

PROPOSED LEASE OF RUISLIP GOLF COURSE TO HIGH SPEED TWO (HS2) LIMITED AND A PROPOSED AGREEMENT FOR LEASE OF PART OF RUISLIP GOLF COURSE FOR THE SITE OF A NEW SECONDARY FREE SCHOOL

Cabinet Member(s)	Councillor Jonathan Bianco Councillor Susan O'Brien
Cabinet Portfolio(s)	Finance, Property and Business Services Education, Children and Youth Services
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Papers with report	Appendix 1 - Plan 1 - HS2 London Borough of Hillingdon, Ruislip Golf Course Appendix 2 - Plan 2 - Proposed Free School site, Ruislip

HEADLINES

Summary	This report to Cabinet proposes the granting of two agreements at Ruislip Golf Course - <ol style="list-style-type: none">1. A lease of the whole course to High Speed Two (HS2) Limited to regularise the existing possession of the course by HS2 Ltd. This lease is to include provision for part of the site to be surrendered in the event that it is required by the Secretary of State for Education to provide a site for a new secondary free school and;2. An Agreement for Lease to the Secretary of State for Education to grant a 125 year peppercorn lease of part only of the Ruislip Golf Course for the site of a new secondary free school.
Putting our Residents First	This report supports the following Council objectives of: <i>Our People; Our Built Environment; Strong financial management.</i>
Financial Cost	The legal costs for the drawing up of the lease agreement is estimated at £3,500. The income value of the lease will be based on the DFE model for 125 years for a peppercorn rent only.
Relevant Policy Overview Committee	Corporate Services, Commerce and Communities Residents, Education & Environmental Services
Relevant Ward(s)	West Ruislip

RECOMMENDATIONS

That the Cabinet :

1. **Authorises the grant of a peppercorn lease to High Speed Two (HS2) Limited of Ruislip Golf Course for a maximum term of 10 years and on the other main terms outlined in this report.**
2. **Authorises the grant of an Agreement for Lease with the Secretary of State for Education to grant a 125 year peppercorn lease of land at Ruislip Golf Course to a free school trust or another party (at the direction of the Secretary of State) on the main terms outlined in this report and subject to the conditions precedent having been met.**
3. **Authorises officers to give public notice of the Council's intention to appropriate the land from Open Space and green belt land to Education use(s) in the event that planning permission is obtained for the new school.**
4. **Delegates authority to the Leader of the Council and Cabinet Member for Finance, Property and Business Services, in consultation with the Deputy Chief Executive and Corporate Director Residents Services, to consider any objections to the proposed appropriation: decide whether the land should be appropriated for Education use(s) and to make all necessary decisions to give effect to the above recommendations and any other decisions which are required in relation to the land.**

Reasons for recommendations

HS2 Ltd took possession of Ruislip Golf Course on 2nd September 2019 as the extent of HS2's possession under Schedule 16 notices and their contractors site investigations had made playing golf at the course untenable. Entering into a lease will regularise this possession, documenting HS2's obligations to secure and maintain the land prior to them reconfiguring the course.

The Education and Skills Funding Agency (ESFA)/LocatED have been searching for approximately 18 months for a site for a new six form of entry (6FE) secondary school in the north of the Borough and have not been able to find a suitable site. The new school is required to meet forecast demand for additional secondary school places and if a site is not secured there is a risk that there will be a shortfall of secondary school places for Hillingdon residents. The Council has one potentially suitable site, a section of the Ruislip Golf Course which is owned freehold but is affected by HS2 works. The ESFA/LocatED require the Council to enter into an Agreement for Lease to proceed with the project.

Alternative options considered / risk management

The Council could refuse to enter into a lease with HS2 Ltd, this would leave HS2 in possession of the golf course without any obligations to the Council to secure and maintain the course during their period of occupation other than the obligations in the Legal Agreement for the return of the reconfigured course at the end of this period.

