


<p style="text-align: center;">Individual Mayoral Decision</p> <p style="text-align: center;">August 2021</p>	
<p>Report of: James Thomas, Corporate Director Children and Culture</p>	<p>Classification: Unrestricted</p>
<p>Cyril Jackson primary school academy conversion</p>	

Lead Member	Cllr Asma Begum, Deputy Mayor and Cabinet Member for Children, Youth Services and Education
Originating Officer(s)	Layla Richards, Head of Strategy and Policy – Children and Culture
Wards affected	Limehouse
Key Decision?	Yes
Reason for Key Decision	Financial impact
Forward Plan Notice Published	29 July 2021 General Exception Notice
Strategic Plan Priority / Outcome	<p>Priority 1: people are aspirational, independent and have equal access to opportunities</p> <p>Priority 3: a dynamic, outcomes-based council using digital innovation and partnership working to respond to the changing needs of our borough</p>

Executive Summary

This report asks for Mayoral approval for completion of lease arrangements and commercial transfers related to the academy conversion of Cyril Jackson primary school. The school received an academy order from the Secretary of State on 19 March 2021 and has indicated its wish to convert to academy status and join the University Schools Trust (a Multi-Academy Trust) on 1 September 2021.

Once applications from school governing bodies have been approved by the Secretary of State the expectation is that local authorities will work with schools on all transfer matters.

Recommendations:

The Mayor is recommended to:

1. Authorise the grant of a 125-year lease to the University Schools Trust for Cyril Jackson primary school
2. Authorise the Corporate Director, Place, to agree final terms and

conditions for the grant of the new lease

3. Authorise the execution of any other land related agreement to allow for the University Schools Trust operation of the Academy from the transfer date
4. Authorise the council to enter into commercial and staffing transfer agreements on suitably agreed terms
5. Authorise the Corporate Director, Children and Culture, after consultation with the Corporate Director, Resources, and Divisional Director, Legal (Monitoring Officer), to enter into and undertake remaining issues and/or agreements associated with the conversion
6. Authorise the Divisional Director, Legal (Monitoring Officer), to execute all documentation required to implement the decisions
7. Authorise the Corporate Director, Resources, to execute the Local Government (Contract) Act 1997 Certificate required to implement the decisions
8. To note the equalities considerations as set out in Paragraph 5.1.

1 REASONS FOR THE DECISIONS

- 1.1 Cyril Jackson is a maintained community primary school and received an academy order from the Secretary of State for Education on 19 March 2021. The school intends to join the University Schools Trust (a multi-academy trust or MAT).
- 1.2 The school, which is judged to be outstanding by Ofsted, has indicated its wish to convert to academy status on 1 September 2021.

2 ALTERNATIVE OPTIONS

- 2.1 There is no alternative option to the planned course of action. Once applications from school governing bodies have been approved by the Secretary of State the expectation is that local authorities will work with schools on all transfer matters.

3 CYRIL JACKSON ACADEMY CONVERSION

- 3.1 Conversion usually involves two key transactions for the council, these being the land transfer and commercial transfer. The land transfer, as guided by the Department of Education (DfE), is by way of a 125-year lease for a peppercorn rent. The commercial transfer deals with the transfer of existing

contracts, staff and associated assets and is affected by a Commercial Transfer Agreement (CTA).

Conversion process – land

- 3.2 As Cyril Jackson is a community school the council own most of the land which is being used by the school except some pieces of land that are unregistered. Legal Services are making the necessary applications to the Land Registry to regularise the Council's ownership to the unregistered lands.
- 3.3 The expectation is that the council will transfer the land to the academy trust – in this case the University Schools Trust. The guidance from the DfE is that this is to be by way of a 125-year lease for a peppercorn rent. Failure to transfer or to delay transferring can lead to intervention by the DfE under the Academies Act 2010. Each lease seeks to protect the council's interests in the following ways:
- The stipulated use in the lease is for education purposes and community, fundraising and recreational purposes ancillary to the provision of education services
 - Not to assign/transfer the lease to anybody other than the successor charitable or public body approved by the Secretary of State
 - Not to take out any charge or loan on the school without prior approval by the council
 - Not to underlet the whole of the school or underlet part for a term in excess of seven years
 - The lease will automatically end upon termination of the funding agreement between the school and the DfE.
- 3.4 The 125-year lease is in line with a prescribed template provided by the DfE. Following discussion with the school and the UST about the adjacent children's centre the agreed council position is that the children's centre will not be included in the area of land being demised under the lease.

Conversion process – commercial transfer

- 3.5 In general, the Commercial Transfer Agreement (CTA) is intended to ensure that all information on the transferring staff is recorded and transferred to the academy trust so that the appropriate arrangements for payment of salaries, pension contributions, etc. can be made. The CTA also includes details of any assets, liabilities and contracts that will transfer to the academy trust and those that will remain with the local authority.
- 3.6 Staff are entitled to transfer under their existing employment terms and conditions, under the Transfer of Undertakings Protection of Employment (TUPE) regulations. The University Schools Trust must inform the local authority, as the current employer, in writing of any measures it envisages taking in relation to the staff after transfer. The council understands that existing measures will remain on transfer. There are a total of 87 employees transferring from the local authority to the UST.

