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Department for Education

Catholic academies: Church supplemental agreement: single and multi-academy model

November 2018

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INTRODUCTION

1) This Agreement is being entered into in acknowledgement of the consent hereby given by the Trustees to the conversion of Our Lady and St Teresa's Catholic Primary School to an academy and the completion of a Supplemental Funding Agreement (the "Supplemental Funding Agreement") which, with its Master Funding Agreement (the "Master Funding Agreement"), dated 26th June 2014 as amended by a Deed of Variation dated 25th March 2020 (together (the "Funding Agreement")) are made under section 1 of the Academies Act 2010 each between the Secretary of State for Education ("the Secretary of State") and Our Lady of the Magnificat Multi-Academy Company a company limited by guarantee registered at Companies House with company number 09064485 ("the Company").

2) This Agreement is made between

   a) the Secretary of State;

   b) Birmingham Roman Catholic Diocesan Trustees Registered as trustee of Birmingham Diocesan Trust (registered charity number 234216) (the "Trustees");

   c) The Archbishop of Birmingham of Archbishop's House 8 Shadwell Street Birmingham B4 6EY (the "appropriate diocesan authority" for the Academy for the purposes of the Education Acts (which shall include the Academies Act 2010)) is also a party to this Agreement in recognition of his role in relation to the Academy ("the Diocesan Authority"); and

   d) the Company.

3) Not used.

4) The Company is also a party to this Agreement solely to acknowledge the commitments made by both the Secretary of State and the Trustees to each other and to make the commitments set out in clauses 14 and 28.

5) In this Agreement the following words and expressions shall have the following meanings:-

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"Articles of Association" means the Memorandum and Articles of Association of the Company for the time being in force;

"Capital Grant" has the meaning given to it in clause 3.5 of the Master Funding Agreement;

"DfE" means Department for Education;

"Insurance/cover" means either (i) a commercial insurance policy taken out with a reputable insurance office or (ii) cover through the Risk Protection Arrangement for academy trust companies provided by the Secretary of State ("the Risk Protection Arrangement");

"Insured/covered Risks" means fire, lightning, explosion, earthquake, storm, tempest, flood, subsidence, landslip, heave impact, terrorism, bursting or overflowing of water tanks and pipes, earthquake, damage by aircraft and other aerial devices or articles dropped there from, riot and civil commotion, labour disturbance and malicious damage and such other risks as the Trustees or Company (as determined by clause 14) insures against from time to time subject in all cases to any exclusions or limitations as may apply from time to time;

"Land" means the land (including for the avoidance of doubt all buildings, structures, standing water, landscaping and other erections) owned by the Trustees situated at and known as Our Lady and St Teresa's Catholic Primary School, Windmill Hill, Cubbington, Leamington Spa, Warwickshire CV32 7LN and registered under title number WK447769 and any other land of the Trustees from which the Academy operates as shown edged red on the attached plans;

"Termination Warning Notice" means any warning notice that may be served under and in accordance with the terms of the Funding Agreement.

6) The Interpretation Act 1978 shall apply for the interpretation of this Agreement as it applies for the interpretation of an Act of Parliament, and references to:

"party" means any party to this Agreement;

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"persons" includes a body of persons, corporate or incorporate;

"school" shall where the context so admits be references to the Academy.

7) Expressions defined in this Agreement shall have the same meaning where used in any Annex to this Agreement.

LEGAL AGREEMENT FOR USE OF LAND

8) In consideration of:

a) the Company undertaking to the Secretary of State to establish and maintain, and to carry on or provide for the carrying on of, an independent school in England to be known as the Our Lady and St Teresa's Catholic Primary School ("the Academy") and having such characteristics as are referred to in clause 1.13 of the Master Funding Agreement and in the Articles of Association; and

b) the Secretary of State:

i) agreeing to make payments to the Company in accordance with the conditions and requirements set out in the Funding Agreement; and

ii) undertaking to the Trustees and Diocesan Authority as set out in this Agreement;

the Trustees undertake to the Secretary of State to make the Land available for use by the Company in a manner consistent with any restrictions imposed on the Trustees at law and pursuant to any trust deed governing the Trustees' ownership of the Land and with the terms of this Agreement.

9) This Agreement shall commence on the date hereof and shall subject to clause 10 (and except in respect of clause 16) continue in force until the earlier of:

a) the termination of the Funding Agreement; and

b) the date upon which any termination of this Agreement arises pursuant to clause 24.

