

THE DEVELOPMENT OF SCHOOL LAND



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St John Fisher Catholic Comprehensive School
The school's relocation to a newly constructed building on a neighbouring site allowed for the release of funds from the original site.

PURPOSE

This document has been produced by LocatED Property Limited (LocatED), an arm's-length body to the Department for Education. LocatED exists to provide advice to schools, multi-academy trusts and other educational bodies to help them solve complex property challenges; secure sites for new schools at the best market price; manage sites held for schools; deliver school-led mixed-use developments; and helping to decarbonise the school estate.

The document is intended to provide advice to individuals and bodies with responsibility for, or an interest in, education buildings and land when considering development opportunities. Such parties would include, but are not limited to:

- School leaders
- Governors
- Trustees of schools
- Charity trustees of academies and academy trusts
- Diocesan authorities and other religious authorities
- Local authorities
- School business professionals
- Any other party with an interest in schools or school land

This document is not a substitute for external professional advice; however, it can be used to help guide the progress of development projects and deliver successful outcomes.

Parties should be mindful of their statutory and contractual obligations in disposing of assets and the obligations and requirements, where applicable, that apply to public bodies, and to seek appropriate professional advice where required. Parties should also be aware of specific charitable characteristics which apply to some school land.

The document relates solely to state-funded schools, whether maintained or academies

Whilst this document relates to the development and disposal of land to release capital, there are other options to generate revenue through the estate, for example through lettings, or for energy generation, but these are not covered here.



BACKGROUND TO THIS DOCUMENT

The English school estate, at an estimated 50,000 HA represents one of the country's single largest land holdings. Ownership across the estate is disparate, with the Secretary of State holding less than 1% and the remaining land split between local authorities, multi academy trusts, diocesan boards of education and other education trusts. The size of individual school sites also varies significantly, with some schools having either limited or excess space.

The government recently published the [Government Property Strategy 2022-2030](#) which sets out the ambition for a smaller, better and greener government estate. Although the school estate is not specifically included in the government's property strategy, the principles set out in the document can equally be applied. Using school estates more efficiently can create opportunities to save money or invest elsewhere in the estate. This should be considered as part of a good estate strategy.

DfE's Good Estate Management for Schools ([GEMS](#)) guidance provides a comprehensive handbook on the essentials of managing a school estate. This document should be read alongside the GEMS guidance, providing specific advice on the considerations that should be made when assessing the potential to release capital from underutilised land.

It should be noted that in many cases the freehold owner of the land may not be the same as the responsible body (RB), for example where academy trusts occupy local authority land, or where maintained schools or academies occupy land held by charitable site trustees. It is highly likely that freeholders will need to consent to any works, so it is essential that they are consulted at the earliest opportunity to gauge support for the proposals and better understand any legal or charitable restrictions on the land that may apply.

This document in no way advocates for the disposal of school land. It is recommended that responsible bodies explore alternative funding options prior to disposing.

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When considering the development of school land, we recommend that all potentially affected stakeholders are identified at an early stage in a stakeholder engagement plan.

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Once a decision to proceed with the development has been made and the requisite consents (if required) have been obtained a suitable disposal strategy for the site should be established.



PROJECT MANAGEMENT

Prior to commencing any project, the skills and experience within the leadership team should be reviewed to establish whether there is sufficient expertise to deliver the proposed project. A project manager should be identified to lead the project and be responsible for the day-to-day delivery of tasks. At an early stage, consideration should be given to whether appropriate governance structures are in place and whether a specific project board or steering group should be established. Finally, the funding of, and accounting treatment for project expenditure should be considered and any requisite approvals secured before entering into any spending commitments. The more complex the project is likely to be, the greater the importance of establishing appropriate governance structures and an experienced project delivery team.

01

Understanding your site

If the RB is looking for potential to release capital from their estates, this should be assessed once existing capital funding and grant funding (e.g. Condition Improvement Fund (CIF)) have been explored and exhausted.



Underutilised and surplus land



Legal matters



Planning considerations



Technical considerations



Sport England Engagement



Land disposals requiring the Secretary of State's prior consent or notification

02

Identifying Stakeholders & Engagement

Development of any type is complex and can affect multiple stakeholders. When considering the development of school land, we recommend that all potentially affected stakeholders are identified at an early stage in a stakeholder engagement plan.

03

Assessing Feasibility

Once the initial assessments are complete, and assuming that they show that there is potential for the proposed scheme, consideration should be given to the optimal route to progress the project.