The DfE/LocatEd have considered a number of sites for the new secondary school all of which have received an initial assessment by the Head of Planning, Transportation and Regeneration and the Director for Housing, Environment, Education, Performance, Health & Wellbeing, none of which have been found to be suitable. Officers do not have confidence that a suitable alternative site can be secured for the school. Obviously any site will be subject to full planning permission and if on greenbelt or open space (as most of the alternatives were) would need to evidence at that time its detailed other searches.

Policy Overview Committee comments

None at this stage.

SUPPORTING INFORMATION

Proposed lease of Ruislip Golf Course to HS2 Ltd

1. HS2 Ltd took full possession of Ruislip Golf Course on 2nd September 2019 as the extent of HS2's possession under Schedule 16 notices and their contractors site investigations had made playing golf at the course untenable. Green Spaces closed the course with the last day of play taking place on the August bank holiday, 26th August 2019. HS2 Ltd has agreed to enter into a lease to regularise their occupation of the course and has also agreed that on completion of this lease it will pay the Council compensation for the loss of revenue and costs incurred by the Council from December 2018 to the date of full possession. Compensation for the period from 2nd September 2019 to the date upon which the land is returned to the Council is covered under an Agreement between the Secretary of State for Transport, High Speed Two (HS2) Limited and the London Borough of Hillingdon dated 17th August 2017 (The Legal Agreement).
2. The lease to HS2 Ltd is proposed to be granted on the basis of the following main heads of terms –
 - The lease to run for a term of 10 years commencing on 2nd September 2019. The lease to be contracted outside the Landlord & Tenant Act 1954.
 - The lease is to be capable of early determination by the tenant only on satisfactory completion of the reinstatement, by serving a 28 day notice.
 - The lease is to be used only in conjunction with the construction and completion of HS2.
 - The land is to be returned to the Council on expiry of the lease and in accordance with the provisions of the Legal Agreement.
 - Footpaths and public rights of way are to remain clear and unencumbered throughout the lease term, unless consent to the contrary from the Council has been obtained.
 - HS2 Ltd is to secure and fence the whole lease area.
 - HS2 Ltd is to be able to share the occupation of the property with their contractors
 - Consideration to be paid to the Council will be an agreed compensation figure to include loss of revenue for the period up to 1st September 2019, associated statutory redundancy payments and any other loss incurred as a consequence of the statutory notices served (or would have been served but for the lease agreement).

- Only land temporarily required by HS2 Ltd to be included within the lease (all land to be served with General Vesting Declarations to remain outside the lease and under schedule 16 until vesting)
 - HS2 Ltd will be required to surrender part of the land demised in the event that it is required by the Secretary of State for Education to provide a site for a new secondary free school.
3. The proposed lease plan is set out in appendix 1. Following in principle agreement to the Heads of Terms for a lease of Ruislip Golf Course to HS2 Ltd, a proposal has come forward to use part of this land for a new free school. The Council will need HS2's agreement to revise clause 11 of the Legal Agreement, relating to Ruislip Golf Course (The Legal Agreement) if this land is to be developed for a new school. Officers wrote to HS2 Ltd on 2 July seeking assurance that HS2 Ltd would have no objection to the Council developing alternative land uses on part of Ruislip Golf Course. However, it was made clear that if HS2 Ltd were to agree to this, they would still be required to honour the terms of the Legal Agreement and to implement their proposals to reconfigure the golf course, subject of course to securing the necessary planning permission. HS2 Ltd replied in writing on 13 July, confirming that HS2 Ltd does not object to the Council developing alternative land uses on the academy part of the golf course and that it would still develop the remaining part of the land as a 9 hole golf course. If a lease is granted to HS2 Ltd, a legal provision will be included in the lease requiring HS2 Ltd to surrender that part of the golf course needed for the construction of the free school should this be required.