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10) The termination of this Agreement howsoever arising is without prejudice to the rights, duties and liabilities of any party hereto accrued prior to termination.

11) Clause 16 of this Agreement shall continue to apply for as long as the Secretary of State has power to exercise any discretion in relation to the Land pursuant to Schedule 1 of the Academies Act 2010.

PARTNERSHIP IN THE PROVISION OF EDUCATION

12) This Agreement recognises the desire of the parties to foster the development and provision of high quality education in particular at the Academy and in the area which it serves and the parties acknowledge the commitment being made by each to this aim. Recognising the Trustees and the Diocesan Authority's respective strategic roles in the provision of education through its family of Catholic schools both in relation to the Academy and more generally (which role has been acknowledged in but is not derived from the Education Acts (as defined pursuant to the Education Act 1996)), the Secretary of State acknowledges the value of:

a) maintaining a good working relationship between the parties at all levels; and

b) the support (financial and otherwise) provided to the Company by the Trustees and Diocesan Authority; and

agrees:

A) to consider the use of his termination powers as set out in the Funding Agreement if requested to do so in writing by the Diocesan Authority in consequence of (i) unacceptable standards as measured by the relevant statutory denominational inspection using criteria equivalent to those triggering the right to serve a Termination Warning Notice under the Funding Agreement or (ii) a serious breakdown in the way the Academy is managed or governed such that the ethos requirements of designation or conditions set out in the Funding Agreement are no longer being complied with; and

B) to maintain an open and frank dialogue with the Trustees and Diocesan Authority so that any matters that in the reasonable opinion of the parties may

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have a significant effect on the running of the Academy as a Catholic school shall be discussed in an appropriate manner recognising each party's viewpoint.

13) Whilst recognising the desire of the parties to work together in good faith and with mutual respect, nothing in this Agreement shall:

a) grant the Company any interest in or control over the Land;

b) interfere with the right of each party to arrange its affairs in whatever manner it considers fit in order to perform its obligations under this Agreement in the manner in which it considers to be the most effective and efficient;

c) oblige any party to incur any additional cost or expense or suffer any undue loss in the proper performance of its obligations under this Agreement;

d) fetter the ability of any party to exercise or fulfil its contractual or statutory powers and duties;

e) prevent the Company from teaching the doctrines of the Catholic Church as received truth notwithstanding that such doctrines are, or may be, matters of faith and may not be susceptible to proof by scientific evidence or enquiry.

PROTECTION OF PUBLIC INVESTMENT IN LAND

14.1) Whilst the Academy operates from the Land otherwise than pursuant to a lease between the Trustees and the Company and in recognition of the funding provided by the Secretary of State to the Company for the running costs of the Academy, including, but not limited to, grant advanced for the purposes of enabling repairs, servicing, maintenance and arranging for appropriate insurance of any buildings on the Land and its grounds, provided that the Company meets the cost of such repairs, servicing, maintenance and insurance (including all reasonable costs of the Trustees), the Trustees will:

a) facilitate any maintenance, upkeep or replacement of any buildings or facilities on the Land by the Company so that the Company may keep the Land clean and tidy and may make good any damage it causes to the Land and / or any deterioration to the condition of the Land consequent upon its use of the same

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that may arise from the date of this Agreement;

b) keep the Land insured in the joint names of the Trustees and the Company with a reputable insurance office against loss or damage by the Insured Risks in the sum which represents the reinstatement value of the Land from time to time;

c) pay the premiums for insurance promptly as they become due and maintain in force the policies of insurance on the Land;

d) following the incidence of damage to or destruction of the Land and subject to receipt of all necessary consents licences permissions and the like apply the proceeds of the policy of the insurance received for those purposes in rebuilding and reinstating the Land (provided that this clause should be satisfied if the Company and/or the Trustees provide premises not necessarily identical to the Land as the same existing prior to such damage or destruction occurring) as soon as may be reasonably practicable;

e) produce to the Secretary of State a copy of the insurance policy whenever reasonably requested and the receipt for the last or other evidence of renewal and up to date details of the amount of cover (but no more often than once in any period of 12 months in both cases);

f) not knowingly do anything whereby any policy of insurance relating to the Land may become void or voidable; and

g) insure against liability in respect of property owners' and third party risks including occupiers liability.

14.2) To meet all of their obligations under clause 14.1(b) to (g) above the Trustees may, at their discretion, consent to the Company becoming a member of the Risk Protection Arrangement.

