



## SHEFFIELD CITY COUNCIL Cabinet Report

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**Report of:** Jayne Ludlam

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**Date:** February 2013

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**Subject:** Priority School Building Programme: Fox Hill and Prince Edward Primary Schools Rebuild

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**Author of Report:** Tricia Slater 27 35779

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**Summary:** The purpose of this report is to highlight the inclusion of Fox Hill and Prince Edward Primary Schools in the government led Priority School Building Programme (PSBP) and the necessary permissions required to enable Prince Edward new school to be built on an adjacent site.

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### Reasons for Recommendations:

- The successful inclusion in the PSBP provides an opportunity to address significant building condition and suitability issues at Fox Hill and Prince Edward Primary Schools;
- The agreement to proceed within the existing site boundary at Fox Hill and on the preferred neighbouring site to Prince Edward will enable the new schools to be developed with minimal disruption to the existing pupils on sites that will continue to be accessible to the current catchment area.

### Recommendations:

- I. Note the Memorandum of Understanding (MoU) for each school has been signed by the Chief Executive. (**APPENDIX A**)
- II. Note there will be no loss of Public Open Space due to the development of better quality facilities with public access provided by a Community Use Agreement (CUA);
- III. Members approve the inclusion of the site adjacent to the existing Prince Edward Primary School (**APPENDIX B**) as the site for the new school and note the proposed substitution of the former Bluestone School site

<sup>th</sup> July 2011 in

respect to the completion of the land package.

- IV. Pending a formal decision to dispose of the former Bluestone School site to SHC, Members confirm that the former Bluestone School site must not be used or committed for use for any other purpose without a decision of Cabinet.
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**Background Papers:**

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**Category of Report:** OPEN

**If Closed add – ‘Not for publication because it contains exempt information under Paragraph... of Schedule 12A of the Local Government Act 1972 (as amended).**

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## Statutory and Council Policy Checklist

<b>Financial Implications</b>
YES Cleared by: Paul Schofield
<b>Legal Implications</b>
YES Cleared by: Sarah Bennett
<b>Equality of Opportunity Implications</b>
YES Cleared by: Bashir Khan
<b>Tackling Health Inequalities Implications</b>
NO
<b>Human rights Implications</b>
NO:
<b>Environmental and Sustainability implications</b>
No
<b>Economic impact</b>
NO
<b>Community safety implications</b>
NO
<b>Human resources implications</b>
NO
<b>Property implications</b>
YES
<b>Area(s) affected</b>
Fox Hill and Manor
<b>Relevant Cabinet Portfolio Leader</b>
Councillor Jackie Drayton
<b>Relevant Scrutiny and Policy Development Committee if decision called in</b>
CYPF
<b>Is the item a matter which is reserved for approval by the City Council?</b>
YES
<b>Press release</b>
YES/NO

## **1. SUMMARY**

- 1.1 The purpose of this report is to provide the background to the Council's inclusion in the Department for Education's (DfE) Priority School Building Programme (PSBP), a government programme aimed at rebuilding schools in the worst condition. Applications to rebuild Fox Hill and Prince Edward Primary Schools have been successful and these schools are included in the programme, which will be procured and project managed by the government's Education Funding Agency (EFA).
- 1.2 The report will highlight the land, property, legal and financial implications of the programme and recommendations to proceed.

## **2. WHAT DOES THIS MEAN FOR SHEFFIELD PEOPLE**

- 2.1 Both of the schools successfully included in this programme serve two of Sheffield's most deprived areas with on average around 90% of the current pupils living in one of the 30% most deprived areas nationally, as measured by Income Deprivation Affecting Children Index (IDACI).
- 2.2 Over £5m of capital investment is required for priority maintenance alone over the next 3 -5 years due to the poor building condition of these schools. If the issues around suitability were also included the figure would be far higher. The successful inclusion of these schools into the rebuild programme will enable the funding that would have been invested into essential maintenance to be diverted to other schools in priority need. Overall, the backlog maintenance is estimated at around £121m for the primary school estate alone.

