

<b>Report of:</b>	Executive Member for Education - Councillor Stephen Hill Executive Member for Environment and Finance & Governance - Councillor Barrie Cooper Director of Education and Partnerships - Rob Brown Director of Finance - Ian Wright
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<b>Submitted to:</b>	Executive - 9 November 2021
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<b>Subject:</b>	Middlehaven - Outwood Academy Riverside
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## Summary

<b>Proposed decision(s)</b>
That Executive approves the sale of the subject land to the DfE for the sum of £1,211,596 (plus fees) to enable the construction of a new secondary school to be used as the permanent location for Outwood Academy Riverside.  That capital funds up to the sale value of the land plus a further sum of up to £1.7m be utilised to assist the DfE in remediating the site, subject to the DfE providing robust evidence of the costs.

<b>Report for:</b>	<b>Key decision:</b>	<b>Confidential:</b>	<b>Is the report urgent?<sup>1</sup></b>
Decision	Yes – exceeds the £150K threshold.	No	No

<b>Contribution to delivery of the 2021-24 Strategic Plan</b>		
<b>People</b>	<b>Place</b>	<b>Business</b>
The delivery of the proposed secondary school will deliver on the Council's statutory duties, ensure that pupils can access a quality school place and reduce travel distances for children and their families.	The development of the subject parcel of land for secondary school use as proposed, will bring a vacant and underused Council asset into far more beneficial future use.	The proposal to dispose of the land will generate significant third party capital investment in the town's education infrastructure, and also deliver associated local employment opportunities.
<b>Ward(s) affected</b>		
The subject parcel of land is situated within the Central Ward and the respective Ward Members have been consulted with no adverse comments received.		

<sup>1</sup> Remove for non-Executive reports

## **What is the purpose of this report?**

1. The purpose of the report is to set out the case for the proposal to dispose of the Council's freehold interest in land at Middlehaven, in order to facilitate the delivery of a new secondary free school in Middlesbrough.

## **Why does this report require a Member decision?**

2. The proposal relates to the disposal of an asset deemed to be surplus at a value in excess of the £150K threshold, together with a requirement for capital investment in school infrastructure in excess of £150k.

## **Report Background**

3. Executive considered a report on 8 October 2019 setting out the case to dispose of the Council's freehold interest in land at Middlehaven.
4. In 2019 Outwood Grange Academy Trust (OGAT) received approval from the Government's Free School Programme of funding to establish a new 1,050 place secondary school to serve central Middlesbrough. The Department for Education (DfE), which is responsible for delivering the scheme, approached Middlesbrough Council seeking a suitable site to use as the permanent school location.
5. The report explained that the statutory duty to ensure there are sufficient school places sits with Middlesbrough Council. The proposed school would therefore form a central pillar of the Council's approach to planning secondary school provision as, without it, there would be insufficient places to meeting rising demand. Support for the proposal was included as a priority in the School Place Planning Strategy, approved by Executive on 21 January 2020.
6. To meet rising demand for places, the DfE proposed opening the school in temporary accommodation in the first instance, allowing for due diligence, design, procurement and delivery of the new school to take place by the academic year 2021/22.
7. The Executive approved the proposal to proceed with the disposal of the Council's freehold interest in the land and requested that a further report be brought forward prior to sale of the land, in accordance with the Council's Asset Disposal Policy.

### ***Remediation of the site***

8. Following the report, initial site investigations conducted by Middlesbrough Council revealed that, despite remediation being undertaken as part of the exchange of the land with the Homes and Communities Agency (HCA) in 2017, there were still concerns about significant levels of contamination remaining on the site. Part of the site was also identified as being in an Environment Agency flood zone, further constraining the site in terms of its development.
9. It was identified that further detailed investigations of the site were required and that a remediation strategy would need to be devised for what was emerging as an increasingly complex site. The timescales were subsequently slipped to 2023/24 to allow this work to take place, with plans to provide more substantial temporary accommodation for the school for the first three years of operation.
10. Early DfE estimates of the cost of remediating the site to the standard required, at approximately £6.9m, raised its concerns that the scheme was becoming unaffordable. Alongside the cost of preparing a temporary site, the estimated project costs escalated considerably and drew ministerial attention.