15) While the Academy operates from the Land or part of it pursuant to a lease between the Trustees and the Company in so far as clause 14.1 regulates occupation the terms of the lease shall prevail.

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16) In the exercise of any discretion that the Secretary of State shall have either in relation to the Land as a consequence of this agreement or pursuant to Schedule 1 of the Academies Act 2010, the Secretary of State agrees to comply with any guidance issued by him in relation to the disposal of publicly funded land that is no longer to be used for the Academy.

17) In relation to any land owned or leased by the Company (excluding any land leased to the Company by the Trustees, the Secretary of State agrees not to give consent to any disposal or grant of security in respect of such land to the Company as envisaged in the Funding Agreement without first consulting the Trustees and the Diocesan Authority and having due regard to any concerns expressed by the Trustees and the Diocesan Authority.

CAPITAL GRANTS

18) The Trustees and the Diocesan Authority acknowledge the Secretary of State's power to pay Capital Grant to the Company and in recognition of the Trustees' and the Diocesan Authority's interest in any Capital Grant paid in relation to expenditure on Land, the Secretary of State commits to the following:

    a) to acknowledge the Trustees' and the Diocesan Authority's right to consent to the carrying out of any works to Land whether or not such works are to be paid for from any Capital Grant;

    b) to recognise the Trustees' and the Diocesan Authority's interest in ensuring that any works to Land are carried out properly and that the Trustees or Diocesan Authority may be procuring or providing support to the Company in the procurement of such works; and

    c) at the Secretary of State's discretion, to make any Capital Grant to the Trustees or the Diocesan Authority in respect of capital expenditure incurred or to be incurred by them on behalf of the Company.

19) To the extent that the Secretary of State considers it necessary, in order to protect the value of any future public investment in the Land and in recognition

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of the Trustees and the Diocesan Authority allowing the Land to be used for the purposes of the Academy, then the Secretary of State may require the Company and the Trustees and the Diocesan Authority to enter into a further agreement in relation to such further public investment and Capital Grant. If the Secretary of State determines such further agreement is required, then the parties agree to negotiate in good faith with a view to reaching agreement to enable such Capital Grant, and future public investment, to be paid.

INTERVENTION AND SUPPORT

20) The Trustees and the Diocesan Authority acknowledge the Secretary of State's right to terminate the Funding Agreement in the circumstances envisaged in the Funding Agreement. The Secretary of State agrees with the Trustees and the Diocesan Authority before taking any such action and in particular serving any Termination Warning Notice to notify the Trustees and the Diocesan Authority that he intends to take action giving his reasons for such action and to allow the Trustees and the Diocesan Authority a reasonable opportunity to make representations regarding such action, including any actions that the Trustees and the Diocesan Authority intend to take to remedy any failing of the Academy, which the Secretary of State will have due regard to before finally taking any action.

20A) Without prejudice to the generality of clause 20 above, to the extent the Secretary of State has concerns as to the suitability of any director or member of the Company (the Relevant Appointee), the Secretary of State will notify the Diocesan Authority of his concerns before exercising any available remedies in respect of the Relevant Appointee under the Funding Agreement.

20B) As soon as possible following the Secretary of State providing notification under clause 20A, the Secretary of State and the Diocesan Authority will meet to discuss the Secretary of State's concerns. The Diocesan Authority agrees to provide any further information on the Relevant Appointee which is reasonably requested by the Secretary of State and:

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a) the Diocesan Authority acknowledges that the Secretary of State may, in his absolute discretion, carry out any additional due diligence on the Relevant Appointee and agrees to act reasonably in co-operating with any requests for assistance by the Secretary of State; and

b) the Secretary of State agrees to share any information of concern with the Diocesan Authority and to consult with the Diocesan Authority as to what remedial action should be taken in respect of the Relevant Appointee.

20C) To the extent the Diocesan Authority agrees that the Secretary of State's concerns regarding a Relevant Appointee have merit, the Secretary of State acknowledges that the Diocesan Authority may, in the first instance, determine what remedial action to take in respect of that Relevant Appointee before the Secretary of State exercises any available remedies under the Funding Agreement.

20D) If the Diocesan Authority does not agree with the Secretary of State's concerns regarding a Relevant Appointee, or the Diocesan Authority (in the Secretary of State's opinion) unreasonably delays taking remedial action or does not otherwise (in the Secretary of State's opinion) take appropriate remedial action, the Secretary of State shall issue a notice under the Funding Agreement requesting that the Diocesan Authority reconsiders its approach, together with any further supporting information of concern.

