 **Issues under consideration**

Area of the land to be demised under the lease to the academy

The council has previously communicated publicly that, in addition to the main School site (area B), all of the area shown in Area C was to be demised to the academy by way of a lease. This is because:

- a) The DfE rejected the council's Section 77 application to demise a smaller area to the school and to carve out part of the land for open space.
- b) The DfE has also subsequently stated "the entirety of the school's playing field land must remain as educational land on the basis that the council's application to redesignate part of it by way of appropriation was rejected" (email from DfE lawyer 29 Feb 2024).
- c) The leadership of the school has stated that it is their intention to lease and use the entire area for education purposes and to allow public access under a Community Use Agreement.

In an email from the Department for Education in February 2024, reference was made to exceptional circumstances in which a smaller area of land could be demised. No specific examples were provided in the email of what the exceptional circumstances might be.

Whilst there does not appear to be any specific legislation or statutory guidance in respect of the area of land to be demised, the playing fields will form part of the area for recreation use for students which will enable them to fulfil the educational curriculum.

This is not a site where there are physical restraints which would prevent space being provided within the school for recreational activities which would justify demising a smaller area than the guidelines suggest. None of the circumstances in relation to the academy would be deemed to be exceptional warranting the council demising less than the full area included in Area C. The Section 77 decision made clear that the land will remain as educational land whether or not it is demised to the school. Public access to the school fields can still be permitted and can be controlled and enforced by a Community Use Agreement.

Area of the fields to be fenced

The current arrangement in place which allows the academy to occupy the land is a tenancy at will and not a lease in the legal sense. It enables the academy to occupy the premises. There is a distinction between both and, whilst decisions were still pending on the extent of land to form part of the final academy lease, in this instance a tenancy at will was the appropriate form of arrangement to facilitate the conversion of the school to an academy on 1 September 2023.

In its capacity as freehold owner, the council could if it wished control the area of land to be fenced by the academy including provisions within the lease to demarcate the area of land over which a fence could be erected. It could stipulate via the lease that either part only or indeed that no area of land can be fenced. Neither of these positions are recommended for the reasons set out below.

1. Due to safeguarding risks, any area that sits outside of a fence would not be used by the school, however, because the entirety of Area C should be demised for education purposes, the school would still be responsible for the maintenance and upkeep of that land.
2. Building Bulletin 103 – Area Guidelines for Mainstream Schools, is a Government guidance document regarding the provision of land and buildings for schools, the document sets out area guidelines for schools based different criteria. The BB103 calculations for this school indicate that at least 71,500 m² of outside space is needed. The proposed demised area including Area C accounts for 75,730 m². The safeguarding risks mean that any space that is unfenced will not be included in these calculations as it will not be used by the school.
3. Any reduction in usable space by specifying a smaller fenced area contravenes the BB103 guidelines and limits the school's ability to deliver its outside education curriculum (both academic and welfare requirements).
4. The issue of safeguarding is a matter for the school and if Area C is to be used for education purposes the school itself should have the right to determine what area should be fenced.

In addition to the council having a function as freeholder of the fields, it also has responsibility as local education authority over the same area of land. These are different functions of the local authority with different responsibilities.

Whilst the academy is not a local authority maintained school, when this was the case, the council had safeguarding concerns about the use of the playing fields for recreational activities. The position has not changed in terms of the safeguarding concerns which remain.

The leadership of the academy wishes for the whole of Area C to be fenced for this reason. The council's Executive Director of Children's Services and Director of Education are also of the view that the area should be fenced in its entirety. A balancing act is needed therefore when weighing up what the council can do as landowner and the risks of doing so.

The leadership of the academy has made it clear to the council that they wish for students to be able to make use of the playing fields to enable them to undertake physical recreation. This cannot be fulfilled whilst the playing fields remain unfenced as there are safeguarding concerns. The council in its role as local education authority wishes to support the academy to ensure that pupils are able to undertake their full educational curriculum.

Costs of fencing

To date the council has spent just under £60,000 on procuring fencing materials and it is currently estimated to cost £80,000 in total to erect the fence around the entirety of Area C. The council will reuse fencing materials already purchased at other school sites in the city.

The council's previous Director of Education agreed, as part of the negotiations between the council and the academy, the arrangements relating to the fence, prior to the school converting to an academy.

The fencing will take approximately 10 weeks from the point of order to delivery and installation.

Need for planning permission

The fence

Permitted development rights allow a six-foot fence (which is roughly 1.8 metres) to be erected on land that does not front a highway, without any need for planning permission. That is the position of Area C. The proposal is to erect a 1.8 metre-high fence to enclose Area C, and that does not need planning permission.

The use of the land

The principal planning use of Area C is education land. As this area of land has never been enclosed, members of the public have also used the land, however that has not changed the principal use of Area C.

It is argued by Save Werrington Fields that people having informally used the land for a prolonged period of time equates to a material change of use of the land, which makes it public open space.

This is not correct, and in fact any informal public use of the land would be ancillary to the principal educational use. The public has been able to gain access to the land because it has not been fenced.

It must be noted, therefore, that the principal use of Area C has not changed. No planning permission is required, because arguably no change of use is either sought *or has already occurred*. This is reiterated in legal advice obtained by the council in November 2021.

