

Cabinet: July 19th 2011.

Proposed land and asset disposal of Fartown High School to the North Huddersfield Trust.

Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Yes. This report will have an impact on more than two wards.
Is it in the Council's Forward Plan?	Yes. 19 th May 2011
Is it eligible for "call in" by Scrutiny?	Yes
Date signed off by <u>Director</u> & name	David Smith - Director of Resources – 11th July 2011
Is it signed off by the Director of Resources?	Yes.
Is it signed off by the Acting Assistant Director - Legal & Governance?	Yes – 11th July 2011
Cabinet member portfolio	Councillor Cath Harris and Councillor Peter O Neil.

Electoral [wards](#) affected: Ashbrow, Dalton, Greenhead, Lindley & Newsome

Ward councillors consulted: No

Public or private: Public

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1. Purpose of report.

To advise Members of the legislative requirements pertaining to the land and asset disposal of Fartown High School to The North Huddersfield Trust by the 1st September 2011.

To advise Members of the conclusions and recommendations of officers regarding the land and asset disposal of Fartown High School.

To advise that Members make a decision regarding the extent of the land and asset disposal to The North Huddersfield Trust, in so far as officers' proposals extend beyond legislative requirements under the Education and Inspections Act 2006.

To advise Members to make a decision regarding the school's request for capital funding to deliver physical alterations to the school's main entrance and some office accommodation.

2. Key Points.

2.1 Background.

On the 15th February 2011 Cabinet determined the outcome of the competition for the new North Huddersfield School and the approved proposer was The Governing Body of Holmfirth High School.

The Cabinet Report produced on the 15th February dealt largely with the competition and ensuring statutory compliance for establishing the new school. In relation to the school site, the following reference was made:

"It is recommended that Members approve the linked statutory proposals to discontinue Fartown School and to establish a new school for 900 pupils aged 11-16 on the site and buildings of Fartown High School by selecting one of the three proposals published by:

- E-Act;
- Holmfirth High School Governing Body;
- The Wakefield Diocesan Board of Education."

The recommendation went on to confirm Cabinet's decision to approve the proposal by the Holmfirth High School Governing Body, which was to establish a new Foundation School with a Foundation. Following due process, this Foundation has been established and is known as North Huddersfield Trust.

This decision by Cabinet means the discontinuance of Fartown High School on the 31st August 2011 and the establishment of the North Huddersfield Trust

School, which will open on the 1st September 2011, on the current site of Fartown High School.

2.2 Fartown High School - Current Ownership and Public Private Partnership (PPP1) Contract details.

2.2.1 Site Details.

Fartown High School is located on approximately 10.6 hectares of land classified predominantly as Urban Greenspace, off Woodhouse Hall Road Fartown, Huddersfield.

The school comprises of several teaching blocks. The original parts of the school were constructed in 1966. The buildings are a mixture of low rise, steel frame with brick walls and multi storey/flat roof construction. The school buildings have a gross internal area of 8,399 square metres. The total site area is 112,815 square metres. A breakdown of the main areas of the site is set out in the table below:

Name	Type	Year Opened	GIFA (SQM)	Floors
Main School Buildings	Permanent Build	1966	6,416	5
Sports Block	Permanent Build	1968	1,647	1
Caretakers House	Bungalow	1968	70	1
Old Coach House	Detached House	1890 (Not Listed)	266	2
Playing Fields		1966	7.09 hectares	N/A

Boundaries to the site are denoted by the original walls, concrete posts and three strand wire fence although the wire is long gone, around which trees, shrubs and hedges have grown. A steel inner cordon palisade fence secures the buildings and some external areas that are used for outdoor provision. External areas/surfaces are a mixture of macadam and concrete paving slabs, whilst sports areas are a mixture of grass and tarmac.

Attached at Appendix A is the proposed red line boundary for the site transfer and an aerial photo of the school site.

2.2.2. Title Details.

The freehold title to the School site is registered to the Council at the Land Registry under Title Numbers YK536, YK3036, WYK488944, WYK521774 and WYK934887.