Agreement for Lease/Lease to the Secretary of State for Education

DfE Free School Bid Process

4. There is a need for the new secondary Free school to meet the rising demand for school places that led to sustained expansion of primary schools in the Borough over the last decade. This included the provision of three new schools. Local Authorities cannot provide new schools but can work with the Department for Education (DfE) and Free schools to ensure successful local delivery. Currently this is one of six free schools being progressed in the borough, though four will replace existing schools on their sites. Given the long term forecast need for additional school places to meet increasing demand in the north and centre of the borough, the ESFA had approved bids in 2016 for two new secondary Free Schools in the north of the Borough, but revised this in 2018 to actively seek a site for one school, originally to open in 2021/22.
5. The DfE commissioned its agency called LocatED to identify a potential site and from 2018 to early 2020 LocatED on different occasions shared various options with the local authority. This included consideration of 24 sites.
6. None of the sites were suitable for a free school as they were either of insufficient size, too far from the target residential areas, suffered from poor public transport connections or had significant planning constraints. DfE shared some options with both potential Trusts, and indicated they would have to close the search. Officers do not have confidence that a suitable alternative site can be secured for the school and there is a risk that there will be a shortfall of secondary school places for Hillingdon residents without the new school.

7. In August 2020, DfE decided to formally to progress the bid from Veritas Academy Trust for a new school called Bishop Arden north of the A40 and to discontinue the free school proposal from the Hillingdon High school consortium. Both these decisions are now published by DfE on their website list updating the pipeline of Free Schools, with no site identified. The DfE now wishes to formally discuss the site with the Council and HS2 and will shortly require the Academy Trust Board to formally agree to it, pending final agreements and planning permission. Shortly, the Trust will start the necessary DfE pre-opening process including consulting locally on the proposed details of the school's operation such as admissions, leadership, local governance and the 21 place unit for pupils with Autistic spectrum disorders, which was included in the bid. DfE will fund this within the building and it will be an important provision in meeting the growing demand from resident pupils with additional needs.
8. The Bishop Arden bid in 2016 was strongly supported by parents in the north of the borough since it would provide another outstanding school open to pupils of all faiths and none, living in the local area. It will not have any faith criteria priority in its admissions though it will have a Christian ethos. Bishop Ramsey School, within the Veritas Academy Trust, will continue with its existing admissions policy which does give some priority places to those with the Church of England faith.
9. To meet the forecast demand for additional secondary school places, the Council has successfully expanded a number of existing schools in the Borough. This includes rebuilding and expanding Northwood School, expanding Vyners School, Ruislip High School and Oakwood School. In addition, Swakeleys Girls School has been rebuilt and expanded by the DfE.
10. For the past few years, to meet the increasing demand of larger numbers coming up from the primary sector each year, the secondary intake has required additional temporary 'bulge' places to be agreed in up to five schools each year to meet the statutory duty to give residents an offer of a school place. In 2020 this was 145 places and is projected to rise each year up to 2024 and then remain high and plateau. However, the Local Authority cannot force academies to expand. Up to now, these have used existing accommodation on the school sites. Most of the 18 secondary school sites across the borough are now full, with no options for further expansions, and most are on playing fields, green belt and/or metropolitan open land which create serious planning constraints.
11. Harlington school (furthest south of any secondary school) is being rebuilt and expanded by a permanent 1.5 forms of entry, due to be completed in 2023, pending planning permission. There is also future demand for more places for pupils living in the north and centre of the borough. North of the A40, the existing eight secondary schools are all close to the A40 or on the north and eastern edges of the borough, resulting in some schools with half of their pupils from south of the A40 or from out of the Borough, because they live close-by; totalling 47% of all the places in schools north of the A40. This reduces places and choice for pupils living in the centre of the north of the Borough. As the Free School is the only additional secondary school being progressed in the borough it is important for the local authority to be sure a site could be found that was generally accessible by public transport in order to help meet the duty to provide places to all residents. The delay and long search for a suitable site has been a concern in planning to meet the on-year

increased demand for places, since it is critical to meeting demand from 2023 onward and ideally from 2022.

