

Date: 9<sup>th</sup> January 2015

## HEADS OF TERMS: FREEHOLD ACQUISITION

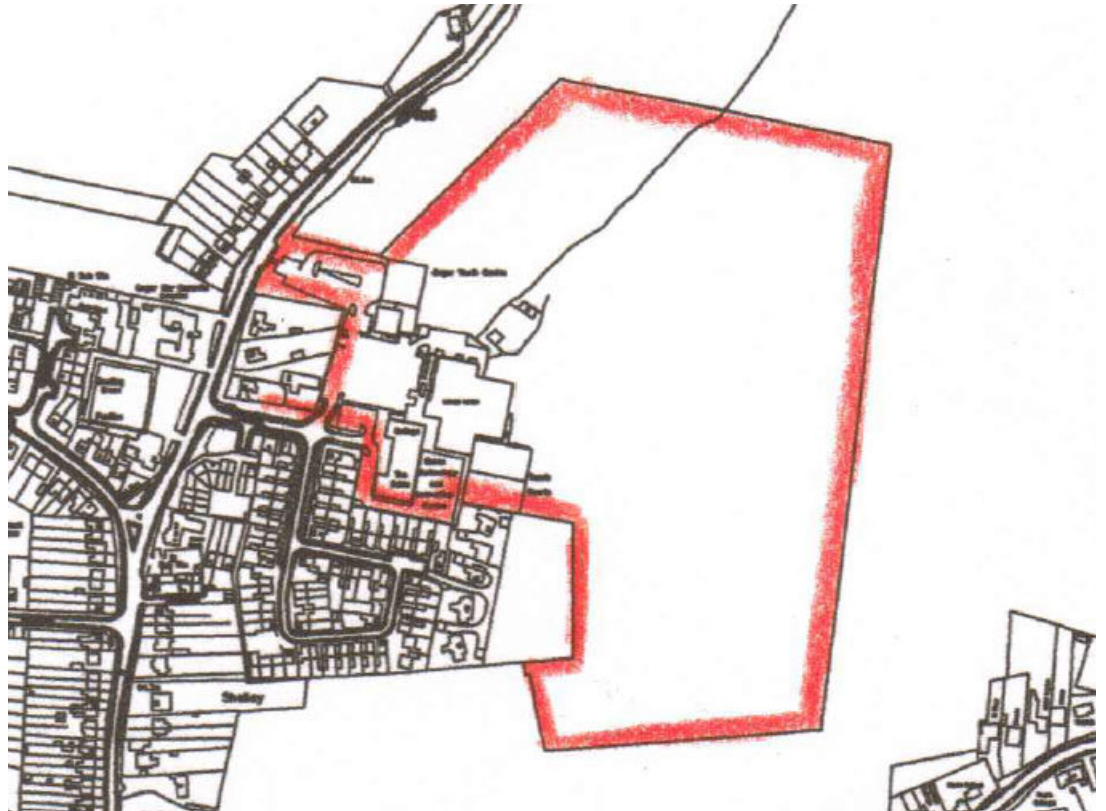
### The Ongar Academy

**FS0405** Note: Although these heads of terms are not intended to be legally binding, once agreed, they will be distributed within the Department for Education and will inform the production of a number of documents between the school and the Secretary of State. It will therefore not be possible to agree variations to the commercial terms set out below once the heads of terms are agreed between the parties. In addition, a number of the provisions relate to policy requirements of the Department. Any derogations from the heads of terms would be considered on a case by case basis and the terms of other transactions would not necessarily be relevant.

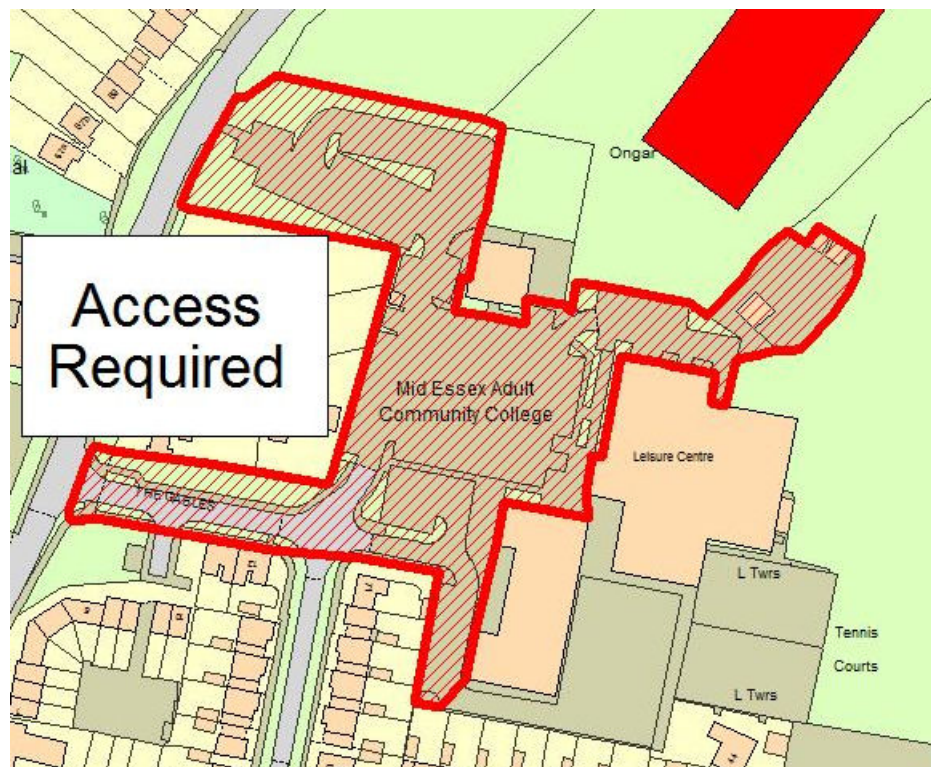
1. **Seller** Epping Forest District Council  
323 High Street, Epping, CM16 4BZ  
FAO Derek Macnab  
Tel; 01992 564 051
2. **Seller's Agent** N/A
3. **Seller's Solicitor** Alison Mitchell, Assistant Director Legal Services, Epping Forest District Council Legal Department  
[AMitchell@eppingforestdc.gov.uk]
4. **Buyer** The Secretary of State for Education (The acquiring party will be the Department for Communities and Local Government).
5. **Buyer's Agent** Education Funding Agency  
Sanctuary Buildings  
Great Smith St  
London, SW1P 3BT  
FAO Paul Aldridge  
Tel; 07989 529 654  
E Mail: [paul.aldridge@education.gsi.gov.uk](mailto:paul.aldridge@education.gsi.gov.uk)
6. **Buyer's Solicitor** Trower & Hamlin LLP of 3 Bunhill Row London EC1Y 8 YZ (marked for the attention of Sangita Unadkat: SUnadkat@trowers.com)
7. **Property** The playing fields adjacent to the Ongar Leisure Centre, The Gables, Fyfield Road, Ongar, CM5 90GA