As this is a PPP1 school, Kirklees School Services Ltd (KSSL) has a Lease of the site, the leasehold title being registered under title number WYK717971. The Lease is for a term of 32 years and 6 months from 30 March 2001.

The land leased to KSSL is underlet back to the Council and the Council's under lease is registered under title number WYK780563. The Lease term is the same as that which KSSL have less one day.

The Council's partner KSSL has a shareholding of Semperian 90% and the Council 10%. Semperian is a private company that manages a portfolio of mature PPP investments. The whole of the current school site is managed by Semperian's sub-contractor, Hochtief Facilities Management (HFM) as part of the arrangements under the PPP1 Contract.

2.2.3. PPP1 Contractual Details.

Fartown High School has been part of the PPP1 contract since its inception in 2001. All the land and buildings within its physical boundary are included in the PPP1 Contract including the Sports Block, The Old Coach House and the Caretaker's House.

The PPP1 contract is a long term contract which terminates in 2033, and the existing contractual arrangements will continue to remain in place when North Huddersfield Trust School is officially established on the 1st September 2011 for the following reasons:

- North Huddersfield Trust School will be a Maintained school and is therefore bound by the Local Management of Schools Scheme of Delegation. As a maintained facility the school's revenue funding with regards to facilities management and building fabric will remain as is, therefore the school's PPP management fee will continue to be paid back to the Council as is, to assist the Council's payment of the PPP Unitary Fee.
- There is an obligation upon the existing school to co-operate with the Council in circumstances that could not have been reasonably foreseen, at the time the Council entered in to the PPP1 contract. It expects a degree of co-operation from North Huddersfield Trust School to enable the PPP1 contract to function as normal.

This means that day to day Facilities Management and lifecycle investment will continue to be delivered at North Huddersfield Trust School for the duration of the PPP1 contract. The school buildings are considered to be in good condition.

The arrangements between the school and the Council in respect of the PPP1 contract are currently governed by the Schools Agreement which will remain in place post transfer of the site following re-statement/execution by the new school.

2.3. Legislative Framework.

The **Education and Inspections Act 2006** ("EIA") is the relevant statute for dealing with proposed land and asset transfer.

The relevant part of this act which sets out what assets are to be transferred to a new school is, **Schedule 2 Part 4, provision of site and buildings for proposed Foundation, Voluntary Controlled or Foundation Special Schools.**

The following provisions contained in paragraph 28(2) of Schedule 2 of the EIA apply:

“The Authority must Transfer their interest in the site and in any buildings on the site which are to form part of the school’s premises:

- (a) to the school’s trustees, to be held by them on trust for the purposes of the school, or.
- (b) if the school has no trustees, to the school’s foundation body or in the absence of such a body to the governing body, to be held by that body for the relevant purposes.”

However, paragraph 28(10) of Schedule 2 of the EIA defines “the site” as the following:

“site does not include playing fields but otherwise includes any site which is to form part of the premises of the school in question”.

This particular statute is different to situations where maintained schools change category by conversion to, for example, a new foundation school as in those circumstances the whole of the school site changes ownership; there is no exclusion of the playing fields or discretion as to what the word “site” means. It is everything that is within the school boundary in this scenario that passes to the school whose status is changing.

As the playing fields are excluded in the current scenario officers and Members have to decide how best to manage the future use of the playing fields by the North Huddersfield Trust School.

Any proposal to transfer the playing fields to the North Huddersfield Trust School, outside of the legislative framework, would mean that the Council has to comply with its statutory duty, as set out in section 123 of the Local Government Act 1972, not to dispose of land and property for a consideration less than the best that can reasonably be obtained.

2.4 User Details and Recommendations.

2.4.1 Main School Building.

The principle use of the main school buildings (including the Sports Block) is to deliver education to 11-16 year old children. However, the Sports Block and playing fields are used by other schools, local sports clubs and community groups. Third party use within school core hours is only applicable to the swimming pool, which is managed by the Directorate for Children and Young People (DCYP) Kirklees Swimming Service.