Potential Council site for the secondary Free School

12. The Council has one potential suitable site for the 6FE new secondary Free School - a section of the Ruislip Golf Course which is owned freehold but is affected by HS2 works (see appendix 2). The site in question is to the east of the golf course and is comparable in size (5.02 hectares) to the size of the site of Northwood School Site (5.25 hectares). Northwood School is also a 6FE secondary school.
13. Ruislip Golf Course is the only possible site officers have identified where a desktop analysis has not identified any significant planning constraints. In this regard the site might still attract resident opposition, but it would be a matter for the Council as a planning authority to determine any planning application on its merits. The land is flat, has an obvious existing vehicular access point (where Hill Lane intersects with the Ickenham Road), is a highly sustainable location close to the underground station and bus routes, is not defined as high quality agricultural land, it is not contaminated land and is large enough to accommodate a secondary school without the necessary new buildings needing to be too close to neighbouring residential property.
14. The Ruislip Golf Course option is also a green belt site. A sequential assessment would need to be undertaken to satisfy not just the Council as Local Planning Authority but the GLA and Secretary of State (as the application, like the Lake Farm School application, would require a referral to the Secretary of State). For the Council to allow a new school in the green belt, it needs to have a strong argument that there is a need for the school and that the education demand cannot be met elsewhere.
15. The latest plans from HS2 Ltd for the remodelled golf course would have the majority of the land necessary for a new secondary school being taken up by a 6 hole academy golf facility. The 9th hole of the re-provided course would need to be remodelled; but officers believe it would be possible to alter the current layout to enable a new 9 hole golf course and a new secondary school to be provided, albeit with the loss of the 6 hole academy golf facility.
16. Officers have now agreed in principle, Heads of Terms to enter into an Agreement for Lease with the Secretary of State for Education to grant a 125 year peppercorn lease of the school site to a free school trust or another party (at the discretion of the Secretary of State) on the satisfaction of conditions precedent being met. The Agreement for Lease will be entered into once the respective parties formal approvals to enter into the Agreement have been obtained, on the ESFA/LocatED receiving satisfactory title and survey information and confirmation that HS2 Ltd will release the land from the existing Legal Agreement (although actual release of the land from the HS2 agreement will only occur immediately prior to completion of the lease). Once the Agreement for Lease has been entered into, the grant of the 125 year lease will be conditional upon the ESFA/LocatED obtaining a satisfactory planning permission for the proposed school and the Council procuring vacant possession (release from the Legal Agreement and appropriating to Education use(s)). There will be a long stop date for obtaining satisfactory planning permission of 36 months from the date of the Agreement for Lease, or 12 months for all

other conditions, after which the parties may determine the Agreement on giving notice, however the ESFA/LocatED may waive any of the conditions precedent should they wish. The main terms of the lease are as follows:

- The lease will be a DfE Model 125 year peppercorn Free School Lease save where amended only in accordance with the agreed Heads of Terms.
- The tenant will be responsible for constructing the school in accordance with the planning permission granted.
- The tenant will take the lease on full repairing and insuring terms
- The use will be restricted to the provision of educational services and for ancillary community, fundraising and recreational purposes.
- Each party will be responsible for their own legal and professional costs

17. The lease will be granted before the main construction works begin as, for Free Schools, the intention is that the Secretary of State for Education will procure the construction works on the site. This will then enable delivery of a significant investment into the borough's educational estate. Once the school has been completed, the free school trust will occupy and operate the school in accordance with the terms of the lease.

18. As noted earlier, if the land is to be used as the site for a new school, the Council will be required to appropriate the land, it will need to be satisfied that the provisions of Section 122 of the Local Government Act 1972 are met and in particular that the land is no longer required for the purposes for which it was held immediately before appropriation. The Council will need to advertise its intention to appropriate the land in a local newspaper for two consecutive weeks and take any consultation responses into account before formally deciding to appropriate the land.