11. Without an affordable and deliverable solution to developing the site, the Regional School Commissioner (RSC) indicated that an Academy Funding Agreement for the school could not be agreed. At this point the school was at risk of not opening.
12. With the prospect of the school not opening in September 2020, the Council would not be able to provide enough school places to meet demand. The result would have been 100 pupils unable to secure a secondary school place in September 2020 and increasing numbers in the following years. No other options to expand existing schools to meet the scale of this unmet demand were available.
13. The DfE proposed the cost of remediation be shared with Middlesbrough Council. It was agreed in principal that the cost should be deducted from the value of the site, and that this should be the final price paid by the DfE. In the event that the remediation costs are greater than the site value, the additional cost is to be shared equally by the DfE and Middlesbrough Council up to a maximum cap of £1.7m each. The Council would only agree to pay the costs of remediation that the DfE can evidence are required to build the school.
14. Following receipt of an independent third party site valuation, commissioned jointly by the DfE and Middlesbrough Council, Heads of Terms were subsequently agreed on this basis.
15. To ensure that only the most necessary and cost-effective remediation solution is secured an open book arrangement has been agreed, whereby the Council can interrogate, challenge and agree each stage of the process. Following more detailed site investigations, the DfE has revised the indicative remediation costings to £4.33m. Under the mechanism agreed this would mean a Council contribution of £1.55m over and above the value of the site, which is below the cap of £1.7m.
16. The Council is currently checking these costs and the remediation strategy that underpins them. Alternative approaches to the remediation are also being investigated with a view to reducing the costs and timescales involved. This includes reviewing procurement routes and responsibility for undertaking the works, encouraging the DfE to engage with their contractor on the basis of a remediation led solution to retain arisings on site and set the finished levels to respond to the arisings generated, and considering neighbouring development sites to source and dispose of ground materials. As a result of this, and as more design work is undertaken by the DfE on a final detailed building and site layout, the indicative costings are subject to change.

### ***Establishment of Outwood Academy Riverside***

17. The Academy Funding Agreement was signed on 27 February 2020, with Outwood Academy Riverside opened to pupils the following September.
18. Operating initially from accommodation at 2 Queen Square with 100 Year 7 pupils on roll, the school relocated to fully refurbished accommodation at 100 Russell Street in April 2021 with capacity for 450 pupils. The school will offer a further 150 Year 7 places in September 2021 and September 2022.

### ***Land at Middlehaven***

19. Shown edged on the plan attached as Appendix A of this report, the subject parcel of land held by the Council measures @ 8.44 Acres (3.41 Hectares)].
20. With proximity to the nearby Middlesbrough College, the subject site lies to the south of Cleveland Street, with frontage to Pioneering Way, Commercial Street, Lower East Street, Lower Feversham Street and Gray Street.
21. In order to take the scheme design forward, the DfE has sought changes to the site area that was initially identified. Firstly, an area of land to the north of Commercial

Street, known as the Jap Euro Auto Spares (JEAS) site has since been excluded from the site due to the envisaged cost/benefit of remediation being prohibitive.

22. Secondly, an additional parcel of land bound by Cleveland Street, Lower East Street and Lower Feversham Street has been incorporated within the site area so as to facilitate the satisfactory orientation and design of the proposed school building.
23. The design of the school facility will require the Buyer to stop up a section of Lower East Street in order to be able to deliver the development proposed.

#### **What decision(s) are being asked for?**

24. That Executive approves the sale of the subject land to the DfE for the sum of £1,211,596 (plus fees) to enable the construction of a new secondary school to be used as the permanent location for Outwood Academy Riverside.
25. That capital funds up to the sale value of the land plus a further sum of up to £1.7m be utilised to assist the DfE in remediating the site, subject to the DfE providing robust evidence of the costs.