Consultants



Site surveys



Planning consultancy



Master-planning & design



Cost consultancy



Development and viability consultancy



Reviewing the feasibility: key considerations

04

Delivery

Once a decision to proceed with the development has been made and the requisite consents (if required) have been obtained a suitable disposal strategy for the site should be established.



Routes to market



Disposal structures



Head of terms, contract negotiation and management

Understanding your site

01



Underutilised and surplus land



Legal matters



Planning considerations



Technical considerations

STAGE 1: UNDERSTANDING YOUR SITE

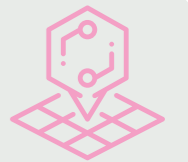
When looking for potential to release capital from school estates, sites should be assessed to establish:

- ▶ Whether there is any land or buildings that are underutilised and / or surplus to requirements
- ▶ The views of the relevant freeholder
- ▶ Whether there are any significant physical or legal constraints to development, noting that there are often title restrictions that prevent school land being used for purposes other than for education
- ▶ Whether development would be supported by the local planning authority
- ▶ Whether any disposal or change of use, and any use of proceeds, is likely to be supported by the relevant landowner and by the Secretary of State for Education.

These subjects are considered in more detail below.

UNDERUTILISED AND SURPLUS LAND

When considering a site's development potential, a useful starting point is DfE's area guidelines for playing field land at existing schools as set out in the DfE guidance: [Involving the Secretary of State in land transactions](#). This is non statutory guidance setting out how and when to involve the Secretary of State in transactions involving school land.



An initial estimate of the potential quantum of surplus land can be calculated by comparing the school's actual site area with the areas set out in the area guidelines. The document sets out how these areas should be calculated.

While an assessment against the guideline areas will give an indication of the 'mathematical' surplus, it is important to consider the actual and potential usage of the land in question by both the school and if applicable, the local community.

These assessments should be undertaken in conjunction with DfE and local education authority forward planning teams to ensure consideration is given to future pupil projections.



LEGAL MATTERS

Understanding the legal ownership of the site is essential before progressing any development or construction project. It is important to check who holds the freehold for the school land, and to engage early with the landowner and any other interested parties, ensuring explicit consent is obtained before the project progresses. A title review should be undertaken at an early stage to ensure there are no legal matters that could prevent the development progressing or cause a breach of legal obligations or restrictions. This should be completed by appropriately qualified legal advisors. A key starting point is to understand the physical extent of the legal boundary of the school site.

Matters that should be reviewed include (but are not limited to):

Land ownership

It should be established who holds the freehold to the land. Regardless of who is responsible for running the school. Explicit approval to progress the project from the freeholder and / or landlord, as well as agreement over the use of proceeds, will need to be sought.

Charges on title

Grant, loans or mortgages will need to be discharged between parties prior to disposal, as these matters cannot be transferred. The consent of any funder may also to be required prior to any development taking place.

Title matters
Specifically land ownership and restrictive covenants

If the land is occupied under a lease, then the terms of the lease need to be checked to ensure that the proposed development and/ or change of use is permitted. School sites are often held under an 'academy lease', which restricts the tenant's use of the site to education use only. In this case, consent will be required from the landlord to progress the project.

Restrictive covenants

These are legal constraints, which may relate to the use of the land or its disposal. Restrictive covenants could prevent the development progressing, or there may be a requirement to seek approval from the beneficiary of the covenant prior to undertaking any work. This could have cost and time implications for the project.

Other legal matters affecting the land:

A

Legal advisors should be asked to undertake due diligence to establish matters such as:

1. Whether the land abuts an adopted public highway
2. Whether the land is connected to mains services and other utilities
3. The status of any planning applications in proximity to the land
4. Whether there is potential for the land to be contaminated

B

Other documented (or undocumented) legal matters that could affect development of the land should be identified. These could include unregistered interests in the land, or other rights that may be exercised, including rights of way. In addition, confirmation should be sought from the school that there are no other matters or informal arrangements in place that could affect the proposed development.

It is recommended that this information is sought at an early stage to ensure that any matters that could restrict development and/or prevent the future disposal are identified and resolved.

Advice on all legal matters should be sought from specialist legal advisors.

PLANNING CONSIDERATIONS

The local planning authority (LPA), the Local Plan and any supplementary planning documents should be consulted to establish whether the proposed development complies with local and national planning policy. In addition, the planning history of the land and the surrounding area should be reviewed to establish if there are any notable planning application refusals or permissions that could establish a precedent for the proposed development.