20E) To the extent the Diocesan Authority does not reconsider its approach, or otherwise does not take remedial action to the Secretary of State's satisfaction, the Secretary of State reserves the right to exercise any available remedies available to him under the Funding Agreement.

20F) Notwithstanding clauses 20D and 20E, the Secretary of State acknowledges and agrees that the decision to remove a Relevant Appointee is the sole responsibility of the Diocesan Authority.

21) Not used.

22) In the spirit of partnership, where the Trustees and/or the Diocesan Authority

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put forward a school improvement plan, whether or not in the circumstances envisaged in clause 20, the Secretary of State will consider any proposals within it and in good faith will consider any resource or funding implications, without, for the avoidance of doubt, being under any obligation pursuant to this Agreement to agree to fund such proposals.

23) The Secretary of State agrees to meet the costs of any relevant statutory denominational inspection proposed by the Trustees or Diocesan Authority provided these do not occur any more often than once every three years.

23A) Not used.

23B) Not used.

23C) Not used.

23D) Not used.

23E) The parties acknowledge that clauses 2.24 and 2.25 of the Master Funding Agreement apply to all academies.

23F) The parties recognise that the provisions set out in clauses 2.24 and 2.25 of the Master Funding Agreement prohibit the teaching as scientifically proven fact, of theories which are contrary to scientific evidence and ensure that schools teach evolutionary theory. The parties recognise that they apply to church schools as they would to all other schools. The parties also recognise that the requirement on every academy and free school to provide a broad and balanced curriculum, including the provision for the teaching of evolution, does not preclude church academies' curriculum conforming to, or their teaching being in accordance with, the tenets of the Catholic Church.

23G) The Secretary of State acknowledges that clauses 2.24 and 2.25 of the Master Funding Agreement, and clause 23F above, do not prevent discussion of a range of beliefs about the origins of the Earth and living things, as long as it is not presented as a valid alternative to academically defensible scientific facts.

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TERMINATION

24) The Trustees may give not less than two years written notice to the Company and the Secretary of State to terminate this Agreement.

25) In the event of any termination of the Funding Agreement in circumstances where the Academy would not otherwise be closing, the Secretary of State will have due regard to any wishes of the Trustees and/or the Diocesan Authority with regard to the future of the school as a “voluntary” maintained school for the purposes of the School Standards & Framework Act 1998.

26) Notwithstanding any termination or expiry of this Agreement the provisions of clause 25 shall continue to apply.

MISCELLANEOUS

27) Any notice or other communication concerning this Agreement shall be sent, in the case of a notice or communication from the Secretary of State to the Trustees and Diocesan Authority at their registered offices or such other addressees/addresses as may be notified in writing from time to time by the Trustees and Diocesan Authority and, in the case of a notice or communication from the Trustees and Diocesan Authority to the Secretary of State to Head of Academies Division, Department for Education, Sanctuary Buildings, Great Smith Street, London SW1P 3BT; or such other address as may be notified from time to time by the Secretary of State and where any such notice or communication is sent by post, unless the contrary is proved, it shall be deemed, subject to satisfactory proof of posting, to be effected at the time at which the letter would be received in the ordinary course of post.

28) a) The Company shall not enter into any other agreement with any person, the terms of which are inconsistent with, or contrary to, the terms of this agreement.

b) If the Company, in breach of clause 28(a), enters into such an agreement, then, in so far as any clause or clauses of that agreement are inconsistent

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with, or contrary to, the terms of this agreement ('the conflicting clauses') the parties agree that, to the extent they are lawfully permitted to do so, they will:

i) treat the conflicting clauses as if they were void and of no effect;

ii) not rely on or enforce the conflicting clauses; and

iii) not act in accordance with the conflicting clauses.

29) No term of this Agreement is intended to give any entitlement as against any party to any person who is not a party to this Agreement and no term of this Agreement may be enforced by any person other than a party under the Contracts (Rights of Third Parties) Act 1999.

30) Save for clause 28 the obligations of the parties are several and for the avoidance of doubt none of the Company, Trustees or Diocesan Authority shall be deemed to be liable in respect of the acts or omissions of the other as between these parties and the Secretary of State.

31) For the avoidance of doubt nothing in this Agreement is intended to vary or amend any provision of the Funding Agreement or any obligation arising under it.

This Agreement was executed as a Deed on 24 August 2022

Executed on behalf of the Company by:

DocuSigned by:

[redacted]

5D99795A928E471.....