#### **Why is this being recommended?**

26. To meet the Council's requirements to generate capital receipts and bring a vacant, unused parcel of land into far more beneficial use in the future.
27. Disposal would facilitate the construction of the Riverside Outwood Academy, creating additional secondary school capacity to assist the Council in its statutory duty to ensure there are sufficient places to meet rising demand.
28. Without an appropriate site on which to permanently locate the new school, its continued operation would not be possible. The school is currently operating out of temporary accommodation until the new building is completed, and would otherwise reach full capacity by 2022/23 and be unable to accept any more pupils.
29. The proposal supports delivery of the Council's Medium Term Financial Plan.

#### **Stakeholder Engagement**

30. The subject parcel of land is situated within the Central Ward and the respective Ward Members have been consulted.
31. No adverse comments have been received.
32. Members will be further consulted on any subsequent proposal made as part of the normal planning process.
33. The scheme proposal has received regular press coverage since the DfE announced its intentions to develop a new school on the site in 2019.

#### **Other potential decisions and why these have not been recommended**

##### ***Re-use for operational purposes***

34. No Council operational service requirement has been identified.

##### ***Other uses***

35. Although the site is capable of being used for other purposes, future use for the development of a secondary school is preferred.

36. Use of the subject land for any other purpose would leave the Outwood Academy Riverside with no site on which to develop a permanent school building.

***Do nothing***

37. The property would remain in its present state.
38. Whilst the subject land would be retained for potential Council use in the future, the liability and responsibility for maintaining and holding the property would remain with the Council in the interim.

**Impact(s) of recommended decision(s)**

***Legal***

39. The property would be disposed of freehold with vacant possession in accordance with standing protocol.
40. The Buyer has submitted a conditional offer for the subject land – the implications of this being that any resulting transaction would be subject to a delayed delivery timeframe for exchange and legal completion.
41. Assuming that the proposed disposal can be progressed without obstruction, or delay, the transaction as proposed should reach exchange of contracts within 6 months of notification of Council approval.
42. The Buyer will apply for planning permission and legally complete the transaction upon the grant of a satisfactory planning consent, subject to a longstop date of 18 months from the date that planning consent is granted.
43. The decision would assist the Council in meeting its statutory duty, under Section 14 of the Education Act 1996, to ensure there are sufficient school places to meet demand.

***Financial***

44. The Council would receive a capital receipt plus fees without the need to incur any further marketing costs.
45. The disposal of the subject site would remove the Council's liability for any future maintenance or holding costs whilst the property remains unused.
46. The Council has committed to reinvest the proceeds of the land sale, and a further investment of up to £1.7m of additional capital (if required) to help the DfE remediate the subject site and deliver the new school facility as proposed.

***Policy Framework***

47. No Policy Framework implications have been identified.
48. The report is in-line with the emerging vision for the repopulation of the town centre.
49. The decision aligns to the Mayor's Vision by:
- a) Facilitating fair access to secure, well paid jobs and meaningful training by working with local schools and other partners to ensure that local people have access to the best education to enable them to achieve the right qualifications and skills;
  - b) Ensuring safer, independent lives for our young people - ensuring our children are protected;

- c) Strengthening our town through bold and innovative regeneration.

### ***Equality and Diversity***

50. A Level 1 (Initial Screening) Impact Assessment (IA), attached at Appendix C, was undertaken and accompanied the 8 October 2019 Executive report.
51. The impact assessment found that the proposal would have a positive impact on the local community and would not represent a concern to equal rights, disability discrimination or the impingement of human rights.
52. The decision being sought aims to positively affect educational outcomes for young people aged 11-16, removing the need for these children to travel to schools outside of the town to access appropriate education, or be without an education.

### ***Risk***

53. The relevant risks this decision would influence are cited below, with an explanation as to why they are relevant and how it would affect each risk.