Key matters that should be considered include:

- 1 Whether the land is in a protected area (e.g. Green Belt/ Metropolitan Open Land, Site of Special Scientific Interest, National Park etc)
- 2 Whether the land is within a settlement's defined development boundary
- 3 Whether any of the buildings on the land, or in close proximity to it, are listed, or are deemed heritage assets

4

Whether the land is in a flood zone

5

Whether the land itself is protected (education land is generally protected, either as public open space, playing field land or sports facilities).

Given the protected nature of education land, it is likely that for any development to progress, measures will be required to mitigate any planning harm caused by the development. Such measures could include:

1

Improved school facilities, especially sporting facilities for education and the wider community

2

Delivery of affordable homes for the community.

Specialist planning advice from a suitably qualified planning consultant should be sought to assist with these matters.



TECHNICAL CONSIDERATIONS

Technical constraints should be identified at an early stage, particularly those constraints that may affect the development potential and/or viability of the site.

Matters that should be considered include:

- ▶ 1. Whether the layout of the existing buildings on the wider site facilitates, or inhibits the development of the land
- ▶ 2. Whether there is suitable pedestrian and vehicular access to the proposed development land
- ▶ 3. Whether the land is connected to mains utilities and services, and whether there is sufficient capacity in the various networks for the proposed development
- ▶ 4. Whether the ground conditions, and topography are suitable for the proposed development, and that any potential for ground contamination has been examined
- ▶ 5. Whether there are any other environmental factors to consider (e.g. existence of wildlife, woodland or other flora and fauna).

Specialist technical advice from a suitably qualified consultant should be sought to assist with these matters.

Once technical constraints have been identified, a suitable mitigation plan can be implemented.

