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| <b>Cabinet</b>  | <br><b>TOWER HAMLETS</b> |
| 15 December 21  |   |
| <b>Report of:</b> James Thomas, Corporate Director Children and Culture | <b>Classification:</b><br>Unrestricted  |
| <b>Canon Barnett primary school academy conversion</b>                  |   |

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| <b>Lead Member</b>                       | <b>Cllr Asma Begum, Deputy Mayor and Cabinet Member for Children, Youth Services and Education</b>  |
| <b>Originating Officer(s)</b>            | Layla Richards, Head of Strategy and Policy – Children and Culture  |
| <b>Wards affected</b>                    | Spitalfields & Banglatown   |
| <b>Key Decision?</b>                     | No  |
| <b>Reason for Key Decision</b>           | This report has been reviewed as not meeting the Key Decision criteria.   |
| <b>Forward Plan Notice Published</b>     | 27 September 2021   |
| <b>Strategic Plan Priority / Outcome</b> | Priority 1: people are aspirational, independent and have equal access to opportunities<br>Priority 3: a dynamic, outcomes-based council using digital innovation and partnership working to respond to the changing needs of our borough |

### Executive Summary

This report asks for Cabinet approval for completion of lease arrangements and commercial transfers related to the academy conversion of Canon Barnett primary school. The school received an academy order from the Secretary of State on 24 June 2021 and has indicated its wish to convert to academy status and join the Mulberry Schools Trust (a Multi-Academy Trust) on 1 February 2022.

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 Cabinet is recommended to:

1. Authorise the grant of a 125-year lease to the Mulberry Schools Trust for Canon Barnett 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 Mulberry 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. Note the equalities considerations as set out in Paragraph 5.1.

## **1 REASONS FOR THE DECISIONS**

- 1.1 Canon Barnett is a maintained community primary school and received an academy order from the Secretary of State for Education on 24 June 2021. The school intends to join the Mulberry Schools Trust (a multi-academy trust or MAT).
- 1.2 The school, which is judged to be good by Ofsted, has indicated its wish to convert to academy status on 1 February 2022.

## **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 CANON BARNETT 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 The expectation is that the council will transfer the land to the academy trust – in this case the Mulberry 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.

3.3 The 125-year lease is in line with a prescribed template provided by the DfE.

### Land swap

3.4 Alliance Asia Property Incorporated (Alliance) have agreed to purchase the Canon Barnett School Playground (light blue area on plan at appendix 1) for £8.8m plus overage. Alliance have further agreed to transfer a piece of land for nil value which will be the new school playground (which is the green area on plan). The area being transferred is valued at circa £3m. The total consideration to be received is therefore £8.8m (in respect of the sale of the playing field) plus £3m (in respect of the value of the land to be acquired for the new playground) which equates to a total of £11.8m.

3.5 The land swap is happening in parallel with the academy conversion. If the academy lease is put in place before the land swap has taken place the lease will need to be surrendered prior to the land swap.

### Conversion process – commercial transfer

3.6 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.

- 3.7 Staff are entitled to transfer under their existing employment terms and conditions, under the Transfer of Undertakings Protection of Employment (TUPE) regulations. The Mulberry 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 and that the Trust will be adopting all relevant council policies and procedures. There are a total of 43 employees transferring from the local authority to the MST.
- 3.8 Consultation with staff has been led by the school and its governing body.
- 3.9 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.
- 3.10 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.
- 3.11 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.
- 3.12 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.
- 3.13 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 1<sup>st</sup> April 2017.
- 3.14 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.

- 3.15 Access to the Teachers' Pension Scheme (TPS) must also be provided for teaching staff, the academy must remit contributions to the TPS.
- 3.16 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.
- 3.17 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

- 3.18 All contracts and licences currently held by the schools are being confirmed, along with the schools' intentions regarding the continuation of the contracts.
- 3.19 If the contracts are to cease, they will cease prior to transfer and any liabilities accounted for from the schools pre-transfer budget.

### **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 Canon Barnett 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.

### Exclusions

4.4 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

4.5 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

4.6 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

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

### Insurance

4.8 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

4.9 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

4.10 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 Canon Barnett 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**

This section of the report is used to highlight further specific statutory implications that are either not covered in the main body of the report or are required to be highlighted to ensure decision makers give them proper consideration. Examples of other implications may be:

- Best Value Implications,
- Consultations,
- Environmental (including air quality),
- Risk Management,
- Crime Reduction,
- Safeguarding.
- Data Protection / Privacy Impact Assessment.

## 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 councils statutory basic needs duty. A contribution made by the school to support central services and de delegated budgets would cease from the date of conversion which equates to £11,160 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 Canon Barnett 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 if the trust has not already achieved admitted body status.
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**Linked Reports, Appendices and Background Documents**  
**Appendix 1 – Canon Barnett Land Swap Diagram**

**Linked Report**

- NONE

**Appendices**

- Appendix 1 – Site plan.

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

- NONE

**Officer contact details for documents:**

N/A