As part of the PPP1 contract arrangements, lettings outside of core school hours are controlled by HFM on behalf of KSSL. The PPP1 contract specifies a number of hours when the school site is exclusively available for school and Council use (from 8:00 am to 18:00pm) term time and, in addition, 440 hours per annum outside these times by prior arrangement with HFM. At all other times the school site and all its facilities are available for third party use by

HFM who administer these lettings, meet any associated costs and keep any income generated. These lettings are subject to standard terms and conditions which third party users must adhere to. With respect to notice, HFM lettings are subject to the following conditions:

- HFM reserves the absolute right to cancel a booking at any time should the facilities be required either by the School or by the Local Authority. In these circumstances any deposit or fee will be returned to the Hirer. HFM's liability in such an event will be limited to the amount of the deposit or the fee.
- HFM reserves the absolute right to refuse any application for hire or cancel a booking at any time without specifying a reason.

2.4.2 Sports Block (including swimming pool).

The sports block comprises of a sports hall, gymnasium and a swimming pool. The sports hall and gymnasium are used to deliver the curriculum requirements to school children during the hours referred to above.

In addition and outside of school hours, as at July 2011, the sports hall has the following users:

- 5 a side football. Thursdays.
- Flying Feathers badminton club. Mondays.

As at July 2011, the gymnasium hall has the following user:

- Sasan martial arts. Monday, Wednesday, Thursday.

These lettings are managed by HFM. The closure of Fartown High School on the 31st August and the establishment of North Huddersfield Trust School will not effect the current administration of lettings by HFM on behalf of KSSL.

The swimming pool forms an integral part of the existing sports block. It shares its boiler and electrical distribution with the rest of the sports block. As the swimming pool is part of the PPP1 contract, day to day repair and maintenance, cleaning, water treatment, utilities and planned maintenance and replacement is included in the service from KSSL until 2033. As and when elements of the building require replacement this is also completed by KSSL under the PPP1 contract.

During normal school core hours the swimming pool is used by the Kirklees Swimming Service to provide swimming lessons to pupils from both pyramid and non pyramid primary schools. The schools who use the Swimming Pool buy back a traded service from the Council.

As at July 2011, the swimming pool is used by the following schools, in addition to Fartown High School:

- Birkby Junior School.
- St Patrick's Catholic Primary School.

- Christchurch Woodhouse CE (C) (A) J I & N School.
- Old Bank JI&N School (Mirfield).
- St Thomas CE (VC) Primary School.
- Crosland Moor Junior School.
- Ashbrow Junior School.
- Fixby J&I School.
- Our Lady of Lourdes Catholic Primary School.
- Mount Pleasant JI&N School.

The Swimming Pool is funded via two distinct strands of funding, the details of which are set out below:

Direct Funding to Fartown High School.

In addition to the normal floor area-based funding, the current funding formula also provides for energy, repairs, caretaking and cleaning of the swimming pool. Schools with swimming pools are given an additional block grant, currently £28,310, to acknowledge the additional costs of having a swimming pool on site in terms of heating, energy consumption, water usage and specialist water treatments.

As identified under item 2.2.3, North Huddersfield Trust School remains tied to the PPP1 Contract for facilities management. As a result the school effectively hands over its premises funding received via the Council (including the swimming pool) to KSSL. Therefore, the costs for maintenance of the swimming pool are met by the Council and paid to KSSL as part of the PPP Unitary Fee.

Costs met by the Swimming Service Traded Service.

Along with other swimming pools in Kirklees schools, Fartown High school's swimming pool is used to deliver the National Curriculum swimming requirements for Year 4 pupils. Each of the aforementioned primary schools with Year 4 pupils receives a funding allocation per pupil to purchase swimming tuition for this year group. It would be very difficult for an individual school itself to organise and secure the pool time necessary to meet curriculum requirements and therefore relevant primary schools buy into a pooled arrangement organised by Kirklees Swimming Service. The service is responsible for booking blocks of time for individual schools at various pool locations and for providing transport from school to the swimming pool and back. Out of the pooled income the cost of the tuition provided, pool hire charges and transport costs will be met.

Therefore it must be clearly understood that up until the termination of the PPP1 contract in 2033 the costs of day to day facilities management and lifecycle replacement of the elements of the swimming pool will be included in the PPP1 contract.