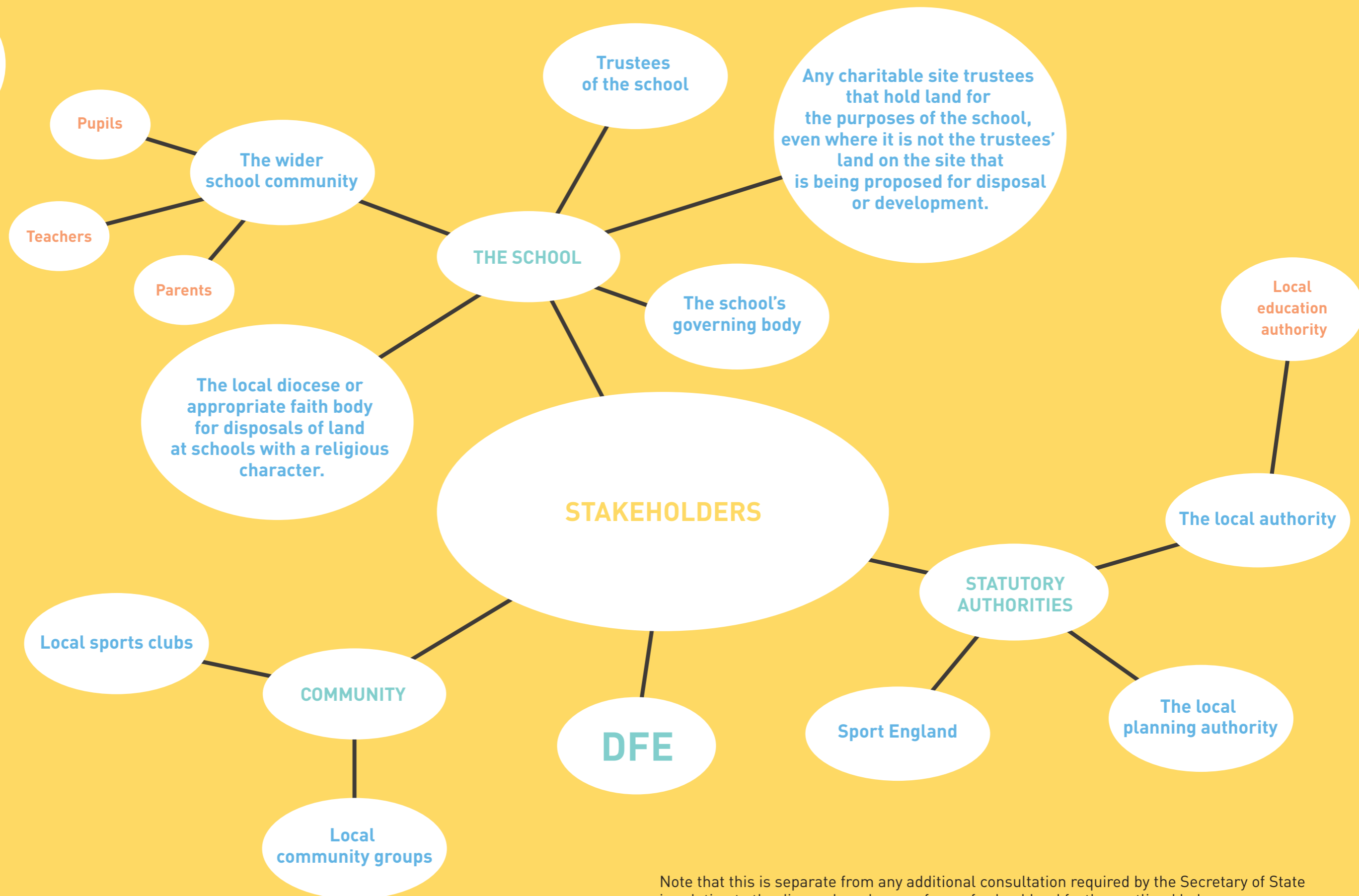


Identifying Stakeholders and Engagement

02

Development of any type is complex and can affect multiple stakeholders. When considering the development of school land, we recommend that all potentially affected stakeholders are identified at an early stage in a stakeholder engagement plan.

Whilst every development project is different, we suggest as a minimum the following stakeholders should be engaged:



Note that this is separate from any additional consultation required by the Secretary of State in relation to the disposal or change of use of school land further outlined below.

STAGE 2: STAKEHOLDER IDENTIFICATION AND ENGAGEMENT

Consideration should be given as to the best time to engage different stakeholders. Prior to engagement, the reasons for undertaking the project and its benefits should be clearly articulated. Given the sensitive nature of developing school land, an assessment should be made that there is a reasonable likelihood of the project commencing, prior to engaging wider stakeholders. Consultation should be meaningful and early enough to give stakeholders the opportunity to input into the evolution of the project.



SPORT ENGLAND ENGAGEMENT

Should the disposal area include playing fields, Sport England should be consulted on the possible loss of playing fields. Sport England will seek to protect and enhance all playing pitches and will resist the loss of any playing fields unless its exemption criteria can be met. The definition of what constitutes playing field land is broad and advice should be sought from Sport England where necessary.



LAND DISPOSALS REQUIRING THE SECRETARY OF STATE'S PRIOR CONSENT OR NOTIFICATION

The disposal of publicly funded education land requires the Secretary of State's prior consent (or in some cases notification to the Secretary of State). This includes both playing field land and non-playing field land (e.g. buildings).

Different rules apply depending on who holds or controls the land, the nature of the proposed transaction, and the type of land involved.

The requirements in legislation are found in:

Academies
Act 2010
schedule 1

School
Standards and
Framework
Act 1998
section 77

School
Standards and
Framework
Act 1998
schedule 22.

For academy trusts, additional requirements are included in the trust's funding agreement and [The Academy Trust Handbook](#).

Applications are dealt with by the Land Transactions team within the DfE's Capital Directorate.

It is important to consult [DfE's guidance](#) on how and when to involve the Secretary of State in land transactions:

There is a policy presumption against the loss of school land, which is particularly strong in the case of playing field land.

It is recommended to engage the DfE's Land Transactions' team as early as possible.

The team may assess early-stage proposals and provide pre-application advice. This will help inform the design in the feasibility stage and ensure that work is not abortive.

Once the land disposal proposal is developed, it is likely that there will be a requirement to submit an application to the Land Transactions Team as set out in the guidance.

Where the proposal involves disposal of playing field land, consultation must also be carried out in accordance with the guidance. Any application is likely to be referred to the School Playing Field Advisory Panel, which provides the Secretary of State with advice on the extent to which an application to dispose of playing fields meets current policy and legislation.

