

Committee: **Lead Cabinet Member for Resources**

Date: **16 June 2015**

Title of Report: **Former Grays Infant School, Western Road, Newhaven**

By: **Chief Operating Officer**

Purpose of Report: **To seek Lead Member approval to the appropriation of the site for planning purposes under S122 of the Local Government Act 1972 (“the 1972 Act”) to facilitate the carrying out of development in the interests of the proper planning of the area.**

---

**RECOMMENDATION:** The Lead Member is recommended to:

**Agree the appropriation of the site for planning purposes under S122 of the Local Government Act 1972 in the interests of the proper planning of the area in order to enable the powers in section 237 of the Town and Country Planning Act 1990 (“ the 1990 Act”) to be used to facilitate the redevelopment of the site.**

---

## **1. Background Information**

1.1 The property was acquired by compulsory purchase on 4 January 1965 under powers set out in S90 Education Act 1944 and subsequently developed as an Infant School.

## **2. Supporting Information**

2.1 Following a consultation exercise and the issue of statutory notices the former Grays Infant School merged with the former Southdown Junior School to form the new Harbour Primary School with effect from January 2013. Following completion of building works all of the pupils moved onto the former Southdown site in September 2014 vacating the former Grays site on Western Road.

2.2 On 16 September 2014 the Lead Member for Resources resolved to declare the former Grays Infant School, Newhaven surplus to the County Council’s requirements; and delegated responsibility to the Chief Operating Officer to dispose of the site at the best price reasonably obtainable.

2.3 Enquiries made of the local planning authority, Lewes District Council, suggest that the site has potential for residential development.

2.4 The title to the site is subject to restrictive covenants dating back over 100 years in favour of adjacent properties. These in particular serve to restrict to four the number of dwellings which may be built on the part of the site shown hatched black on the attached plan.

2.5 Holders of the benefit of any restrictive covenant affecting the site would be entitled to compensation for any diminution in value (if any) of their interest. The Council would seek to pass this responsibility to a purchaser on any sale of the site.

2.6 The emerging Lewes District Council Core Strategy identifies a need for a minimum of 830 additional housing units in Newhaven by 2030. The Strategy sees housing growth as pivotal to the regeneration of Newhaven and Core Policy and looks to achieve residential densities of 47 to 57 dwellings per hectare in towns. The existing covenants, to the extent they might be enforceable, would serve to restrict the contribution the site could make towards satisfying this requirement

2.7 Under S122 of the 1972 Act the Council is empowered to appropriate land for planning purposes i.e. which will facilitate development, re-development or improvement in the interests of the proper planning of the area and likely to contribute to the economic and social well-being of the area.

2.8 Once the land has been validly appropriated for planning purposes then under S237 of the 1990 Act (power to override easements and other rights) development and use of the land by the Council or a successor in title is authorised, provided it is done in accordance with planning permission even though it might be in contravention of existing covenants.

2.9 The effect of S237 is to convert the benefit of a restrictive covenant into a claim for compensation, restricted to the loss in value of the claimant's land arising from the breach. A claimant would not be able to secure an injunction preventing development.

### **3. Conclusion and Reason for Recommendations**

3.1 The appropriation will facilitate the development of the site in accordance with local planning policies.

3.2 Once appropriated, the powers under S237 of the 1990 Act will enable existing restrictive covenants to be dealt with as a claim for compensation.

3.3 The benefit of appropriation and the 1990 Act powers can be passed to a purchaser/developer of the site.


**KEVIN FOSTER**  
**Chief Operating Officer**

Contact Officers: Nick Anderson Estates Surveyor, Tel: 01273 336969

Local Member: Councillor Butler

Background Papers: None



<b>Map Title:</b> Grays School, Newhaven		East Sussex County Council County Hall St Ann's Crescent Lewes 
<b>Date:</b> 20 May 2015	<b>Map No:</b> 1	
<b>Scale:</b> 1:1,250	<b>Author:</b> NA/RP	