Risk No	Risk Description	How it impacts on each risk
O4-025	In June 2019 the DfE announced that Middlesbrough would receive funding to build a new Free Secondary school. This investment is dependent on agreement with the DfE for the cost and siting of the land of the new school. If agreement cannot be reached, pupils will not be admitted to the new school for September 2020 (albeit in temporary accommodation). This will result in further costs to the council in needing to find places for children for September 2020 and each successive year thereafter. The limited resource available and land on current school sites to build on will make this increasingly difficult and could jeopardise the viability of the new school.	The report details the arrangements for the land transaction and remediation costs. The proposal has a positive impact on this risk.
O4-026	There may be insufficient year 7 school places available to meet demand over the next 5 years which could result in Middlesbrough children not being able to attend school in the town, leading to a failure to fulfil our statutory obligations, and placing a financial burden for funding additional places. It could also damage our reputation and lead to dissatisfied	The building of a permanent location for the new secondary school will provide the school places needed to meet demand, having a positive impact on this risk.
O8-104	If the Asset Disposal Policy Framework fails to deliver sound business management practices then this may lead to the Council being unable to demonstrate best value and open and transparent dealings in asset disposal resulting in damage to the Council's reputation from negative publicity and potential financial consequences.	This report is being brought forward prior to the sale of the land to ensure compliance with the Council's Asset Disposal Policy which will have a positive impact on this risk.

## **Actions to be taken to implement the decision(s)**

54. Subject to Executive Committee approval, the Council moves to:

- a. Proceed with the disposal of the subject property to the DfE for the sum of £1,211,596 (One Million Two Hundred & Eleven Thousand Five Hundred & Ninety Six Pounds) plus fees, to enable the construction of a new secondary school to be used as the permanent location for Outwood Academy Riverside.
- b. That the sale value of the land and a further sum of up to £1.7m of capital funds be utilised to assist the DfE in remediating the site if required and where evidence is provided to support it.
- c. Confirm a satisfactory timeframe for delivery of the proposed development scheme with the Buyer, requiring them to:
  - i. Exchange contracts within 6 months of notification of the grant of Council approval.
  - ii. Use reasonable endeavours to legally complete the transaction within 6 months of the date that planning consent is granted.
- d. Grant the Director of Finance delegated authority to authorise any variation from the price stated in Paragraph 54(a) of less than £150,000, if required.