Director

DocuSigned by:

[redacted]

D09CF07F639C44C.....

Director

Executed on behalf of the Trustees by affixing the Common Seal of the Birmingham Roman Catholic Diocesan Trustees Registered in the presence of:

1997

[redacted]

Trustee

[redacted]

Trustee

Executed as a deed by the Archbishop of Birmingham

..[redacted]..

In the presence of

Witness Signature: [redacted]

Witness Name: [redacted]

Witness Address: [redacted]

Witness Occupation: Senior Office Administrator

The Corporate Seal of the Secretary of State for Education, hereunto affixed is authenticated by:

J. Miller

Duly Authorised

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Department for Education

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HM Land Registry
Official copy of title plan

Title number **WK447769**
Ordnance Survey map reference **SP3368SE**
Scale **1:1250**
Administrative area **Warwickshire : Warwick**

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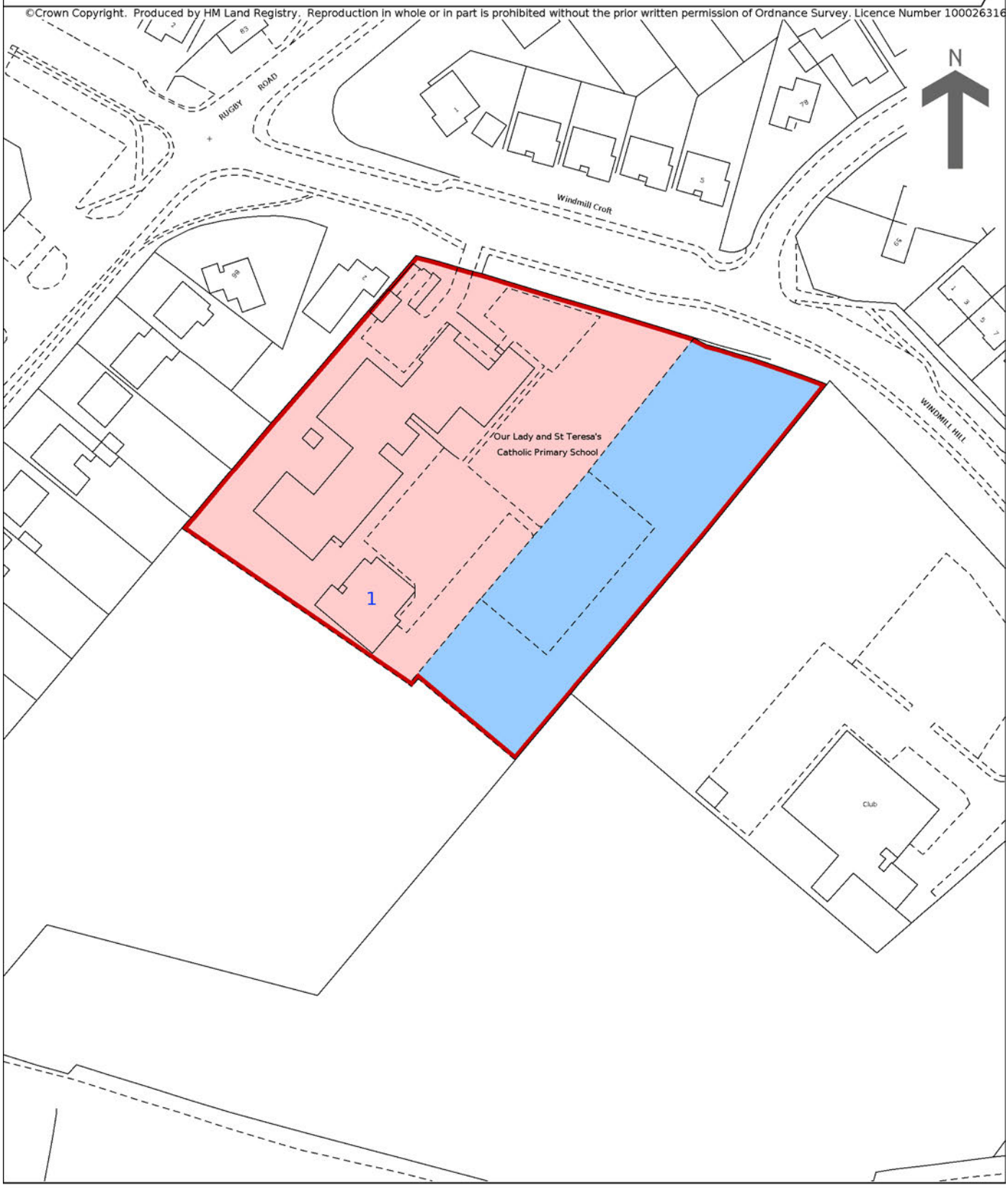