Assessing Feasibility

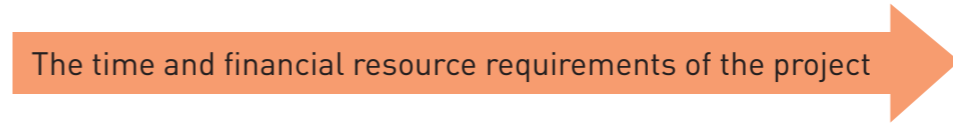
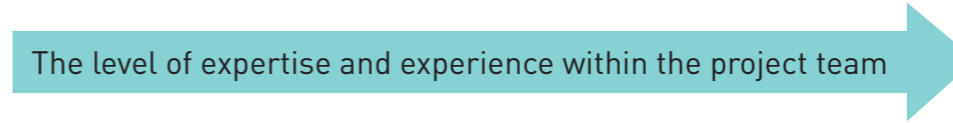
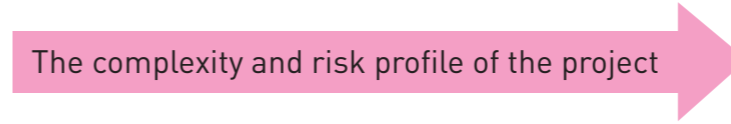
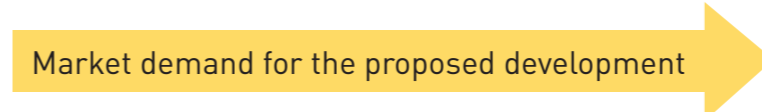
03

-  **Consultants**
-  **Site Surveys**
-  **Planning Consultancy**
-  **Master-planning and design**
-  **Cost consultancy**
-  **Development and viability consultancy**
-  **Reviewing the feasibility: key considerations**

STAGE 3: ASSESSING FEASIBILITY

Once the initial assessments are complete, and assuming that they show that there is potential for the proposed scheme, consideration should be given to the optimal route to progress the project. More complex projects may require further feasibility work to de-risk the opportunity, whereas it may be possible to identify and dispose of part of a school site without the need for substantial further work.

The route taken will depend on several factors, including:

-  The time and financial resource requirements of the project
-  The level of expertise and experience within the project team
-  The complexity and risk profile of the project
-  Market demand for the proposed development

A feasibility study provides the next level of detail for the project.

Its purpose is to establish:

- | A | B | C |
|--|---|-----------------------------------|
| The type and quantum of development that could be achieved on the land (including any proposed school improvement works across the wider site) | The viability of the proposed development | The most suitable route to market |



CONSULTANTS

To ensure a comprehensive feasibility study is completed, a suitably qualified professional team should be identified and appointed. To reduce the project team's resource requirements, consideration could be given to appointing a single multi-disciplinary consultant.

The following core services are likely to be required at this stage:



In addition, a multidisciplinary consultant will be able to advise on, and instruct relevant surveys that will inform the design and procure any additional specialist consultancy as required.

The project team should be mindful of statutory obligations regarding the procurement and appointment of consultants, and should work with its' procurement advisors, to identify to identify a suitable route to procure the relevant services. to support procurement. Prior to appointment, confirmation should be sought that the consultancy team has suitable experience to deliver the project.

It is essential that all consultants are able to provide an appropriate level of professional indemnity cover, together with appropriate letters of reliance/ collateral warranties so that current and any future interested parties can rely on the work that has been undertaken. Further legal advice should be sought to ensure the form of warranty is suitable for the proposed development.



SITE SURVEYS

At an early stage in the feasibility process, the project team should work with the consultancy team to identify the extent of any surveys that will be required to inform the design and identify (and then mitigate) any risks relating to the development of the land. The particular surveys required will vary from site to site, but some common requirements include:

- ▶ Topographic survey
- ▶ Air quality assessment
- ▶ Transport/ highways assessment
- ▶ Utilities survey
- ▶ Phase 1 ground investigation
- ▶ Ecology assessment
- ▶ Acoustic survey
- ▶ Heritage assessment.

PLANNING CONSULTANCY



The key to any successful project is to ensure that the proposed use is acceptable in planning terms. A planning consultant will advise on 'the art of the possible' and will be informed by the Local Plan and other supplementary planning documents as well as relevant planning history and national planning guidance (as set out in the National Planning Policy Framework). The project team should work with its planning consultants to establish a suitable planning strategy for the scheme, which could include pre-application engagement and/or submitting a full or outline planning application for the scheme. The planning consultant should also identify the key planning risks and provide solutions to mitigate them.