## **Appendices**

Appendix A – Site plan

Appendix B – Asset Disposal Business Case

Appendix C – Impact Assessment

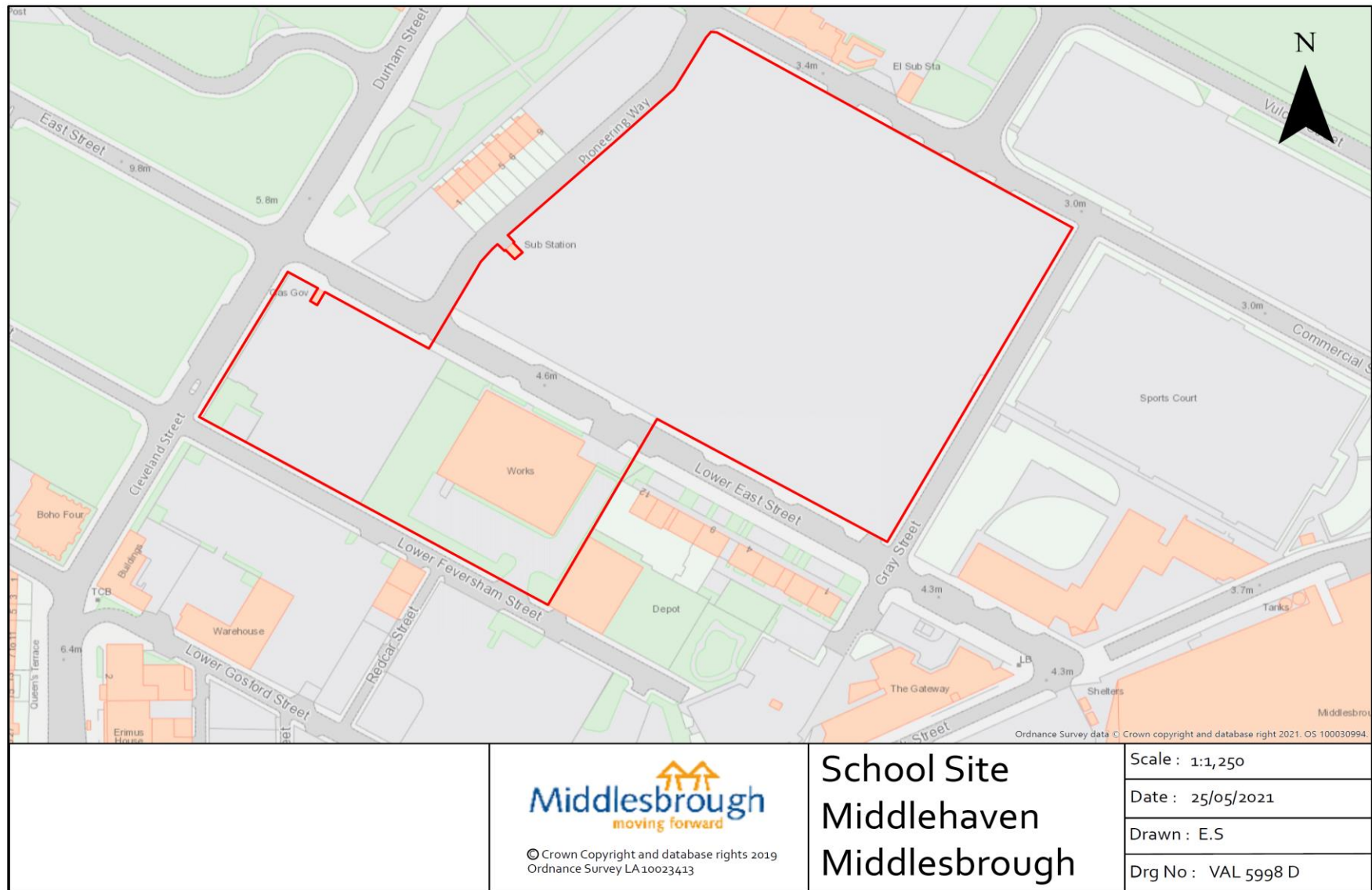
## **Background papers**

<b>Body</b>	<b>Report title</b>	<b>Date</b>
Executive	Middlehaven - Potential Site for a Secondary Free School	8 October 2019
Executive	School Place Planning Strategy 2020-25	21 January 2020

**Contact:** Gary Maddison, Strategic School Planning Manager

**Email:** [gary\\_maddison@middlesbrough.gov.uk](mailto:gary_maddison@middlesbrough.gov.uk)

## Appendix A – Site Plan





## Appendix B – Asset Disposal Business Case

### Asset Disposal Business Case:

Name of Asset:	Free School Site - Plot A, Gray Street, Middlehaven, Middlesbrough TS2 1DH
Asset Register Number:	18001
Current Use:	Vacant & cleared development site – the property was 'Not In Use' by the Council as at the date of valuation.
Valuation at Current Use (Asset Register):	£2,077,000
Reason for Disposal:	<p>Disposal of @ 9.44 Acres [3.82 Ha] of surplus Council land shown edged on the plan attached, in order to facilitate the delivery of a new Secondary Free School for up to 1,050 pupils aged 11-16 years.</p> <p>Delivery of the school would assist the Local Authority in meeting its statutory duty to ensure that there are sufficient school places in the secondary sector, where demand is forecast to outstrip supply.</p> <p>Outwood Grange Academy Trust (OGAT) has secured approval from the Secretary of State for Education to establish the school, subject to securing a suitable site in Middlesbrough, and demonstrating value for money. The school would serve the north and predominantly the centre of Middlesbrough. Middlesbrough's young people would be the main beneficiaries.</p> <p>OGAT, having had their bid approved by the Secretary of State for Education, are the only Trust able to deliver this school in partnership with the Department for Education (DfE). Delivery of the school would help to ensure that there are sufficient secondary school places to meet demand in a local school, run by a nationally recognised high-quality provider.</p>
Latest Valuation (Proposed Disposal):	£2,077,000 – pending confirmation of the site area & the agreement of any allowable development and abnormal cost deductions identified following the completion of the requisite site investigations & diligence.

Asset Disposal Stream (Please Select):

Generate Capital Receipt	v [02]
Stimulate Economic Activity	v [03]
Support Communities	v [01]

(In the event of more than one stream being relevant please rank in order of importance)

Officer requesting Disposal:

Name:	Gary Maddison
Position:	Strategic School Planning Manager

Could the asset be disposed of for an alternative use that may give greater benefits to the Council?