- 3.7 Consultation with staff has been led by the school and its governing body.
- 3.8 Upon achieving Academy status under the Academies Act 2010, a maintained school becomes an academy and the school is no longer funded through the local authority and it will automatically be a separate Scheme Employer as listed in Part 1 of Schedule 2 of the Local Government Pension Scheme Regulations 2013.
- 3.9 All non-teaching staff (including new employees) have a legal right to become members of the Local Government Pensions Scheme (LGPS). At the date of conversion to Academy status, all existing members of the LGPS who transfer over to the Academy will have continuity of membership in the LGPS. Any non-pensionable eligible employees will need to be enrolled automatically at date of conversion.
- 3.10 Hence support staff who transfer will simply continue their membership of the Local Government Pension Scheme (LGPS) as an academy is a scheme employer in the LGPS.
- 3.11 All future non-teaching staff and support staff appointments carry contractual eligibility to be a member of the LGPS and must be enrolled into the Scheme. The Academy has no discretion to provide alternative pension arrangements for their employees who are eligible to be members of the LGPS. On conversion, a separate contribution rate will need to be calculated by the relevant LGPS fund.
- 3.12 The contribution rate is made up of two elements; the cost of future benefit accrual and a proportion of the cost of meeting the past service deficit. In setting the rate for recovery of the past service deficit, specific advice has been sought in relation to pensions liabilities. The recommended approach, in accordance with guidance from the Pensions Committee is to allow for a twenty-year recovery period for the amount of deficit attributable to deferred and pensioner members of the LBTH Local Government Pension Scheme, to all schools converting to academies on or after 1st April 2017.
- 3.13 The academy is also required to ensure procedures are in place to ensure all data required, by the 2013 LGPS regulations, is passed to the Pension Fund accurately and on time via the iconnect pensions portal.
- 3.14 Access to the Teachers' Pension Scheme (TPS) must also be provided for teaching staff, the academy must remit contributions to the TPS.
- 3.15 Upon conversion, teaching staff who have previously opted out of the TPS or are in non-pensionable employment (part-time employment or re-employment which commenced pre 1 January 2007 with no election to join), they must be contractually enrolled into the Teachers' Pension Scheme but employees can choose to opt out.

- 3.16 The school has a number of Service Level Agreements (“SLAs”) with the Council. It may be that the school will confirm its intention to carry on with these arrangements post conversion, at which point it will be able to enter into new contracts with the Council, like any other school.

Conversion Process – Contracts

- 3.17 All contracts and licences currently held by the schools are being confirmed, along with the schools’ intentions regarding the continuation of the contracts.
- 3.18 If the contracts are to cease, any remaining liabilities will be transferred via the CTA. All continuing contracts will be assigned.

4. CONTINUING RELATIONSHIP

Admissions

- 4.1 All academies are required to adopt clear and fair admission arrangements in line with admissions law and the School Admissions Code. When community or voluntary controlled schools convert, they become admission authorities and therefore responsible for their own pupil admission arrangements. This will involve periodic consultation as well as reviewing and publishing their admission arrangements on an annual basis.
- 4.2 The Council retains the responsibility for ensuring that all children and young people in the borough have a school place. On conversion Cyril Jackson has confirmed that it will continue with the admissions policy and arrangements that the Local Authority uses for its community primary schools. This includes the use of priority admission ‘catchment’ areas as part of its oversubscription criteria.

Special Education Needs and Disability

- 4.3 Local authorities retain responsibility for pupils with Education, Health and Care (EHC) plans in academies on the same basis as for such pupils in maintained schools. The LA will continue to commission special places and they must:
- Ensure that academy pupils are appropriately assessed and have EHC plans as part of the entry criteria
 - Consider parents' representations for an academy to be named on an EHC plan and act reasonably in considering those representations
 - Fund any individually assigned SEN Top up resources
 - Monitor arrangements for SEN pupils in academies
 - Conduct reviews of the SEN statements or EHC plans of children in academies at least annually and each six months for children under five.

- 4.4 There is no specific guidance in respect of converting schools with special units and it is assumed that the guidance in relation to maintained special schools wishing to convert to academy status applies.
- 4.5 Cyril Jackson primary school has a resource base provision for children with speech, language and communication needs. The local authority commissions 20 places for children with a range of speech and language needs and provides funding for speech and language therapists to be on site as part of the provision. The resource base does not cater for children with Autism Spectrum Disorder (ASD) although it is possible that some of the children within the resource have as yet, undiagnosed ASD.
- 4.6 The guidance states that they will not be able to change their characteristics, including the number of places for which they are funded and the types of special educational needs they provide for, as part of the conversion process. The number of pupil places for which the academy will be funded will be based on the number of places for which the special school is funded currently.
- 4.7 Any future proposed change to their characteristics would have to be considered by the Education Funding Agency (EFA), with the final decision resting with the Secretary of State. Any special provision which is an academy wishing to change its designation must involve the Council in the consultation process that it leads. This would also apply to the resource base provision.