MASTER-PLANNING AND DESIGN



The masterplan for the proposed development should be informed by the constraints and opportunities identified in the planning appraisal, understanding of the local property market, surveys, consultation with stakeholders and through understanding the local area. Factors that will be considered include:

- ▶ Market demand
- ▶ The layout of the school buildings and playing fields
- ▶ Pedestrian and vehicular access to the site
- ▶ The topography of the site
- ▶ The height, massing and type of the surrounding built environment
- ▶ The local transport infrastructure

Master-planning is usually an iterative process that will be informed by engagement with key stakeholders, including the local planning authority. The level of detail required will vary depending on the complexity of the project (with more detail required for more complex projects) and the anticipated disposal strategy.



COST CONSULTANCY

The design team should work closely with cost consultants to ensure that the proposed development is affordable. Cost consultants will be able to advise on the cost of delivering the project, including any abnormal costs. Costs for any school improvement works should be considered at an early stage to ensure that the project can be achieved within the budget.



DEVELOPMENT AND VIABILITY CONSULTANCY

Development and viability consultants will work closely with the project team to ensure the scheme maximises the potential land receipt. Based on relevant and up to date market knowledge, consultants will advise on the most commercially advantageous use or uses for the site, as well as the best layout to make the most of the opportunity.

Development consultants should also work to devise an appropriate land disposal strategy, which will vary from site to site and depend on market conditions and local demand. Development consultants should be able to advise on the most suitable route to market and provide a disposal strategy for consideration.



REVIEWING THE FEASIBILITY: KEY CONSIDERATIONS

Once the feasibility study is complete, consideration should be given to whether there remains a strong case for progressing the proposed development. Care should be taken to ensure that potential land receipt is sufficient to cover the cost of the proposed school improvement works, with a contingency to allow for any uplift in costs. Consideration should also be given to the risks associate with the proposals

and whether suitable mitigation strategies have been identified.



London River Academy Planning consent was granted in 2023 for a mixed-use development in Barnes, south west London, to include a 90-place special school alongside a new outpatient clinic

Delivery

04



STAGE 4: DELIVERY

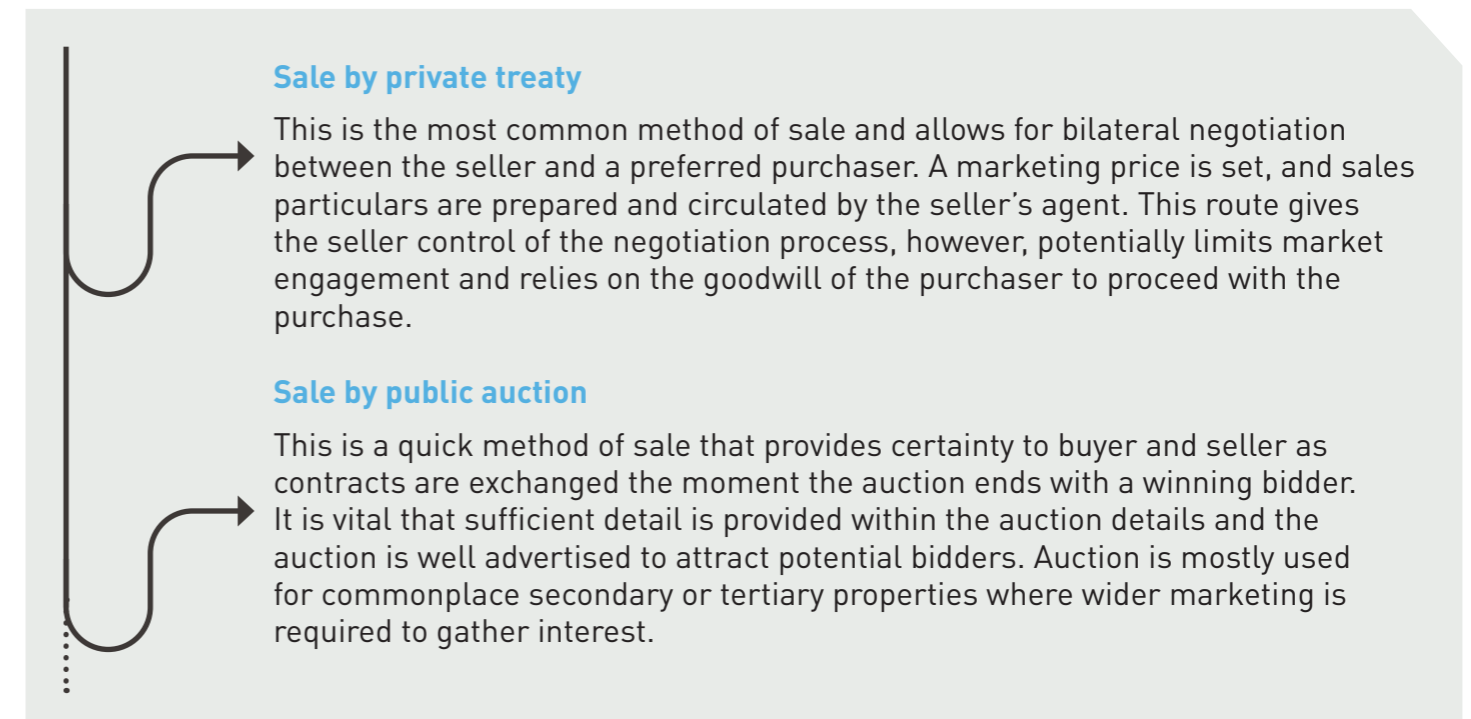
Once a decision to proceed with the development has been made and the requisite consents (if required) have been obtained a suitable disposal strategy for the site should be established. This should be prepared by working closely with the consultancy team. The preferred route will be established as part of the feasibility study and should take account of the need to secure value for money at the same time as managing risk.