## **3. OUTCOME AND SUSTAINABILITY**

- 3.1 Under the PSBP financed by the Department for Education (DfE), two of Sheffield's poorest condition primary schools will be rebuilt providing modern and efficient primary school buildings capable of delivering an inspirational curriculum to 735 primary aged children.
- 3.2 Fox Hill will operate as an Academy under the governance of the Steel City Schools Partnership, which will also run Montenev Primary School and Mansel Primary School. It is our understanding that individuals currently involved with the governance of the Fox Hill and Montenev Federation and the Mansel Primary partnership arrangement will also be involved in the Steel City Schools Partnership.
- 3.3 Prince Edward Primary will continue as a Local Authority Community school.

## 4. BACKGROUND

- 4.1 In July 2011, the Department for Education (DfE) announced the Priority School Building Programme (PSBP). The intention at this point was for the programme to be a privately financed programme to provide school facilities whose aim was to address those schools in the worst condition. The programme is a national programme aimed at both primary and secondary schools.
- 4.1.1 In May 2012, the Secretary of State announced which schools would be included in the PSBP. The qualifying criteria for which has been that the amount of maintenance investment required should be the equivalent of 30% or more of the costs to rebuild the school. The total number of applications was 587, of which 261 schools were successful.
- 4.1.2 Within the announcement 30 schools were identified as being priority and as such could not wait until a Private Finance Initiative (PFI) approach could be developed for the programme before action was taken and would therefore attract centrally managed capital grant. Both Sheffield schools are included in the top 30 priority schools and therefore **will not** be a Privately Financed Initiative (PFI) schools.
- 4.1.3 A Memorandum of Understanding (MoU) has been prepared by the EFA and is expected to be signed off by the Chief Executive by the end of November. (See **APPENDIX A**)
- 4.1.4 The EFA aim to have the new schools opened by March 2015.
- 4.2 Fox Hill Primary School
- 4.2.1 The current priority maintenance requirements for this school (including heating, mechanical and electrical) total over 40% of the estimated cost to rebuild the school. This school is of CLASP\* construction with the associated levels of asbestos. The external curtain walling has decayed and the large expanse of flat roofing is problematic. The blow air heating system is ineffective and adds to the poor internal environmental conditions. There are 25 boilers across this site and the water tanks are located and therefore only accessible via the neighbouring Community Centre. The presence of asbestos throughout this building has made improvements to the poor quality classrooms expensive and therefore piecemeal. In certain areas classrooms are only accessible through other classrooms, which can be disruptive to teaching and learning. Rebuilding this school would provide greater value for money.
- 4.2.2 The current site that accommodates the existing school buildings is sufficient in size and layout to enable a new school to be built on the same site whilst the school continues to operate. On completion of the new build school, the existing school would be demolished and

the area developed into quality play/sports facilities.

\*Steel-framed, flat-roofed prefabricated buildings made of steel and concrete and referred to as the **CLASP** method of construction have been used since the 1950s by local authorities for schools and other public buildings.

#### 4.3 Prince Edward Primary School

4.3.1 Prince Edward Primary was built in the 1920s as a secondary school for 1600 pupils. The current priority maintenance requirements for this school (including heating, mechanical and electrical) total over 50% of the estimated cost to rebuild the school. The school is built on a number of levels which makes accessibility problematic. The boiler needs replacing, lighting and ventilation is poor. The presence of asbestos throughout this building has made improvements to the poor quality classrooms expensive and therefore piecemeal. Rebuilding this school will provide greater value for money and will support the ongoing measures to raise attainment.

4.3.2 The existing school is located on a site close to the junction at Manor Top where Prince of Wales Road joins City Road. Although the physical buildings are considerable in size, the whole site with play facilities (including access to green space) is extremely constrained. Both the location and size of the existing footprint have led to the recommendation to relocate the school on a neighbouring site. This is covered in more detail below (section 4.4 – Land and Property Implications)

#### 4.4 LAND AND PROPERTY IMPLICATIONS

4.4.1 There are no specific land and property issues which relate to the proposals to rebuild Fox Hill.

4.4.2 The proposed site for rebuilding Prince Edward Primary School encompasses part of the existing school site and part of a cleared council housing site currently included within Sheffield Housing Company (SHC) land package (see **APPENDIX B**). The recommendation is to remove the area of land shown in APPENDIX B from the SHC land package and substitute it with a comparable alternative site. The site that is proposed will be substituted is the former Bluestone School site (see **APPENDIX C**), the development of which is currently identified for Housing Use, and would be discussed with the local community at the appropriate time. The preferred option would be to rebuild the school on the site identified, demolish the existing school and release the site for future disposal. The future use of the resultant cleared site will be considered within the context of the corporate asset management strategy.