Exclusions

- 4.8 The DfE statutory Guidance on Exclusion is equally applicable to Academies and Free Schools. Whilst academies are not required to have LA representation at exclusion review hearings, parents can request the attendance of the LA. Schools often seek advice on the use of exclusions especially as much greater emphasis is now placed on avoiding indirect (or direct) discrimination against vulnerable groups of pupils. Where the review process finds that an exclusion has not been carried out correctly there can be additional financial implications for the school, on top of any funding that would normally follow an excluded pupil.

Trading

- 4.9 The Council will continue to offer a range of support services to academies and free schools on a traded basis. Academies are currently charged an additional 10% for services as there are additional administrative costs to the Council. It is proposed that any transferrable SLAs are honoured at current rates until the end of the academic year.

School Forum

- 4.10 Under the School Forum Regulations 2012, the Council was required to secure representation from academies in proportion to the number of

pupils. The LBTH School Forum reviews the membership regularly to ensure proportionality and makes the appropriate changes to membership.

Governance

- 4.11 The Governing Body of an academy must currently have two parent governors.

Insurance

- 4.12 Schools must ensure that adequate insurance cover has been arranged prior to conversion, to take effect from midnight at the date of conversion. The DfE has produced a guidance note on the issues arising from this and the way in which costs are reimbursed.

Landlord responsibilities

- 4.13 Whilst there is a lease of the buildings and land for 125 years, the Council retains the responsibility for landlord functions under all academy leases. In general terms this is about ensuring the academy has adequate insurance, due regard to health and safety of staff and pupils, maintains the buildings in fit and proper state etc.

Policies

- 4.14 Academies are required to have a number of policies and other documents in place, by law. This includes, but is not limited to, policies for admissions arrangements, data protection, school complaints, charging and remissions, school behaviour, special educational needs and disability, health and safety, school exclusion, child protection and health and safety. Academies are also covered by the Public Sector Equality Duty. Unlike local authority maintained schools academies are not required to have a sex and relationships education policy.

5. EQUALITIES IMPLICATIONS

- 5.1 Cyril Jackson primary school works collaboratively to enable all children to experience the best possible educational opportunities, outcomes and life chances. It is also a member of the Tower Hamlets Education Partnership (THEP) which brings together the large majority of schools in the borough and facilitates effective partnership working across schools. Equality and inclusion is one of the THEP's four core values.

6. OTHER STATUTORY IMPLICATIONS

Safeguarding

- 6.1 Statutory guidance, 'Keeping Children Safe in Education 2021', comes into force on 1 September 2021 and will apply to all schools. It sets out the legal duties schools must follow to safeguard and promote the welfare of children and young people under the age of 18. On conversion, the local authority will continue to work collaboratively with the school to safeguard and promote the welfare of all children in the borough.

7. COMMENTS OF THE CHIEF FINANCE OFFICER

- 7.1 Revenue costs of funding the School will be met from the Dedicated Schools grant (DSG) however they will no longer be provided directly by Tower Hamlets to the School but will be funded from the Education and Skills Funding Agency (ESFA). This is done through recouping the calculated budget of the school from the gross DSG and the net grant paid to the council. Tower Hamlets council will retain the responsibility of funding additional costs in relation to pupils with EHC plans. The council will no longer receive capital funding for school maintenance which would be funded to the Academy trust and would therefore no longer have responsibility for the maintenance of the buildings. Any required capital investment to secure additional places in the authority would continue to be funded by the council if this was to secure the council's statutory basic needs duty. A contribution made by the school to support central services and delegated budgets would cease from the date of conversion which equates to £13,652 of lost income to the council.

8. COMMENTS OF LEGAL SERVICES

- 8.1 When the Secretary Of State grants an academy order under the law the Council is legally obliged to provide appropriate levels of assistance relating to the conversion of the school into an Academy. The contents of this report shows compliance with this duty although it should be noted that the secretary of state has further powers that could be invoked should it be necessary to enforce the transfer of assets and other items in order to form the new academy.
- 8.2 The Council is (in effect) required to transfer to the academy trust such land and other assets and items as the are held by the Council for the purposes of running Cyril Jackson School. DFE guidance goes further to say that these are assets and other items which are required to ensure that on the first day following the conversion the Academy has the same level of facilities as the maintained school previously. The proposed commercial transfer agreement and land transactions will put this transfer into effect.
- 8.3 It is anticipated that the existing staff at the school will transfer to the academy under the Transfer Of Undertakings (Transfer of Employment) Regulations

2006. Therefore, the Council is undertaking appropriate levels of consultation with affected members of staff and is compliant with the requirements of the regulations.

- 8.4 Access to the Local Government Pension Scheme is expected. However, admission to the scheme will be subject to separate approvals and admission agreement in accordance with the relevant pensions law.
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Linked Reports, Appendices and Background Documents

Linked Report

- NONE

Appendices

- NONE

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

- NONE

Officer contact details for documents:

N/A