ROUTES TO MARKET

Advice should also be sought on the best route to market. The best route will depend on a number of factors including:



Consideration could be given to the following routes:



Sale by informal tender

Following a period of marketing, informal tender gives all interested parties an opportunity to submit their 'best bids', together with any associated conditions. Sellers and buyers are not bound by the results of the tender and there is usually an opportunity to seek clarification or further information prior to selecting a preferred bidder.

Sale by formal tender

Sale by formal tender is similar to informal tender with the exception that the seller and buyer are bound by the outcome of the tender process. This method provides price and time certainty but may deter potential bidders and care should be taken to ensure sufficient due diligence is undertaken prior to commencing the process.



DISPOSAL STRUCTURES

The disposal route and deal structure proposed will depend on a variety of factors including:

- 1 The complexity of the project
- 2 The strength of the market
- 3 Timing and financial requirements
- 4 Risk appetite versus the need for price certainty.

Consideration should be given to one of the following disposal structures:

A

Unconditional sale

This is where the land is sold without any pre-completion conditions and completion usually occurs shortly after exchange of contracts. This structure is seen as a lower risk (for the seller) and a quicker option as the purchaser is unlikely to withdraw and there is little (if any) work to complete between exchange and completion. It should be expected that a lower price for the site would be received, in return for the reduced risk and increased speed.

B

Conditional sale

This is where contracts are exchanged with pre-completion 'conditions precedent', which need to be satisfied prior to completion. These will often include an acceptable planning permission being granted. This structure is higher risk (for the seller) and often slower. In return for the increased risk, a higher price for the site would usually be received using this structure. Professional advice should be sought on the likelihood of the proposed conditions being discharged prior to entering a conditional contract, together with appropriate deadlines for the conditions to be fulfilled.