4.4.3 Whilst the site itself has not been yet legally transferred to the SHC, there is a present contractual commitment under the Development Agreement signed on 7<sup>th</sup> July 2011 between the Council and the

SHC for the Council to transfer sites within the agreed Land Package to SHC at an agreed point in the future following the discharge of certain conditions. However, there are also provisions in the Agreement with the SHC that sites can be withdrawn from the Land Package and substituted with others under certain circumstances where there is a furtherance of the Council's operational needs or for the achievement of its statutory duties. The substituted sites must be capable of development to provide an equivalent number of housing units at an equivalent level of return and will typically be of a similar size and in a similar location and prior notice of such a substitution should be served on the Company itself.

- 4.4.4 A suitable substitute site has been identified and the issue has been raised with the SHC at its Board meeting on 31<sup>st</sup> October 2012 at which agreement was reached in principle subject to further feasibility work being carried out.
- 4.4.5 The proposed substitute site shown in APPENDIX C is the site of the former primary school known as Bluestone and has been identified by the Planning Authority as a site for housing in the Sheffield Development Framework (SDF) and contributes to identified housing supply figures.
- 4.4.6 Part of the proposed site shown in APPENDIX B is currently designated as Public Open Space (POS). Within the context of the relevant policy 'CS47 Safeguarding Open Space', an assessment outlined this as an area that lacks both formal and informal provision. Under normal circumstances this proposal would be contrary to policy, however it has been accepted as an exceptional case with the request that on-site replacement provision for such open space is provided and is of a better quality and accessible to the community. A Community Use Agreement is required for planning approval.
- 4.4.7 The provisions set out within the Community Use Agreement will ensure there is no loss of POS as a result of the new school development.

#### 4.5 HUMAN RESOURCE IMPLICATIONS

- 4.5.1 Currently there are 70 LA staff working from office accommodation in Prince Edward. The vision has always been that these staff will be relocated to the relevant schools in line with the Special Educational Needs (SEN) Integrated Resources (IR) strategy.

#### 4.6 FINANCIAL IMPLICATIONS

- 4.6.1 Capital: All Capital costs associated with the procurement, design and build of this project will be incorporated into the PSBP and will be in addition to the capital allocation currently received and committed to school expansions and maintenance programmes as

part of the CYPF Capital Programme.

- 4.6.2 Demolition Costs: Within the PSBP the policy is not to include the cost of demolition where the new school is moving to a new site. The implication of this is that the demolition costs will be included within the programme for the Fox Hill rebuild, but will be excluded in the case of Prince Edward. The current estimate for demolishing the existing Prince Edward Primary School is £175,000.
- 4.6.3 Risks: The substitution of the Bluestones site may affect the timing and value of future capital receipts and this will be reflected in the appropriate reports.
- 4.6.4 Revenue: The costs associated with the relocation of LA staff from Prince Edward will be contained within the CYPF Revenue budget.

#### 4.7 LEGAL IMPLICATIONS

- 4.7.1 The Council has a contractual agreement with the Sheffield Housing Company which has been approved by the Council's Cabinet and is contained within the Development Agreement signed in July 2011. The appropriate process of substitution as described in the Development Agreement has begun and the substitution has been agreed in principle. The SHC does retain the right to reject a proposed substitute site and the formal process of disposal needs to take place. However, notice of withdrawal has been given and so this will not prevent the withdrawal of the land needed for the Prince Edward Primary School rebuild.
- 4.7.2 Although the changes to the schools mentioned in this report include the transfer of a school to a new site, statutory proposals are only required to comply with the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 if the main entrance of the school on the proposed new site would be 2 miles or more from the main entrance of the school on its current site.
- 4.7.3 Information provided by the EFA suggests that neither the Council nor the schools will be a contracting authority for the purposes of procurement legislation. However, the Council has signed the Memorandum of Understanding (**Appendix A**) acknowledging that formal agreements may be required to deal with project-specific issues e.g. related to title/contamination/access. The exact agreements required will need to be agreed in due course. However, the provisions of the agreements are likely to include taking on liabilities where the Council owns the site. It would appear that opportunities for the Council to withdraw from the PSBP if the contractual arrangements are unacceptable, or for any other reason, will be limited.



