

EARLY YEARS AND CHILD CARE – LEASE COSTS AND LICENCE FEES FOR COUNTY COUNCIL PROPERTIES AT LESS THAN BEST CONSIDERATION

To: Cabinet

Date: 15 June 2010

From: Executive Director: Children and Young People’s Services and Corporate Director: Finance, Property and Performance

Electoral division(s): All

Forward Plan ref: 2010/032 **Key decision:** Yes

Purpose: The Council has a statutory responsibility and is a strategic leader in facilitating the childcare market. It works in partnership with the private, voluntary and independent sectors and has used Surestart capital funding to include modern facilities for early years and childcare provision within school build programmes.

There is a need to consider the level of lease and licence fees payable by the private, voluntary and independent sector childcare providers on County Council premises. The requirement to achieve “best consideration” in every case may, however, limit the delivery and availability of childcare places.

There are multiple facilities across the Council’s premises with multiple providers operating from each location. Cabinet has previously retained executive powers on ‘less than best consideration’ transactions.

Recommendation: That Cabinet agrees to delegates to the Executive Director: Children and Young People and Corporate Director: Finance, Property and Performance in consultation with the Portfolio holders for Learning and also for Resources and Performance, the ability to grant leases and licences at less than best consideration on transactions to provide childcare places and Children’s centres in Council premises when agreed criteria are met.

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1 BACKGROUND

- 1.1 The Childcare Act 2006 expands and clarifies in legislation the vital role local authorities should play as strategic leaders in facilitating the childcare market, which was first laid out in the Childcare Act 2004. The 2006 Act reinforces the framework in which local authorities already work – in partnership with the private, voluntary and independent (PVI) sector – to shape children’s services.
- 1.2 Section 6 of the 2006 Act gives local authorities a new duty to secure, so far as is reasonably practicable, that the provision of childcare (whether or not by them) is sufficient to meet the requirements of parents in order to enable them to work or undertake training leading to work. This applies to childcare for children aged 0 – 14 years, and up to 18 years for children with disabilities. Section 7 gives local authorities a related duty to secure free early years provision for pre-school children of a prescribed age. By September 2010, this free early years provision will equate to 15 hours per week, to be taken on a flexible basis.
- 1.3 Section 8(1) gives local authorities the power to assist any person providing, or proposing to provide, childcare and to make arrangements for the provision of childcare. Section 8(2) specifies that the assistance local authorities may give includes financial assistance.
- 1.4 Securing sufficiency does not mean local authorities providing childcare themselves, although they may do so in certain circumstances. The 2006 Act sets the local authority role as one of market facilitation and support across the sector to enable parents to work or to make the transition to work.
- 1.5 Statutory guidance gives a number of factors as the “benchmark” of sufficiency. The guidance states that “Local authorities will need to satisfy themselves that, so far as is reasonably practicable:
 - There are sufficient **places overall** in each sub-local authority area, having regard to demographic trends and to patterns of employment and travelling to work.
 - There is sufficient **flexibility**, with places being available at the right times...to fit in with working patterns.
 - Places are sufficiently **accessible**, so that parents do not have to travel too far out of their way to access childcare.
 - Childcare places are high **quality**, in terms of judgements made by Ofsted.
 - There is sufficient **range**, with the balance of sessional and full day care being appropriate to meet the needs of parents.
 - There is sufficient **knowledge and information** about the supply of places.
 - Childcare places are sufficiently **affordable**.
 - Childcare places are sufficiently **inclusive** and meet **particular needs**.
 - Childcare places are sufficiently **sustainable**.

2 FUNDING FROM GOVERNMENT – EARLY YEARS AND CHILDCARE

- 2.1 Funding to support our childcare sufficiency duties is provided from the

Department for Children, Schools and Families. This funding is part of the Sure Start Early Years and Childcare Grant provided to all local authorities. For 2008 – 2011, this Grant includes:

- £1,400,000 per annum revenue funding (for “Sufficiency and Access”)
- £7,200,000 capital funding over three years (the Sure Start Early Years and Childcare Capital Grant)

- 2.2 To support sufficiency, the Sure Start Grant can provide direct financial support to childcare providers including capital grants or short-term revenue pump-priming, or exceptionally, long-term financial support
- 2.3 The terms of Grant for the capital funding are
- to improve the quality of the learning environment in early years settings
 - to ensure all children, including disabled children, are able to access provision
 - to enable private, voluntary and independent (PVI) childcare providers to deliver the free offer for 3 and 4 year olds, and to do so flexibly

Significantly, the grant is intended to support the private, voluntary and independent (PVI) sector to deliver sufficient good quality and flexible childcare.