Financial Implications

The report above outlines the rationale for the appropriation of land at Ruislip Golf Course and the subsequent granting of a lease for 125 years to a free school trust as directed by the Secretary of State. The land in question is currently held by HS2 Ltd as a result of the planned works for the new rail line.

The original agreement for HS2 was a reinstatement of the golf course with 2 elements, a nine hole golf course and a 6 hole academy. The new free school is expected to be positioned in the area of the golf academy. As noted in the report HS2 have agreed to continue with the reinstatement of the course in the remainder of the land at their expense. However, there will be no additional value provided with respect to the area that has been earmarked for the free school.

The golf income budgets have already been adjusted to reflect the reduction on income as a result of the HS2 agreements, no future income targets had been built into the council budgets due to the length of the project but would have been and will be for the 9 hole course at the appropriate juncture potentially upto 10 years in the future. The ultimate loss of the planned 6 hole academy would have potentially provided an income stream which was as yet unknown and not reflected in any income targets.

The planned provision of a new secondary free school with 6 forms of entry is of substantial benefit to the Council and has enabled adjustments in the Council's capital programme for school expansions in 2020/21 combined with updated secondary school places forecasts. If a school were to be provided directly by Council resources, this would have a significant annual impact in financing charges for the necessary borrowing that would be incurred. By comparison, the recent cost to build a similar sized school in Northwood was circa £36,000k, if this was financed entirely by borrowing the charges for this would be circa £2,000k per annum.

The lease when it is agreed will be at peppercorn and of no substantial value to the Council, and each party is responsible for their own legal costs. The estimated legal cost for drafting the lease is £3,500, which will be funded from existing budgets.

RESIDENT BENEFIT & CONSULTATION

The benefit or impact upon Hillingdon residents, service users and communities?

Completion of a lease to HS2 Ltd will have little obvious impact as HS2 are already in possession of the golf course. It will, however, regularise the position, documenting HS2's obligations to secure and maintain the land prior to reconfiguring the course.

Completion of the Agreement for Lease will facilitate the construction of a new secondary free school in the north of the Borough and the delivery of up to 1,200 school places.

Consultation carried out or required

Consultation has been limited to internal sources at this stage, however, full public consultation will be required as part of the planning process.

The Council will also need to advertise its intention to appropriate the land and take any consultation responses into account before formally deciding to appropriate.

CORPORATE CONSIDERATIONS

Corporate Finance

Corporate Finance has reviewed the report and concur with the Financial Implications set out above, noting that there are no material financial implications arising from the report recommendations other than a minor £3.5k legal cost that can be met from existing resources.

Legal

There are essentially two proposals set out in the report for Cabinet's consideration and therefore it would be helpful for the legal comments to be broken down, for ease of reference, into the following headings.

Lease of Ruislip Golf Course to HS2 Ltd

HS2 Ltd is currently occupying the golf course pursuant to Schedule 16 of The High Speed Rail [London - West Midlands] Act 2017 which gives it a legal power to enter upon, and take temporary possession, of this land for the purpose of undertaking construction and maintenance of works associated with Phase One of the HS2 project. The specific types of works permitted are identified in the Schedule. Schedule 16 has limited legal effect. It does not regularise HS2 Ltd's occupation of the golf course and the Council does not enjoy the usual benefits that a freehold owner of land has.

The advantage of granting a lease of the golf course to HS2 Ltd is that it would regularise HS2 Ltd's occupation and it would contain certain covenants and conditions in favour of the Council which would be capable of being enforced in the usual way between a landlord and tenant.

It is important to note that if Cabinet agrees to grant a lease to HS2 Ltd for a term of 10 years, it will be caught by section 123 of the Local Government Act 1972 which provides that except with the consent of the Secretary of State, a council shall not dispose of land, otherwise than by way of a short tenancy, for a consideration less than the best that can reasonably be obtained. A short tenancy is defined as the grant of a term not exceeding 7 years.