(To be completed by Valuation and Estates):

Yes		No	v
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If yes please outline potential use:

N/A
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Estimated Value at Alternative Use:	N/A
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Key factors to be considered when assessing potential disposals:

1.	Potential fulfilment of the Borough's local Plan Framework education requirement
2.	Capital receipt generated
3.	Potential education service budget saving as a result of generating third party provision

Any additional financial factors to be considered other than immediate capital receipt:

As currently proposed, the transaction to dispose of the asset will deliver:

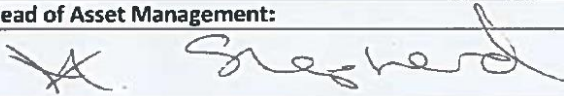
- Third party capital investment into Middlesbrough's education infrastructure in excess of an estimated @ £15 million to provide a school facility of the proposed nature and size;
- Employment of teaching staff, support staff and contracted services;
- Reduction in, and avoidance of future increased costs to the Home to School Transport budget, arising from the increased ability of families to secure school places within walking distance of their homes and a reduction in the need to place pupils in out-of-area provision.
- A sustainable and viable development scheme capable of regenerating the subject site, whilst also stimulating economic activity and facilitating associated redevelopment of the surrounding area.

As the DfE's chosen partner, only OGAT is able to establish and operate the proposed school development. If the Council's objective is to see a school delivered on this site, then the sale of the land must be via private treaty with the DfE/ESFA/Secretary of State for Housing, Communities and Local Government as the only partners able to deliver this.

Preferred Method of Marketing (to be completed by Valuation & Estates):

Formal / Informal Offers	
Private Treaty	v
Auction	
Community Asset Transfer Process	

Approved to proceed:

Head of Asset Management:	Date:
	14/8/19

Method for Final Approval:

Estimated Value:	Approval Required:	Authorised:	Date:
Less than £50,000	Head of Financial Planning and Support		
Between £50,00 and £100,000	Strategic Director of Finance, Governance and Support		
More than £150,000	Executive Property Sub Committee		

## Appendix C – Impact Assessment Level 1: Initial Screening Assessment

<b>Subject of assessment:</b>	Potential Location for a new Secondary Free School			
<b>Coverage:</b>	Service specific to Children's Services			
<b>This is a decision relating to:</b>	<input type="checkbox"/> <b>Strategy</b>	<input type="checkbox"/> <b>Policy</b>	<input checked="" type="checkbox"/> <b>Service</b>	<input type="checkbox"/> <b>Function</b>
	<input type="checkbox"/> <b>Process/procedure</b>	<input type="checkbox"/> <b>Programme</b>	<input type="checkbox"/> <b>Project</b>	<input type="checkbox"/> <b>Review</b>
	<input type="checkbox"/> <b>Organisational change</b>	<input type="checkbox"/> <b>Other (please state)</b>		
<b>It is a:</b>	<b>New approach:</b>	<input checked="" type="checkbox"/>	<b>Revision of an existing approach:</b>	<input type="checkbox"/>
<b>It is driven by:</b>	<b>Legislation:</b>	<input type="checkbox"/>	<b>Local or corporate requirements:</b>	<input checked="" type="checkbox"/>
<b>Description:</b>	<ul style="list-style-type: none"> <li>• <b>Key aims, objectives and activities</b> – To facilitate the establishment of a new Secondary Free School in order to create additional secondary school places to meet increased demand from September 2020.</li> <li>• <b>Statutory drivers</b> – the Council has a statutory duty to secure sufficient school places to meet demand, under the Education Act 1996</li> <li>• <b>Differences from any previous approach</b> - The establishment of new secondary school provision in Middlesbrough would allow the Council to commission more local school places and avoid having to places pupils in out-of-area provision, or pupils having no school place at all. This would be the first Secondary Free School established in Middlesbrough. Middlesbrough Council no longer has the powers required to establish a new school itself – all new schools have to be Free schools.</li> <li>• Key stakeholders and intended beneficiaries – <ul style="list-style-type: none"> <li>• Pupils and Parents of Pupils starting secondary school for the first time in September 2020;</li> <li>• Local ward members;</li> <li>• Outwood Grange Academy Trust (OGAT)</li> <li>• Department for Education.</li> </ul> </li> <li>• Intended outcomes – <ul style="list-style-type: none"> <li>• The establishment of an additional 1,050 secondary school places in Middlesbrough;</li> <li>• Meet the needs and preferences of pupils to receive an education in a Middlesbrough secondary school;</li> <li>• Improve educational standards and opportunities for pupils by ensuring that all pupils can secure a secondary school place.</li> <li>• Reduce the need to secure school placements in out-of-area provision, reducing travel times for students and home-to-school travel costs for Middlesbrough Council;</li> <li>• Secure a capital receipt to be re-invested into the Council's capital programme</li> </ul> </li> </ul>			
<b>Live date:</b>	Discussions around the potential sale of the land would start as soon as the DfE had confirmed the site, following its options appraisal of available sites in Middlesbrough. The DfE and OGAT, in partnership, would establish the school in temporary accommodation in September 2020 subject to Heads of Terms being agreed on the site and the Regional School's Commissioner agreeing a Funding Agreement. The DfE would aim to complete the construction of the new school accommodation during the academic year 2021/22.			