The Council will be able to continue to offer local schools use of the swimming pool via the traded services arrangement, as the funding arrangements set out above will continue to remain in place and do not affect how the North Huddersfield Trust School is funded.

Should the Council decide in the future not to operate a swimming service from the swimming pool then discussions would need to take place between the Council, the Governing Body of the North Huddersfield Trust School, the North Huddersfield Trust and KSSL to determine the future use of the swimming pool.

The swimming pool is also used by a number of swimming clubs outside of normal school hours, the lettings for which are managed by HFM.

As at July 2011, HFM on behalf of KSSL, let out the swimming pool to the following clubs:

- M&M Swim School. Sunday.
- Splish Splosh. Sunday.
- Aquastrokes. Tuesday, Wednesday and Thursday.
- Waves Swimming School. Monday, Friday and Saturday.
- Amphibi Kids Swim Academy. Saturday.

Members are asked to note the statutory provisions as set out in the EIA referred to in item 2.3 of this report when having regard to what “the site” is and what is legally required to be transferred.

If ownership of the swimming pool were to be retained by the Council, this would mean that 2/3 of an integrated building would be owned by The North Huddersfield Trust and 1/3 by the Council. This would undoubtedly lead to issues of liability regarding utility bills, maintenance and replacement of elements. The Council could enter in to negotiations with KSSL about restructuring the current property arrangements, but these are liable to be protracted and involve substantial cost.

Officers consider that for the purposes of the EIA the swimming pool is part of the school site and therefore under the legislation there is an expectation to transfer ownership of it to the North Huddersfield Trust.

In transferring ownership of the swimming pool to the North Huddersfield Trust, officers would ensure that there is adequate provision and protection documented in the legal paperwork to ensure that the Council can continue to operate the swimming pool for swimming provision to schools during normal school hours and term times, for as long as it wishes to.

This would be dealt with by ensuring that sufficient rights of access and egress to the swimming pool were reserved to the Council by way of legal easements in perpetuity.

Also reserved as an easement in perpetuity would be the exclusive right to use the swimming pool and changing facilities for Council purposes during term times as published from time to time by the Council.

2.4.3 Playing Fields.

The playing fields consist of 7.09 hectares of formal grassed areas and woodland utilised for football, athletics and informal recreation. The playing

fields (including changing rooms in the sports block) are subject to seasonal use by a local club(s) and when in use are let by HFM on behalf of KSSL.

There are a number of options available to the Council in order for it to satisfy its statutory duty referred to under item 2.3 of this report, (where it was explained that paragraph 28(10) of Schedule 2 of the EIA excludes playing fields from the definition of the site). These options are set out below:

1. The Council can sell its freehold interest in the playing fields to the North Huddersfield Trust for best consideration restricting their use to that of playing fields to be used solely in conjunction with the North Huddersfield Trust School, or;
2. The Council can rent the playing fields to the North Huddersfield Trust for a market rent with an identical restriction on user, or;
3. The Council could give the playing fields to the North Huddersfield Trust, at no cost, with an identical restriction on user, but there are additional criteria to be met in pursuing this option.

As referred to in item 2.3 of this report, the Council has a statutory duty, under Section 123 of the Local Government Act 1972, not to dispose of land and property for a consideration less than the best that can reasonably be obtained.

In all cases, disposal at less than best consideration is subject to the conditions set out in the Local Government Act 1972 General Disposal Consent (England) 2003, one of which is that the undervalue of the disposal does not exceed £2,000,000 (two million pounds).

The terms of the General Disposal Consent mean that specific consent is not required for the disposal of any interest in land which the Council considers will help it to secure the promotion or improvement of the economic, social or environmental well-being of its area.

A market valuation of the playing fields has been completed, and in accordance with this, transfer of ownership would represent an undervalue of £100,000. This is defined as the best price that is reasonably obtainable for the property.

Applicable to all of these options is the provisions of section 77 of the School Standards and Frameworks Act 1998 ("SSFA") which sets out the criteria to be applied when considering the disposal of school playing fields, the essence of which is that the Secretary of State's consent to the disposal must first be obtained. Officers will seek the Secretary of State's consent should Members decide on a preferred option.

