

Committee: Cabinet

Agenda Item

Date: 25 October 2012

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Title: Underlease of land at Gaces Acre, Newport

Portfolio Holder: Cllr R Chambers

Key decision: No

Summary

1. At the Cabinet meeting on 2 August 2012, Members gave permission for the Trustees of Newport Free Grammar to underlet land at Gaces Acre, Newport to the Academy. That permission was given subject to a condition prohibiting the further assignment or transfer of the underlease. An amendment is now sought to this condition by the Trustees.

Recommendations

2. The condition placing an absolute prohibition on assignment or transfer of the Lease should be amended so that assignment or transfer of the whole or any part of the underlease is prohibited except where the assignment or transfer of the whole of the underlease is to a successor charitable or public body of the Academy approved by the Secretary of State.
3. The amendment to the condition should be subject to a requirement on the Academy to notify the Council if any such assignment or transfer occurs.

Financial Implications

4. None

Background Papers

5. None.

Impact

Communication/Consultation	None
Community Safety	None
Equalities	None
Health and Safety	None
Human Rights/Legal Implications	
Sustainability	None
Ward-specific impacts	None
Workforce/Workplace	None

Situation

1. This report is to be read in conjunction with the report to cabinet (agenda item 9) dated 2 August 2012.
2. On 2 August 2012, permission was given by the Members to the Trustees of Newport Free Grammar School to underlet land at Gaces Acre, Newport to the Academy subject to:
 - a. the Trustees entering into a licence to underlet with the Council with the form of underlease annexed
 - b. the underlease containing an absolute prohibition on assignment or further sub-letting
 - c. the underlease containing a covenant that the Academy will comply with the terms and covenants contained in the headlease; and
 - d. the trustees' agreement to pay the Council's costs in preparing, negotiating and completing the licence to underlet.
3. The Trustees require an amendment to condition (b) to permit the assignment or transfer of the underlease where the Academy has been succeeded by another charitable or public body which has been approved by the Secretary of State.
4. There is minimal risk to the Council in permitting such an assignment or transfer in these limited circumstances. The successor body will already have been approved by the Secretary of State and they would be obliged to comply with the provisions of the underlease.
5. However, the Council should ensure that it is notified of any change of undertenant. To that effect, the Council should require a clause to be inserted in the underlease obliging the Academy to give notice to the Council should any such assignment or transfer occur.
6. Risk Analysis

Risk	Likelihood	Impact	Mitigating actions
<i>Academy does not comply with terms of the headlease</i>	1 It is to be expected that the Academy would honour its contractual obligations	2 The council would be in a position to require the Trustees to enforce the terms of the lease to the Academy	Monitoring of performance of the covenants be undertaken on a risk sensitive basis

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.