C

Development agreement

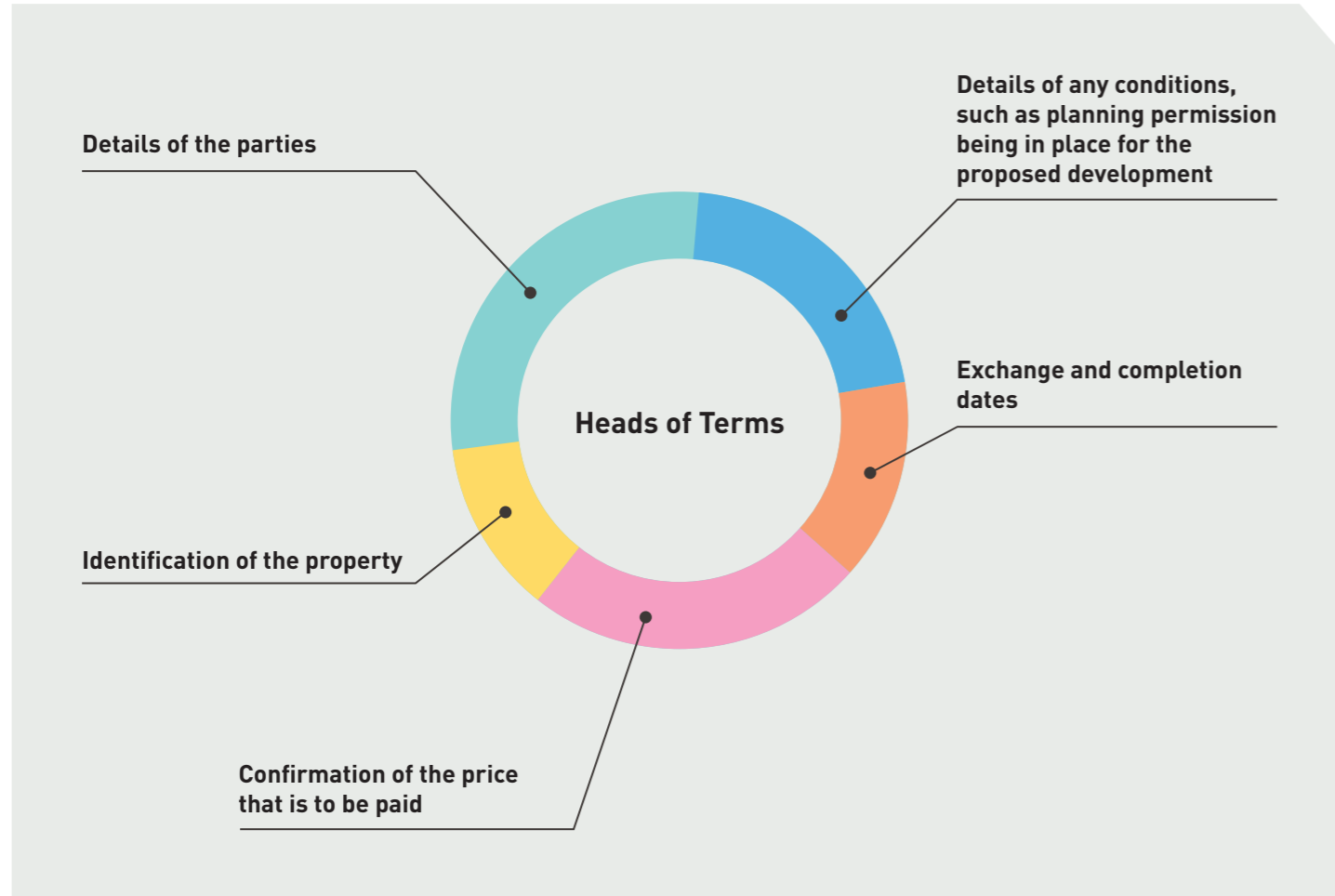
In some circumstances, consideration may be given to entering into a development agreement with a private sector partner. This is most appropriate when the purchaser is required to deliver some element of school improvement works alongside the commercial development (for example as part of a mixed-use project). Specialist development advice should be sought in these cases due to the complexity of such agreements. Advice should also be sought on the development partner procurement route to ensure compliance with public procurement regulations.

In each case, consideration should be given to whether overage or clawback provisions should be included as part of the deal structure. This ensures that the benefit of any future uplift in value (if for example the purchaser sells the site at a profit within a certain time period) is shared.



HEADS OF TERMS, CONTRACT NEGOTIATION AND MANAGEMENT

Heads of Terms (HoTs) are agreed in a non-binding document that sets out the key terms of the commercial deal prior to instructing solicitors to negotiate the contract. HoTs should include:



Once HoTs are agreed, the seller should seek to negotiate and exchange contracts as quickly as possible to minimise the opportunity for the purchaser to amend the terms and / or reduce ('chip') the price.

For conditional exchanges, where the purchase is subject to conditions being discharged (e.g. planning permission being granted), progress will need to be closely monitored to ensure that target and long stop dates in the contract are being adhered to and any information that is required is provided in a timely manner.

Once all the conditions are discharged, the parties will be in a position to complete the transaction. The seller should liaise closely with legal advisors to ensure that the completion process is undertaken in accordance with the contract provision.

DISCLAIMER

This document does not constitute legal or any other form of professional advice and should not be relied upon as such. It focusses on the technical aspects of delivering development projects on school land only and does not supersede or replace any DfE or other statutory guidance or policies, or any other legal obligations or restrictions relating to the development or disposal of school land. Any comment on matters of a legal nature within this document are for guidance only and do not represent a complete account of the law. LocatED accepts no responsibility for any damages, losses costs or legal challenges made as a result of the content of this document.

It is essential that independent legal advice is sought at an early stage of any proposed project.

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