A plan is attached showing the property edged in red for illustrative purposes

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Access rights will be required over the following areas:



**8. Purchase Price**

8.1

The purchase price and the consideration for the variation of the covenant relating to the use of the land will be agreed pursuant to the joint instruction of a suitably qualified

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valuer of not less than 15 years' experience, party to be agreed, or in default appointed by the President of the RICS. **The valuer will act as an expert.** The opinion of value will be binding on both parties and will reflect:

- a) the Open Market value of the asset subject to the restrictive covenant for use as leisure; and
  - b) The Open Market value of the asset subject to the varied restrictive covenant as to leisure and state funded education use
- 8.2 No deposit will be payable on exchange of contracts. The balance will be payable in full on completion.
- 8.3 VAT is not payable on the purchase price.

**9. Title** The Property will be sold with vacant possession on completion but subject to:

- 9.1 **The lease to SLM, and**
- 9.2 **the cross rights over the lands labelled 'access required,'**

It is noted that there is currently a restrictive covenant and terms have been agreed with Essex County Council for the relaxation of that restrictive covenant to include state funded education.

**10. Sale of Part**

- 10.1 The Seller will retain land adjoining the Property.
- 10.2 The transfer will reserve the following rights over the Property:  
rights for the Seller to repair and/or replace any existing service media on or under the Property
- 10.3 The transfer will grant the following rights over the Seller's retained land for the benefit of the Property:  
Unfettered access with or without vehicles over the area identified on plan above.  
Rights to lay or connect into and use all service media within the ownership of the Seller. **Correct Plan required before this can be agreed.**
- 10.4 The Buyer will join the management company governing the maintenance of the access roads over the Adult Community College and Leisure Centre site and it is envisaged that the Buyer will contribute a one third share towards ongoing maintenance costs (subject to the Buyer receiving and reviewing the historic service charge information).

**11. Early Access**

- 11.1 The Seller will permit the Buyer to access the Property prior to exchange of contracts and following exchange of contracts for the purposes of undertaking investigative survey work. The Buyer will enter into an Access Licence with the leisure centre operator, "SLM."
- 11.2 The terms of the access will be as follows:-
  - (a) the Buyer to provide reasonable prior notice to the Seller
  - (b) the Buyer to make good any physical damage it causes to the Property
  - (c) **the Buyer obtains all necessary consents from the SLM the Tenants of the Leisure**

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Centre.

<b>12. Exchange and Completion</b>	12.1	The parties will endeavour to exchange conditional contracts by Friday 27 <sup>th</sup> February 2015
	12.2	Completion will take place following satisfaction of all of the Conditions Precedent for Completion though the Buyer will be permitted to elect to complete earlier at its discretion
	12.3	The Contract will permit the Buyer to assign the Contract to another school trust or SofState prior to completion without Seller's consent being required.
<b>13. Conditions Precedent for Exchange of Contracts</b>	13.1	Satisfactory completion of title investigation; Seller's Board Approval
	13.2	Acceptable Access Licence with "SLM"
<b>14. Conditions Precedent for Completion</b>	Completion will be conditional upon:-	
	14.1	Obtaining planning permission (without a challenge being made during the JR period) for a permanent secondary school in excess of 4,000 sq m and temporary accommodation in excess of 200 sq m if required, upon terms acceptable to the Buyer. The Buyer will apply for that planning permission and pursue that application with due diligence.
	14.2	In the event that the planning application is refused or is subject to onerous conditions so as not to amount to an acceptable planning permission, the Buyer may appeal.
	14.3	Completion of Deed of Variation from Essex CC varying the user to include state funded education.
	14.4	The long-stop date for the satisfaction of the Conditions Precedent will be 5 <sup>th</sup> November 2016. The Buyer may at its discretion waive any or all of the Conditions Precedent.
	14.5	Receipt of satisfactory survey results;
	14.6	Essex County Council agreeing the amount to be repaid under the 'clawback' provisions set out in the 2005 transfer.
<b>15. Costs</b>	Each party is responsible for its own internal legal and professional costs in connection with this transaction. The Academy Trust are responsible for meeting the costs of the independent valuation.	

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