

EXTRAORDINARY JOINT MEETING OF THE CHILDREN AND EDUCATION AND GROWTH, RESOURCES AND COMMUNITIES SCRUTINY COMMITTEES	AGENDA ITEM No. 5
2 AUGUST 2024	PUBLIC REPORT

Report of:	John Gregg, Executive Director Children and Young People'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	Tel. 01733 452522

**RESPONSE TO CALL-IN OF EXECUTIVE DECISION - KEN STIMPSON
ACADEMISATION JUL24/CAB/15**

R E C O M M E N D A T I O N S	
FROM: Service Director Commercial, Property and Asset Management	Deadline date: 2 August 2024
<p>It is recommended that Joint Children and Education and Growth, Resources and Communities Scrutiny Committee:</p> <ol style="list-style-type: none"> 1. Considers the response from officers to the call in of the Ken Stimpson Academisation JUL24/CAB/15 report which sets out how member concerns have been addressed and also contains previously exempt financial and condition survey information. 2. After considering the evidence presented to the meeting: <ol style="list-style-type: none"> i) Decide to take no further action in relation to the Cabinet Decision Ken Stimpson Academisation JUL24/CAB/15, in which case the original executive decision will be effective immediately; or, ii) Decide to refer the decision back to Cabinet for reconsideration, setting out in writing the nature of its concerns and any alternative recommendations. 	

1. ORIGIN OF REPORT

1.1 This report follows a call-in request of the Cabinet Decision Notice published on 17 July 2024 titled "Ken Stimpson Academisation JUL24/CAB/15."

2. PURPOSE AND REASON FOR REPORT

2.1 The report is being presented following a call-in request by Councillors John Fox, Christian Hogg and Sarah Hillier.

This report sets out the response to the call-in of Ken Stimpson Academisation JUL24/CAB/15 and how member concerns have been met. It also contains previously exempt financial and condition survey information.

The call-in was made on the basis of concerns that the decision does not follow principles of good decision-making set out in Part 2, Article 11 (Decision Making) of the Council's Constitution, specifically:

- a) Realistically consider all alternatives and, where possible, consider the views of the public.
- b) Understand and keep to the legal requirements regulating their power to make decisions.
- d) Act for proper purpose and in the interests of the public
- f) Follow procedures correctly and be fair.
- h) Be responsible for their decisions and be prepared to give reasons for them.

2.2 This report is for the joint meeting of the Children and Education Scrutiny Committee and the Growth, Resources and Communities Scrutiny Committee to consider under their Terms of Reference No. Parts 1 and 2, Section 4 - Overview and Scrutiny Functions, paragraph 3, Scrutiny, sub paragraph 3.3 Hold the Executive to account for the discharge of functions in the following ways:

- (f) By exercising the right to call-in, for reconsideration, decisions made but not yet implemented by the Executive or key decisions which have been delegated to an officer;

2.3 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.

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 In July, Cabinet approved the transfer of land and the installation of a fence on educational land, which forms part of the Ken Stimpson Academy site. This is so children at the school can begin using the outdoor space again. There are conversations and decision-making dating back to 2020 on this subject.

There are a number of residents, many of whom come under the banner of the Save Werrington Fields group, who are against losing too much of the field which they have accessed for dog walking and other leisure activities. They argue that they are not against a fence and are supportive of one if it does not take too much of land that they consider should remain for community use.

The academy has made it clear to the council, in the past and very recently, that it wants the entire area fenced to allow it to deliver the curriculum it wants to for pupils at the school.

In making its decision, the council has to consider both its responsibilities as landowner and its responsibilities as the local education authority and the safety of pupils and the need for them to have access to proper space to allow them to take part in sports and other outdoor recreation activities.

This Cabinet report followed a request, in March, by the former leader of the council, Councillor Mohammed Farooq, for officers to review matters and the decision making and activities to date.

Following the Cabinet decision the matter has been called in citing the key points set out below.

This report seeks to address in turn each of the points raised.

Response to Call In

4.2 3a. Call-in reasoning:

No alternative possible decisions were presented to Cabinet. Evidence presented is just highlighting the outcome of report recommendations, not looking at any alternative recommendations. No Cabinet discussion or questioning of points raised by the public and Ward Councillors demonstrates a lack of consideration of all alternatives and the views of the public. There has been no public consultation or discussion with key stakeholders.

Officer response:

The land in question is designated for education purposes and not public open space. Over the past few years, the council has been in discussions with councillors, including the ward members, the neighbourhood council and residents and their views have been put forward and given due consideration.

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 addresses concerns raised by members of the public.

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. This request was rejected by the Government.

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 has reviewed its needs and stated that it requires the whole of Area C and for it to be fenced.

The cabinet report states that 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.

The matter had been presented and discussed at length with Cabinet at two separate Cabinet Policy Forum meetings and with meetings with the Leader, Deputy Leader and Cabinet Member for Children's Services. Alternative options were considered by the council's Corporate Leadership Team but a clear recommendation was made to cabinet on that basis that the council chose to support the school in its request to fence the entire Area C based on the fact it is designated education land and the amount agreed to be fenced is consistent with the recommended amount required for a school of the size of Ken Stimpson Academy. Local representatives and ward members were informed in advance of the cabinet papers being published and given the opportunity to speak at the meeting.