Members are asked to note that unlike other statutory provisions relating to school playing fields, where statute provides for schools to transfer back to the Council, the playing fields, if the school no longer requires them, or with the Secretary of State's consent, to dispose of them and hand the proceeds of sale back to the Council, the SSFA makes no corresponding provision for new schools.

During the remaining years of the PPP1 contract, management and maintenance of the playing fields will be completed by HFM whether the playing fields are owned by the Council or the North Huddersfield Trust. Only on termination of the PPP1 contract would issues of responsibility become an issue if there was a split of ownership. Such issues may include the liability for boundary maintenance between land owned by the Council and that owned by the North Huddersfield Trust.

Officers recommend that ownership of the playing fields be transferred to the North Huddersfield Trust for no consideration, subject to first obtaining the relevant additional statutory consents. Officers will build into any documentation transferring the playing fields to The North Huddersfield Trust a provision restricting the use of the playing fields to playing fields, together with other safeguards to ensure that the playing fields are offered back to the Council, free of the restriction on use and at no cost, should the playing fields be no longer required.

2.4.4 The Old Coach House.

The Old Coach House is a detached building located in the centre of the site, but without separate road access. It has a separate oil fired boiler which is fed from an adjacent tank that requires vehicle deliveries.

The Old Coach House was subject to a lease between Kirklees Council and Barnardos which commenced on the 15th May 1996 for a period of six years. The Lease was renewed on 15th February 2006 for a further six years. However, this lease was surrendered early by Barnados to the Council with effect from 31 May 2011.

Under the PPP1 Contract, HFM maintain The Old Coach House on behalf of KSSL. As and when elements of the building require replacement this is also completed by KSSL under the PPP1 contract.

Members are again asked to note the statutory provisions as set out in the EIA referred to in item 2.3 of this report when having regard to what the site is and what is to be transferred. The Old Coach House is considered by officers to be part of the school site and therefore under the legislation there is an expectation to transfer ownership to the North Huddersfield Trust.

The Old Coach House is currently vacant, but could provide a useful resource to North Huddersfield Trust School. Due to its location the building is not severable from the rest of the school site and whilst it was previously let to Barnardos, this did not present any safeguarding issues.

- There is an opportunity for North Huddersfield Trust School to use it (maybe not now but in the future as the new school grows and develops).
- In the interim there is an opportunity for the new school to try and use the building to generate income, which would support the school in becoming financially stable. However, this would be subject to restrictions to ensure issues such as safeguarding are adhered to.

- KSSL confirm they have no interest in using the buildings as a vehicle to generate third party income during school core hours.

If the Council wished to retain ownership of The Coach House the implications of so doing would be complex in terms of carving out the true costs of maintenance, utilities and management, post PPP1 Contract. During the PPP1 contract which ends in 2033, there are no contract implications as The Old Coach House is maintained by HFM.

Officers consider that, having regard to the provisions of the EIA which says the Council must transfer “any buildings on the site which are to form part of the school’s premises”, the Council would transfer ownership of The Old Coach House to the North Huddersfield Trust, in order that it may make use of this additional facility within the school grounds.

2.4.5. Caretakers House.

The Caretakers House is a detached bungalow in the heart of the school site, without separate access, which is occupied by the current Head Caretaker. The Head Caretaker is employed by HFM. It is proposed that the freehold and under leasehold interest be transferred to the North Huddersfield Trust.

Under the PPP1 contract, HFM maintain the Caretakers House and as and when elements of the building require replacement this is also completed by HFM under the PPP1 contract.

2.5. School Request for Capital Funding.

In February 2011 the current executive Head Teacher of Fartown High School, Dr Andy Williams, formally requested officers within the Council to consider funding a range of works, including a proposal to re-model the existing main school entrance and office accommodation.

In March 2011, officers within the Council’s DCYP and Physical Resources and Procurement (PRP) Service agreed to obtain some indicative costs for the range of proposed works, so that a clear understanding of the financial implications could be understood.