- 2.4 Cambridgeshire has channelled the majority of the Early Years and Childcare Grant through the its Children and Young People’s Capital Programme, where the funding has been used to provide facilities for delivery of early years and childcare provision within school build programmes. The resulting Capital Programme was approved by Cabinet in early 2009. This means that the Grant, instead of being used to provide grant funding to PVI sector childcare providers, has been used to fund part of the Council’s strategic investment programme to improve accommodation on school sites.
- 2.5 In the light of this, and in consideration of local authority statutory responsibilities for the provision of early years and childcare, there is a need to consider the level of lease and licence fees payable by PVI sector childcare providers on CCC premises

Children’s Centres

- 2.6 The Sure Start Grant also provides funding for the local authority to build and operate children’s centres throughout the county. These are being built and opened in three phases. Phase 1 and Phase 2 are now complete and operational. All Phase 3 centres have now achieved designation, but in a number of instances are operating out of temporary facilities pending completion of their building programmes.
- 2.7 In most cases, the children’s centre is operated by the Council. However, in two cases, the children’s centre building is owned by the local authority but services are delivered by a voluntary organisation under contract with the Council. In these cases, there is also a need to consider the lease fee payable by the voluntary organisation, since any lease costs will need to be built into the contract price payable by the Council. Essentially, therefore, the

Council would be charging itself.

Example Scenarios

2.8 Somersham

There is a new build programme at the primary school, funded from Sure Start Grant funding (Phase 3 children's centres), Sure Start Grant Funding (Early Years and Childcare), and Standards Fund (Extended Schools). The programme will provide a children's centre facility, early years facilities, and out of school childcare facilities.

The children's centre provision will be run by the Council and therefore no formal lease or licence is required.

The early years provision will be run by a voluntary sector provider and a licence is required. In addition, the out-of-school provision will be run by a different voluntary sector provider, which will require a separate licence.

2.9 Ashbeach, Ramsey

There is a new build programme at the primary school, to provide improved primary and early years facilities with funding from the Sure Start Grant (Early Years and Childcare) and from the Capital Programme.

The project will provide primary school improvements and early years facilities.

The early years provision is run by a voluntary sector provider and a licence is required.

2.10 The Grove School, Cambridge

A premises improvement project for one unused classroom at the primary school using Sure Start Grant funding (Early Years and Childcare) to provide a room suitable for early years provision. This will be operated by a voluntary sector provider and a lease is required.

2.11 March Children's Centre – Cavalry School

This is a new build programme at the primary school, to provide a replacement building for early years provision and new children's centre facilities. Funding was from the Sure Start Grant.

The children's centre services have been contracted out to the Ormiston Children & Families Trust as a provider of services on behalf of the Council. A lease is required for this element of the provision, but not for the early years element as this is run by the school.

2.12 Great Staughton

Day nursery and pre-school provision are in separate mobiles on the school site. The day nursery is privately operated and owns its own mobile. A ground lease is required.

The pre-school is a voluntary sector provider and occupies a mobile owned by the school. A lease/licence is required.

3 Best Consideration

- 3.1 Local authorities have a fiduciary duty to obtain the ‘best consideration reasonably obtainable’ for the disposal of any interest in property in accordance with S.123 of the Local Government Act 1972. In June 1999, Policy Committee agreed a policy whereby all disposals should take place for ‘best consideration’. Members also expressed a willingness to consider exceptions to the policy, but only where service directors and appropriate Members endorsed non-financial benefits. Final approval of any financial discount required the authority of Policy Committee.
- 3.2 On 30 July 2003 the Government introduced a General Disposals Consent (GDC) that relaxed regulation. This allowed local authorities to exercise limited discretion and dispose of interests in property for below ‘best consideration’. Discretion can be exercised where disposal is likely to contribute to economic, social and environmental well being of the area. In September 2003 Members confirmed their current policy of obtaining the best consideration reasonably obtainable for the disposal of all property interests, subject to any exceptions on a case-by-case basis being referred to Cabinet.
- 3.3 It is proposed that PVI sector early years and childcare providers, and any organisation operating under contract with the local authority to provide children’s centre services, should have the opportunity to apply for a reduction from ‘best consideration’ in the licence fee or market rent for leased premises.
- 3.4 It is estimated that this applies to some 150 potential transactions. The ‘best consideration’ for an individual ground lease is unlikely to exceed a few hundred pounds per annum; whereas the amount payable for a individual lease or license of facilities provided by the Council will depend on the space utilised and location and is unlikely to exceed a five thousand pounds per annum. It is not expected that all the transactions will be at a full discount because some providers may be able to operate relatively commercially in a particular location and there is no wish to distort the local market. However, the lease and licence holders will be expected to meet the property running costs in full e.g. utility bills, rates, cleaning, security etc
- 3.5 The criteria to determine whether a reduction from ‘best consideration’ can be considered are:

(a) In buildings funded from the Sure Start Capital Grant:

All Ofsted-registered private, voluntary and independent sector early years and childcare providers (Ofsted registration ensures that the provider meets clear legal standards relating to staffing, quality and health and safety):

- Day nurseries
- Pre-school playgroups
- After school clubs
- Breakfast clubs
- Holiday clubs

Any organisation operating under contract with the local authority:

- Children’s centre service providers

(b) In educational premises in the Council's control, not funded from the Sure Start Capital Grant:

Voluntary sector or not-for-profit early years and childcare providers who are registered with Ofsted

Private or independent early years and childcare providers, who are registered with Ofsted, where:

- Evidence indicates that open market operations would not be sustainable
- Evidence is available to show that existing early years and childcare services are insufficient to meet local need

(c) On educational land in the Council's control being used to provide a site for a third party building:

Private, voluntary or independent sector childcare providers who will be registered with Ofsted, where officers have assessed:

- The financial viability of the provision
- The governance and legal structures
- Partnership with the school
- The sustainability and design of the building
- The quality of any existing settings operated by the provider

3.6 The amount of reduction to be applied will be:

(a) 100% reduction in buildings funded from the Sure Start Capital Grant:

(b) 0 – 100% reduction in educational premises in the Council's control, not funded from the Sure Start Capital Grant with the amount to be determined by an assessment of the business plans produced in conjunction with the local authority officers.

(c) 0 – 100% reduction on educational land in the Council's control with the amount to be determined by an assessment of the business plans produced in conjunction with the local authority officers.

3.7 The amount of the reduction will be limited in all cases to an annual payment of £100 for each lease or license agreement. The lease / license holder will also be expected to meet the legal and establishment charges for the agreements. The potential exists for these costs may be met by grant support from the Council.

3.8 More specific criteria is outlined in **appendix one**.

4. SIGNIFICANT IMPLICATIONS

4.1 Resources and Performance

The current policy is to refer all exceptions to the best consideration requirement to Cabinet. This report outlines a pragmatic process to delegate authority to deal on grant, regrant and on renewal of a large number of relatively 'low' value (as best consideration) leases and licences of Council premises for specific childcare facilities and children's centres.

4.2 Statutory Requirements and Partnership Working

The local authority plays a strategic role in assessing needs and in commissioning services, but the actual delivery of childcare takes place mainly through the private, voluntary and independent sector.

4.3 Climate Change

There are no significant implications within this category however, the Childcare Act 2006 specifies that childcare provision should be accessible, i.e. close to where parents live or work. Facilitating childcare provision locally, particularly on school sites, has positive implications for climate change in terms of vehicle pollution levels.

4.4 Access and Inclusion

There are no significant implications within this category however local and affordable childcare provision has a particular impact upon early years and childcare take up amongst disadvantaged and hard-to reach groups.

Children's centre services are responsive to local need and will focus upon access and inclusion issues within their local communities.

4.5 Engagement and Consultation

There are no significant implications within this category. Early years and childcare provision is established only after consultation with families, schools, and existing childcare providers. This is a statutory function for the local authority and is integral to successful market management.

Source Documents	Location
none	

In order for childcare providers to be offered the use of premises by Cambridgeshire County Council at 'less than best consideration' the proposal will be evaluated on the criteria below

Criteria for 'less than best consideration'

1. The legal entity of the group has been identified and a list of current board members/directors/trustees/elected members and chair provided.
2. The group's main purpose is provided
3. The group has Public Liability Insurance
4. Evidence that agreement to a lower rate than 'best consideration' will support the provision of continued financial viability.
 - Based on a robust and detailed business and financial planning
 - Previous two years accounts submitted
 - All revenue and proportioned maintenance costs taken into account
 - Affordability and flexibility of services considered.
5. Evidence that the continuation of the provision is needed, through
 - Local Authority gaps in provision identified through Childcare Sufficiency assessment
 - Demographic information available
 - Expressions of support from potential users
 - Waiting lists in existing provision locally
6. Evidence of good practice and engagement with Local Authority
 - Ofsted registered provider
 - Staff training and development plans implemented
 - Engagement in Quality Framework and agreed action plan
 - Cambridgeshire Local Agreement signed by provider
 - Actively engaged with partnership working

The agreement to 'less than best consideration' will be time limited and therefore reviewed every three years. The above criteria will inform the review.