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HM Land Registry Official copy of title plan

Title number **WK447769**
Ordnance Survey map reference **SP3368SE**
Scale **1:1250**
Administrative area **Warwickshire : Warwick**

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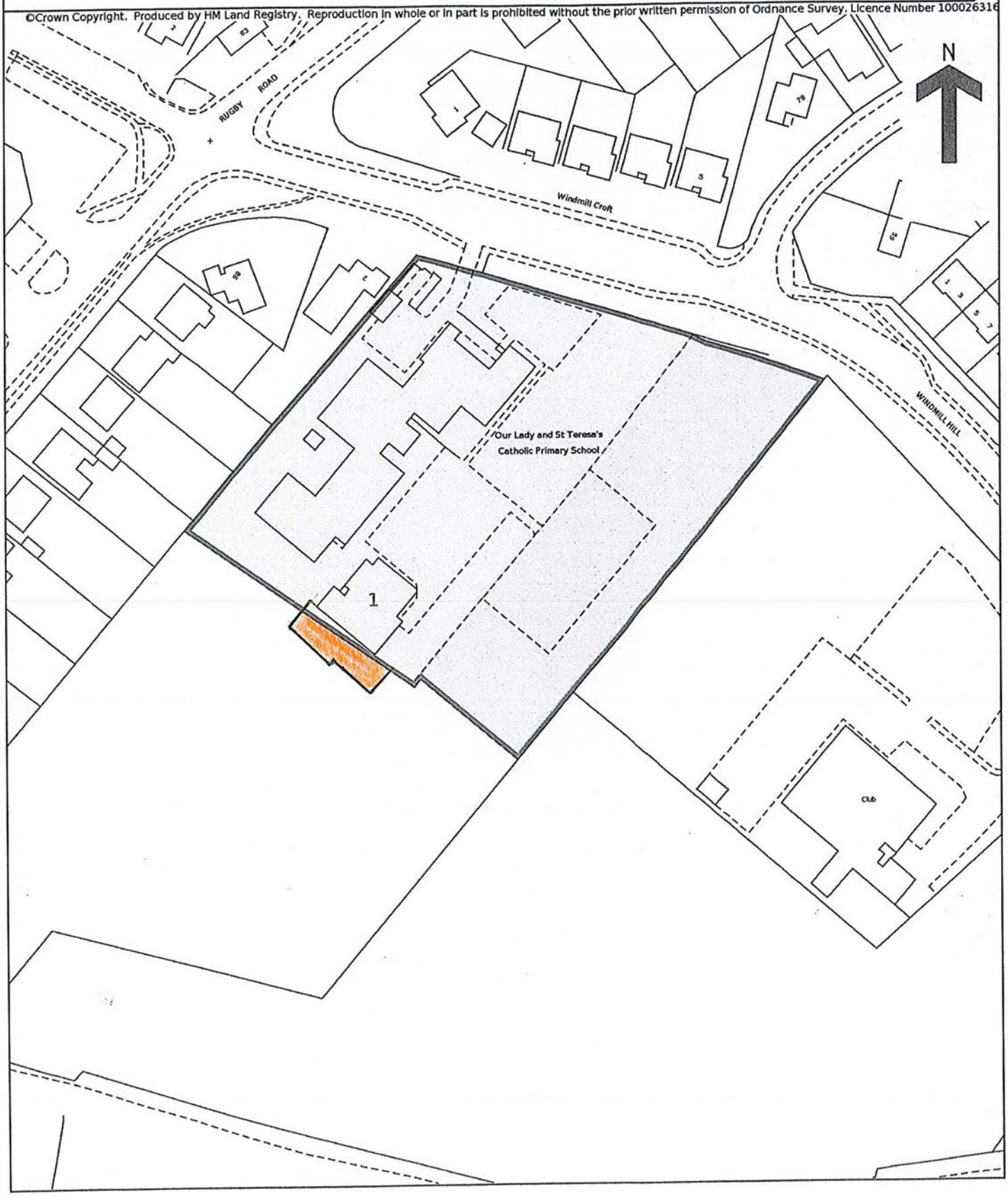

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