The North Huddersfield Trust School has since agreed to fund a number of the proposed works including improvements to toilets, car parking and fencing from its Devolved Formula Capital allocation. For the remaining works, a fixed price quotation of £105K has been provided via the PPP1 contract. The scope of the works and the expected benefits the investment would achieve are summarised below:

- Improved lighting and decorations to the main entrance foyer area, including new suspended ceiling and lighting grid, new carpet tiles and lockable display cabinets.
- Re-modelling of existing office accommodation to create a large conference room that would be used by the school, its partners and the wider community.
- Refurbishment of an existing office and the creation of a New Head Teachers Office.

- An improved entrance, particularly for wheelchairs users, combined with an improved reception hatch that would be DDA compliant.

Officers recommend that the above works be approved and funded from the 2011/12 DCYP Capital Plan. Should Members approve the request then it is expected that some of the work could be completed over the summer holidays with final completion expected by the end of the October half term break.

3. Implications for the Council.

The Council transfers land and assets associated with Fartown High School at no cost to the North Huddersfield Trust. In particular the school playing fields are also transferred at no cost, whilst at the same time complying with all legislative requirements.

The existing PPP1 contract is not disturbed and the transfer of ownership involves minimal cost to the Council.

The Council protects school and community use of the swimming pool, and is able to continue to offer the use of the swimming pool to local schools as long as it wishes to.

Other assets, such as the Coach House, are subject to a degree of restriction on use as set out in Schedule 22 of the School Standards and framework Act 1998 (restrictions on disposal of the asset for example), whilst giving the North Huddersfield Trust an opportunity to use the buildings.

The Land and Asset Transfer will support a key strategic objective of the Council to support the growth and development of the North Huddersfield Trust School.

4. Consultees and Their Opinions.

Members of the North Huddersfield Trust are to be briefed on these proposals in July 2011. However, preliminary discussions have been held with Dr Andy Williams, who has indicated his support for a full land and asset transfer.

DCYP have established a dedicated project team to support the development of the new school. The project team consists of key officers from Human Resources, School Organisation and Planning, Governance, Learning, and PPP Contract Specialists. This key group of officers have all been involved in the development of this proposal. The DCYP Schools for The Future Project Co-ordinating Board has also been fully briefed on these proposals and fully supports them.

5. Next Steps.

If the recommendations are approved then officers will move to give effect to them in order to have all necessary documentation and paperwork in place in readiness for the opening of the new school on 1 September 2011.

Should Cabinet not agree to implement the Officer Recommendations then it will be necessary to return to Cabinet with revised proposals.

6. Officer Recommendation and reasons.

Members are requested to:

- a) Note that the Education and Inspections Act 2006 requires the Authority to transfer its interest in the site and any buildings to the New North Huddersfield Trust.
- b) In order to carry out the obligations of the Council:
 - Authorise the Assistant Director of Physical Resources and Procurement in consultation with the Director for Children and Young People to negotiate and agree the terms of the transfer of the Council's proprietary interests in land and buildings used by Fartown High School to the North Huddersfield Trust to be held in trust for the purposes and benefit of North Huddersfield Trust School.
 - Authorise the Acting Assistant Director – Legal & Governance in consultation with the Director for Children and Young People Service and the Assistant Director of Physical Resources and Procurement as appropriate to complete all necessary documentation and obtain consents from any Government department ancillary to implementation of the recommendations including, but not limited to signing documents and making any new instrument of government and any consequential changes to the PPP Project Agreement and Schools Agreement.
- c) Authorise the allocation of up to £105K from the New Pupil Places Fund within the 2011/12 DCYP Capital Plan to enable the works described in Section 2.5 to be implemented.

7. Cabinet Portfolio Holders Recommendation.

Portfolio Holders' support the officer recommendations as they will provide the new North Huddersfield Trust School with a sound base on which to build its future success.

8. Contact Officer and Relevant Papers.

David Martin - Capital Development and Delivery Manager - Physical Resources and Procurement – david.martin@kirklees.gov.uk - Telephone 01484 226052

Appendix A - Red Line Boundary Plan including aerial photograph.

9. Assistant Director Responsible.

Joanne Bartholomew – Assistant Director – Physical Resources and Procurement Service