## 5. ALTERNATIVE OPTIONS CONSIDERED

- 5.1 Do Nothing: If it is decided not to continue to support the EFA to develop plans to rebuild the 2 primary schools in the city, the opportunity for greatly needed investment into the Sheffield school estate would be lost.
- 5.2 Continue with Asset Management Planning and Maintenance: As highlighted at paragraph 2.4, over £5m is required to maintain these schools over the next 3-5 years. CYPF currently receive an allocation of £6.5m (2012/13) to invest in maintenance programmes for all CYPF properties, which includes 170 schools where an estimated £121m investment is required in the 133 primary schools alone.
- 5.3 Use Existing Capital Allocations to Rebuild Schools: Current annual capital allocations (2012/13) total around £11m for the provision of school places and the maintenance of all CYPF estate.

To divert this funding away from the planned school expansions, new school buildings to provide additional places and building maintenance programmes would mean the authority would not be able to meet its statutory duty 'to ensure the provision of 'sufficient' schools' for the provision of primary and secondary education in their area' and ensure premises regulations are being adhered to.

## 6. REASONS FOR RECOMMENDATIONS

- 6.1 The successful inclusion in the PSBP provides an opportunity to address significant building condition and suitability issues at Fox Hill and Prince Edward Primary Schools;
- 6.2 The agreement to proceed within the existing site boundary at Fox Hill and on the preferred neighbouring site to Prince Edward will enable the new schools to be developed with minimal disruption to the existing pupils on sites that will continue to be accessible to the current catchment area.

## 7. RECOMMENDATIONS

- I. Note the Memorandum of Understanding (MoU) for each school has been signed by the Chief Executive. (**APPENDIX A**)
- II. Note there will be no loss of Public Open Space due to the development of better quality facilities with public access provided by a Community Use Agreement (CUA);
- III. Members approve the inclusion of the site adjacent to the existing Prince Edward Primary School (**APPENDIX B**) as the site for the new school and note the proposed substitution of the former Bluestone School site (**APPENDIX C**) to the

<sup>th</sup> July 2011 in

respect to the completion of the land package.

- IV. Pending a formal decision to dispose of the former Bluestone School site to SHC, Members confirm that the former Bluestone School site must not be used or committed for use for any other purpose without a decision of Cabinet.

## APPENDIX A

# Priority School Building Programme Template Document Memorandum of Understanding for a Subsequent School

**Document Status: Final**  
**SEPTEMBER 2012**

Document Properties	
Document Author	Rob Davenport
Document Owner	Louise Whitesman
Organisation	Education Funding Agency
<b>Title</b>	PSBP Template Document: Memorandum of Understanding for Subsequent School (Capital)
Document Type	Memorandum of Understanding
Review Date	August 2013
Abstract	
<p>This document is the Memorandum of Understanding for a Subsequent School i.e. a school that will be designed by the contractor following their appointment as Selected Panel Member. It is intended that a Memorandum of Understanding is prepared and signed at the beginning of engagement between the EFA and schools.</p> <p>A signed MOU must be in place in order for a Feasibility Study to be submitted.</p>	

## LETTER HEADER / DATE / ADDRESS ETC

Dear *[insert school's addressee]*

As we take forward the delivery of the Priority School Building Programme (**PSBP**) for the batch of *[insert area]* schools and for *[insert school name]*, we wanted to outline the roles and responsibilities of our respective organisations, to ensure that the programme is delivered in the most efficient and practical manner.

The delivery of the PSBP is being managed on behalf of the Secretary of State for Education by the Education Funding Agency (**EFA**), which is an executive agency of the Department for Education.

For each school the Secretary of State will enter into delivery contracts (for example, he will sign the design and build contract with the contractor). The Secretary of State and the EFA fully understand and acknowledge the vital role that the school, its governing body [and Trust] [,/and] *[insert name of local authority]* [and *[insert name of diocese]* diocese] has in ensuring the efficient delivery of the project in a way that satisfies all of our respective requirements (in this letter we will refer to these parties collectively as 'the school and its stakeholders'). For this reason, we have set out in this letter the principal roles and responsibilities of the relevant organisations and we are asking that the school and its stakeholders each countersigns this letter to indicate their acknowledgement of the processes involved in achieving a successful and timely delivery.