It is the view of the Borough Solicitor that the Council would comply with its statutory obligation under section 123 by granting a 10 year lease to HS2 Ltd. It is already in possession of the golf course, albeit temporary, and therefore it would not be appropriate for the Council to, for example, 'test the market' in the usual way. In the circumstances, there would be no other viable person/body interested in the golf course, given that it is the subject of HS2 works. All that the Council is seeking to do is to regularise occupation of the golf course which is a legitimate and lawful exercise.

It is of the utmost importance that the Council, in negotiating and granting a lease to HS2 Ltd, ensures that there is a valid clause within the lease which imposes an unequivocal obligation on HS2 Ltd to surrender back to the Council that part of the golf course which is required by the Secretary of State for Education to provide a site for a new secondary free school. Furthermore, the Council will also need to insist that it will be allowed to sell the land with vacant possession in the future. The main heads of terms for the proposed lease are set out in the body of the report.

Agreement for Lease to the Secretary of State for Education

The Council has a statutory duty under the Education Act 1996 to secure sufficient schools for the provision of primary and secondary education in Hillingdon. The proposal to use part of the golf course as a site for a new school will help the Council to meet its duty.

Clause 11.1 of the Legal Agreement between the Council and the Secretary of State for Transport and HS2 Ltd dated 17 August 2017 relates to the golf course. The Council requires HS2 Ltd's agreement to vary this clause, which concerns the whole of the golf course, so as to allow for part of it to be developed for a new school.

The Borough Solicitor can confirm that there is no requirement for a formal variation of clause 11.1 as this has already been dealt with by an exchange of letters between the Council and HS2 Ltd dated 2 July and 13 July 2020 respectively. This correspondence has made it clear that HS2

Ltd has no objection to the Council developing alternative land uses on the academy part of the golf course and that it would still develop the remaining part of the land as a 9 hole golf course.

The land on which the golf course is situated obviously has no current education purpose. Therefore, part of it would need to be appropriated by the Council for education use which will bring section 122 of the Local Government Act 1972 into play which provides the necessary power for appropriation to take legal effect.

Section 122 permits the Council to appropriate land which is no longer required for the purpose for which it is held immediately before the appropriation. However, it is subject to the rights of other persons in, over or in respect of the land concerned, This is another reason why it is imperative that there is a clause in the lease, requiring HS2 Ltd to surrender that part of the golf course on which the new school is to be located; HS2 Ltd would then not have any rights over it.

On the basis that the golf course land is open space, there is a prohibition on the Council appropriating any part of it without first having given its intention of doing so which is to be advertised in two consecutive weeks in a local newspaper. Once this has been done, the Council is required to consider any objections to the proposed appropriation which may be made to it before it can take any steps to implement it. With regard to the terms of the proposed grant of a lease to the Secretary of State for Education, which have been summarised in the body of the report, they appear to be in standard form.

Finally, it is important to note that if Cabinet approves the recommendations in the report, the Council will have a dual role as landowner and as local planning authority. The Council will therefore need to ensure that there is a proper separation of these roles at all times and take steps to ensure that no conflict of interest arises.

Infrastructure / Asset Management

Infrastructure / Asset Management comments are contained within the body of this report.

Comments from other relevant service areas

Education Service

As set out above, the proposed Free School is crucial to ensuring the Council as a Local Education Authority can meet the statutory duty to provide sufficient school places for all residents.

Planning

A sequential site assessment would be required to justify building a new school in the green belt. Such a proposal would be a referable development to the Mayor of London. It is strongly advised that detailed pre-application planning advice is sought before a planning application is submitted.

BACKGROUND PAPERS

Nil.

Appendix 1 - Plan 1 - HS2 London Borough of Hillingdon, Ruislip Golf Course