<b>Lifespan:</b>	There is no end date to the proposal and the changes are intended to be permanent.
<b>Date of next review:</b>	Conditional upon successful negotiations with the DfE a further report would be brought to Executive, in line with Council's Asset Disposal Policy, to agree the final sale via private treaty. The proposed new-build scheme would be subject to the normal planning process.

Screening questions	Response			Evidence
	No	Yes	Uncertain	
<b>Human Rights</b> Could the decision impact negatively on individual Human Rights as enshrined in UK legislation?	☒	☐	☐	<p>There is no evidence to suggest that the decision would negatively impact upon any individual's human rights. The decision does facilitate these rights including:</p> <ul style="list-style-type: none"> <li>the right to an education.</li> </ul> <p>The proposal will positively impact on this right, increasing education provision in the local area.</p> <p>Evidence used to inform this assessment includes analysis of projected demand and the local provision of places, alongside feedback from schools and parents in Middlesbrough.</p>

Screening questions	Response			Evidence
<b>Equality</b> Could the decision result in adverse differential impacts on groups or individuals with characteristics protected in UK equality law? Could the decision impact differently on other commonly disadvantaged groups?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>The Public Sector Equality Duty (PSED) requires that when exercising its functions the Council must have due regard to the need to:-</p> <ul style="list-style-type: none"> <li>eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;</li> <li>advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and</li> <li>foster good relations between persons who share a relevant protected characteristic and persons who do not share it.</li> </ul> <p>In having due regard to the need to advance equality of opportunity, the Council must consider, as part of a single equality duty:</p> <ul style="list-style-type: none"> <li>removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;</li> <li>taking steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it; and</li> <li>encouraging people who share a protected characteristic to participate in public life or in any other activity in which participation is low.</li> </ul> <p>As this proposal relates to school-age children it is relevant to the equality duties and the protected characteristic of age. The proposal would have a positive impact on this group, increasing the availability of school places within the town, ensuring that more appropriate placements can be made and reducing the number of children required to travel greater distances to placements outside the borough, or be without an educational placement.</p> <p>Evidence used to inform this assessment includes analysis of projected demand and the local provision of places, alongside feedback from schools and parents in Middlesbrough.</p>
<b>Community cohesion</b> Could the decision impact negatively on relationships between different groups, communities of interest or neighbourhoods within the town?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>No negative impact is anticipated. The proposal would impact positively on community cohesion, increasing the availability of school places in the town and removing the need for pupils to have to travel to other schools outside the town, or be without a school place.</p> <p>Evidence used to inform this assessment includes analysis of projected demand and the local provision of places, alongside feedback from schools and parents in Middlesbrough.</p>
Assessment completed by:	Gary Maddison			Head of Service: Andrea Williams
Date:	22 August 2019			Date: 22 August 2019