Prior to final signature of the contracts, we will ask the school and its stakeholders to sign a formal agreement with the Secretary of State. This agreement will set out, in more specific detail, exactly what is required from all parties to deliver the building works and what, in limited and clear circumstances, the implications will be if a party fails to deliver those requirements. The final form of that agreement will be prepared in due course and whilst it will be a standard form for all schools in the capital part of the PSBP, we will ensure that it is shared with the school and its stakeholders at appropriate times during its development so that no element will come as a surprise to you at the time of signature.

### **The Role and Responsibilities of the Secretary of State and the EFA**

The EFA will manage the delivery of the building works 'centrally' and its primary responsibility is to ensure that the investment of public money achieves the objective of dealing with the condition need at the school at a reasonable cost to the taxpayer.

The EFA will prepare the feasibility study for the school, manage the project development with the contractor and act as contract manager during the build process following contract signature. In order to deliver this role successfully, the EFA will work closely with the school and its stakeholders throughout the processes described above to ensure that an appropriate level of local input is established and maintained.

The EFA will be using its Contractors' Framework to deliver the building works which has a proven track record of delivering schools in an extremely timely manner. Further information on the Contractors' Framework can be found by following the link below.

## **The Role and Responsibilities of the School and its Stakeholders**

The school and its stakeholders will need to work with the EFA so that the feasibility study is submitted on time and thereafter so that the project development process can progress as efficiently as possible both for the school and for the other schools in the batch. Whilst it is not clear yet exactly what this commitment will entail (and it will be different for each school), the school and its stakeholders should expect to dedicate resources and time to attending meetings and feeding in information and views to the project throughout the feasibility project development and construction processes.

To allow the EFA to complete the feasibility study and project development process in a timely fashion, we will need the school and its stakeholders to supply certain information including information relating to the property's title (so that we can grant appropriate access rights to the construction contractor to come onto the site and to carry out the planned works). We understand that in a number of cases (such as, for example, the provision of detailed property information), the school itself will not be best placed to provide the necessary information. In such cases we would expect the school to assist the EFA in dealing with the person or organisation best able to deliver the required information (for example, the local authority). The school must also allow access to the site for the carrying out of a number of property related surveys (including intrusive surveys).

It is important that information and access is provided in a timely manner and that any information is correct.

As referred to above, the Secretary of State will be entering into a design and build contract and under that contract, he will be taking on certain responsibilities (and thus liabilities) to the contractor relating to local site matters and school activities. He will be relying on the information and access given by the school and its stakeholders and in the agreement to be signed between the Secretary of State and the school and its stakeholders, may look to the school and its stakeholders to assume some of these responsibilities for themselves. Appendix 1 to this paper sets out in more detail how the contracting will work and Appendix 2 sets out examples of the sorts of responsibilities that the Secretary of State may look to pass to the school and its stakeholders.

There will also be some non-property matters that the Secretary of State will seek to pass to the school and its stakeholders. For example, a general obligation not to disrupt the building works.

Once the building works are complete, the design and build contract provides for a 12 month period during which time, if a problem arises, the construction company can be required by the Secretary of State to solve the issue. Following the expiry of that period and the resolution of any issues that may have emerged, we will expect to transfer the contract to the school. This will give the school rather than the Secretary of State, any remaining rights against the construction company in respect of any defects in the buildings which later arise.

Whilst the PSBP does include funding for certain fixed furniture, fittings and equipment and for ICT network infrastructure, it does not include any funding for loose furniture and

equipment (including ICT equipment). As such the school will be expected to re-use as much of its existing furniture and equipment as it considers necessary in the new school and to make up any deficit for itself.

We look forward to working with you and the other parties involved in delivering this project and the improved facilities for *[insert name of school]*. Please countersign this letter below where indicated.

Yours sincerely

.....