Community Use Agreement between the council and the academy

In fencing any part or all of Area C, there will be a stop on unrestricted access to the fields. Since 1 September 2023, when the council entered into the Tenancy at Will to enable the academy to occupy the site, a Community Use Agreement was entered into principally to enable Peterborough Limited, the council's contractor, to continue to maintain the grounds and book the pitches for organised sport. This arrangement will fall away following the grant of the lease and will be more prescriptive including details of the number of pitches, expectation of the standards of playing surface and hours of opening. There will also be provision for the academy to choose who it wishes to manage the community use arrangements.

A Community Use Agreement will ensure that outside of school hours, parts of the enclosed fields are available for members of the community to continue to access and use, within reason, for other community-based activities. The proposed terms have been discussed and provisionally agreed with the Ken Stimpson Academy and are set out below:

Term: to match the term of the 125-year academy lease:

School exclusive use: Term time between 08:00 and 17:00 Monday to Friday. Ken Stimpson's core hours are from 08:45 to 16:00, but the academy operates a breakfast club from 08:00 and the extra hour at the end of the day would allow for extracurricular sports to take place.

Demise: to be agreed but the whole of the pitches under Area C and to possibly include a minimum number of sports pitches to be made available for community use.

Rights: to cover the following:

- Access for both organised and recreational sport (will need defining in terms of sports etc), and
- Block booking for external sports clubs (subject to alienation clause and landlord approval), and
- Community events with prior notice (to supersede the above in event of a clash)
- All outside school hours unless agreed by school
- No animals to be allowed on site unless agreed otherwise by school

Income: to cover the following:

- School has the right to arrange bookings for community use or to appoint a company to manage (subject to landlord's consent) or Peterborough Limited (the Council's current leisure provider) can continue to arrange for a fee to be agreed.
- Booking fee cannot exceed 115% of the average booking fee chargeable by the council for similar services.

Maintenance of the Fields: School to cover costs for maintenance to ensure the fields remain of a bookable standard for 'organised sport'.

Insurance: School to maintain adequate insurance cover for the services at their own cost

Changes to the agreement: School barred from making changes to the agreement and cannot make a planning application without landlord's approval (to be enshrined in the lease)

5. CORPORATE PRIORITIES

5.1 The recommendation links to achieving the following Corporate Strategy outcomes:

- Our Places and Communities
- Prevention, Independence and Resilience

The proposal will support the creation of a healthy and safe environment within which the school can undertake their outdoor education curriculum and the community can partake in organised sports activities in accordance with the Community Use Agreement.

Carbon Impact Assessment: This CIA relates to the academisation of Ken Stimpson in addition to erecting a fence around the perimeter of the school grounds.

The academisation will result in the school entering into a 125-year lease. The land and buildings will remain for school use, and this will not change. It is anticipated that the council's carbon emissions will reduce as the utilities and building maintenance will be the responsibility of the academy, but the overall impact will be neutral.

Moreover, erecting a fence will impact the council's emissions. The manufacturing and installation of the fence involves raw materials, production processes, transportation, and waste disposal. The council will, however, reuse fencing materials purchased at other school sites in the city.

CONSULTATION

6.1 The contents of this report have been shared and discussed with ward members.

6.2 These recommendations have been considered by the Corporate Leadership Team (CLT) on the 28 May and Cabinet Policy Forum (CPF) on 3 June 2024.

7. ANTICIPATED OUTCOMES OR IMPACT

7.1 *The outcomes of approval of the recommendation in the report will be the delegation of the necessary authority to progress, specifically:*

Approval to complete the academy lease to include the whole area deemed education land, to support the school in delivering its outdoor education curriculum and to ensure the land remains available for the wider community use outside of school hours.

8. REASON FOR THE RECOMMENDATION

8.1 To enable the Cabinet to finalise the academisation process for the school.

9. ALTERNATIVE OPTIONS CONSIDERED

9.1 Alternative options have been considered and these are set out in the main body of the report.

10. IMPLICATIONS

Financial Implications

10.1 The council will need to bear the cost of supplying and erecting the fence. This is estimated to be £80,000. Fence panels already purchased will be used at other school sites in the city.

Legal Implications

10.2 The Council is obliged under the Academies Act 2010 to take all reasonable steps to facilitate the conversion of the school into an Academy. Reasonable steps include granting a 125 year lease, however, for this particular conversion, the Council was not in a position to grant a 125 year lease at the time of conversion and therefore a tenancy at will was granted on the basis that when the s77 application was determined, the Council would be in a position to grant a lease of the exact educational demise.

The Cabinet Member of Children's Services, Education, Skills and the University authorised the conversion, see [Decision - Delegation of Authority to Negotiate and Agree Details of Academy Conversion - NOV21/CMDN/43 | Peterborough City Council](#).

The Council has the power pursuant to s123 of the Local Government Act 1972 to dispose of land held by them in any manner they wish.

The Council has the power to enter into a Community Use Agreement 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.

Whilst the Council's Executive Director for Corporate Resources has the authority, under 3.14.12.(j) of the Constitution, to negotiate and settle terms for new, and variations to, leases, in consultation with the Director of Law and Governance, given the significance of the matter in hand the matter has been referred to Cabinet for decision.

Equalities Implications

10.3 The fencing of the land removes safeguarding concerns and allows the school to use the fields to deliver its outdoor education curriculum. The Community Use Agreement will enable the wider community to access the land for organised sport and other community activities.

Carbon Impact Assessment

Not Applicable.

11. BACKGROUND DOCUMENTS

11.1 None

12. APPENDICES

12.1 None