There are three options to consider. Namely:

1. Not to fence any area. This is not viable due to safeguarding concerns and would render the field unusable by the school, as it currently is today.
2. To fence a smaller area (be that 2.5 or 4 pitches). The cabinet report states that the council could if it wished stipulate via the lease that either part only or indeed that no area of land can be fenced. The report does not recommend either of these positions and sets out the following rationale to support that decision:
 - a. 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.
 - b. 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 on 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.
 - c. 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).
 - d. 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.

The council has a responsibility as local education authority over the same area of land. Prior to academisation the council already 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 and 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.

3b. Call-in reasoning:

The report has not given sufficient evidence of the recommendation that the decision does not need to go to planning. The City Council believed this decision had to go to planning as recently as March, 2024. We believe there is a divergent view that has not been put to Cabinet that the change of land use should go to planning.

There has been only a limited reference to an equalities impact statement, and no reference to a health impact statement which are highly encouraged in policy decision should have been a key consideration, especially with the loss of amenity and health consideration to the community.

Officer response:

The cabinet report clearly sets out the rationale for why planning consent is not required. The advice was given by the Interim Director of Planning as well as the Interim Director of Legal & Governance & Monitoring Officer. The rationale behind this decision is set out in the cabinet report which states that the principal planning use of the land 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 the land. 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.

Whilst an impact statement wasn't completed equalities implications are considered in this report.

3d. Call-in reasoning:

Please see above.

The full impact of the loss of amenity and fencing of the fields will have on the community has not been properly considered. The perceived needs of the school have been stated as being given priority over the needs of the community, but with no regard to the proportionality of this. No alternative ways to meet the safeguarding requirements had been considered. There have been no serious safeguarding issues in the 40 years of dual use of the land. Therefore, the response to fence to entire 8 pitches (Area C) lacks proportionality.

Officer response:

Although the public have been able to use the area of land in question, it has always been education land. However, the impact of the loss of the fields to the public was considered and those representations were made during the cabinet meeting. There remains a significant amount of public open space in Werrington as well as a public footpath around the exterior of the school grounds. The Community Use Agreement will allow for the fields to be used outside of school hours but in a different way; the agreement still supports the community but via organised sport and enabling other community events. The agreement will set out the minimum number and standard of sports pitches and the council will ensure that this facility remains available to the community. Due to safeguarding issues the children cannot use the school fields without fencing.

The cabinet report highlighted two reviews undertaken on the safety of the use of the fields by the school. These reports concluded that without fencing the fields cannot be used and that it is common practice for school grounds to be protected by fencing. The lack of safeguarding issues in the past does not prevent the risk of future occurrences.

3f. Call-in reasoning

There is a perception of lack of fairness from public attendees and ward Councillor at the Cabinet. It did not feel that speakers were listened to. This is evidenced by lack of Cabinet questioning and debate which gave an impression of predetermination of the decision. This view of predetermination was reinforced in Council leader Dennis Jones' comment in interview to BBC Radio Cambridgeshire on the morning of 17 July, 2024.

There is also a question of planning recommendations as per point 3b).

Mr John Gregg, Executive Director of Children's Services, was put up to respond to questions raised by speakers but failed to answer many questions and gave cursory answers to those he did answer.

Officer response:

It is understandable that members of the public are unhappy with the decision. Everyone who spoke was given a fair opportunity and was listened to. The cabinet recommendation was clear and cabinet members had the opportunity to raise further challenges; the fact that they did not indicates that they felt the recommendation should be approved. The cabinet report sets out why a compromise was not recommended and that the school had stated that it requires the whole of the field and for it to be fenced. The Executive Director of Children and

Young People's Services sought to collate and respond to all queries and grouped some questions together to frame his responses. He sought to respond to all questions and whilst some were missed, cabinet members had the opportunity to seek further clarification, which they chose not to.

3h. Call-in reasoning

There were no questions asked of the public, former MP and Councillors. There was no debate by Councillors. There were no reasons for the decisions given by the Cabinet, addressing points raised. There is a very strong public perception that the decision was made prior to cabinet, not open to scrutiny and was undemocratic. Given the important and permanence of this decision, it is essential the decision-making process is transparent.

Officer response:

Cabinet members had the opportunity to ask questions but chose not to. The cabinet paper clearly set out the recommendations and rationale behind the decision. In making its decision, the council has to consider both its responsibilities as landowner and its responsibilities as the local education authority and the safety of pupils and the need for them to have access to proper space to allow them to take part in sports and other outdoor recreation activities.

5. CONSULTATION

5.1 The cabinet report was shared and the matter discussed with ward members.

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

6. ANTICIPATED OUTCOMES OR IMPACT

6.1 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.

7. REASON FOR THE RECOMMENDATION

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

8. ALTERNATIVE OPTIONS CONSIDERED

8.1 Alternative options have been considered and these are set out in the main body of the Cabinet Report and expanded above.

9. IMPLICATIONS

Financial Implications

9.1 The council will need to bear one half of the cost of supplying and erecting the fence. The cost of the fence is estimated to be £80,000 in total.

Legal Implications

9.2 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.

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 had been referred to Cabinet for decision.

Equalities Implications

- 9.3 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.

Rural Implications

- 9.4 N/A

10. BACKGROUND DOCUMENTS

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985

- 10.1 N/A

11. APPENDICES

- 11.1 None

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