**Mike Green**  
Head of Capital  
For and on behalf of the Education Funding Agency

**In acknowledgement of the expectations upon the School set out in this letter for the delivery of the Priority School Building Programme:**

**Signed on behalf of the School by:**

***[Head teacher / Principal]***

**Signed on behalf of the School's Governing Body by:**

***[Chair]***

**[Signed on behalf of the Trust by:**

***[Trustees]***

**Signed on behalf of the *[insert name of local authority]* by:**

**[Chief Executive]**

Signed on behalf of the *[insert name of diocese]* by:

*[insert position]*

## APPENDIX 1

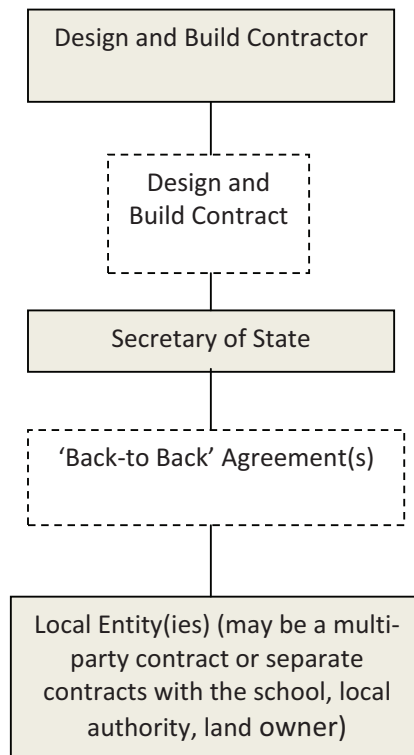
### Contract Structure

Under the Design and Build contract, the Secretary of State will assume certain responsibilities to the contractor. A number of these responsibilities relate to 'local' site matters and school activities that the school and its stakeholders are better placed to manage and control than the Secretary of State.

In contracts previously let by local authorities they have required schools to enter into back-to-back arrangements to pass on those responsibilities (the local authority owes the duty to the contractor and that duty is then mirrored to the school or local entity in its contract with the local authority). With the passing of the responsibilities comes also the right to enforce any failure to carry them out. It is proposed that the same arrangements be put in place for the PSBP and that the Secretary of State passes 'local' responsibilities to schools and other local entities and also has the right to enforce their performance although there would be no obligation to take any enforcement action should the Secretary of State choose not to do so.

Schools in England are 'owned' under a number of corporate structures and the ownership of the land they are on is yet more diverse. Schools may either be local authority maintained, Academy Trusts, VA or Foundations; the land they sit on may be owned by the school, the local authority, the local diocese or another third party. Responsibilities passed to a local entity must be passed to the person best able to manage and hold them (i.e. the local school 'owner' and the local landowner (if different)) so there may be a multi-party back-to-back agreement or separate agreements with more than one local entity.

The proposed contract structure for PSBP is detailed below:







## APPENDIX 2

### Examples of Risks and Responsibilities

There are responsibilities that the school and its stakeholders will need to fulfil in order to facilitate the building works at the school. The majority of these relate to property and planning issues and include:

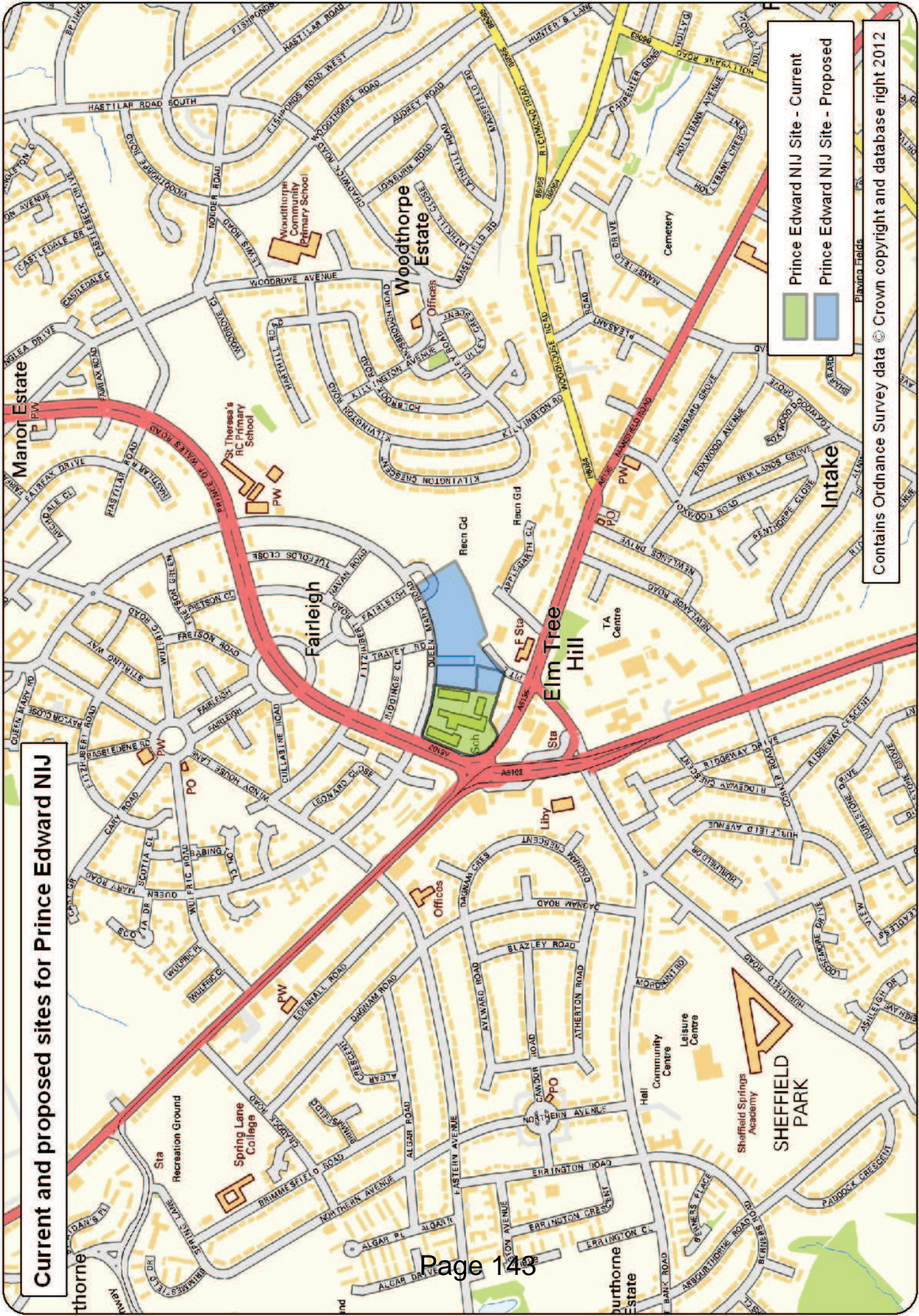
- a. *restrictive covenants over the site or part of the site that need to be released or otherwise addressed (for example a covenant in the title not to build in a specified place on the site):* these are often dealt with either by way of insurance, a release from the covenant holder or via a land tribunal. All of these require the involvement of the landowner or the holder of a material interest in the land. A failure to take the insurance or otherwise deal with the covenant would require either taking the risk that the covenant would not be enforced in the face of the works or varying the project to avoid breaching the covenant.
- b. *Occupational interests (for example, telemasts, substations, and nursery, caretaker or dentist leases):* these are likely to require the landowner or lessor to vary or terminate the interest as necessary for the purposes of the works.
- c. *Adverse rights (for example a group of local residents who have had long uninterrupted rights to walk across playing fields for recreation and to access amenities):* the landowner would need to make the Secretary of State aware of these rights so that they can be rescheduled or the plan for the site varied to accommodate them.
- d. *Access to the site:* the landowner may need to enter into or vary or extend agreements with 3rd party owners of adjoining land to ensure that the school site can be accessed by the contractor.
- e. *Highways/planning/utilities agreements:* Landowners are likely to need to enter agreements to satisfy planning condition or move utilities.

The list above is not exhaustive but experience has shown that they are real when carrying out works of this nature. There are mitigating actions that can apply to each provided they are known about in advance. As such, the responsibility to be passed to the school and its stakeholders is:

- to declare all property interests that are known about and that may affect the site; and
- to take those steps that are needed to enter into agreements etc in order that the mitigating actions are effective and the works can go ahead. All of the agreements with 3rd parties can be facilitated centrally by the EFA as part of the central procurement function but the Secretary of State will not be entitled to enter into the agreements itself.

There are also non-property matters that the Secretary of State will need to pass down. For example, a general obligation not to disrupt the building works (which includes an obligation to comply with the decant programme (i.e. if a school is being delivered in phases the school must be ready to move from an area on time if that area is the subject of the next build phase)).

**Current and proposed sites for Prince Edward NIJ**



Prince Edward NIJ Site - Current  
Prince Edward NIJ Site - Proposed

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# Former Bluestone Primary School Site

