


Cabinet Decision	 TOWER HAMLETS
24 July 2024	
Report of: Steve Reddy, Corporate Director, Children Services	Classification: Unrestricted
Conversion to Academy Status: Columbia Primary School and Hermitage Primary School	

Lead Member	Councillor Maium Talukdar, Cabinet Member for Education and Lifelong Learning
Originating Officer(s)	Terry Bryan, Service Head for Pupil Access and School Sufficiency and Tracy Routledge, Head of School Building Development.
Wards affected	All wards
Key Decision?	Yes
Reason for Key Decision	Significant impact on wards
Forward Plan Notice Published	4 June 2024
Exempt information	N/A
Strategic Plan Priority / Outcome	Accelerating Education

Executive Summary

The purpose of this report is to formally notify Cabinet of the Academy Orders issued by the Secretary of State for Education in respect of two council maintained community schools, Columbia and Hermitage, and to obtain the necessary authority to delegate responsibility required to named officers to facilitate the academy conversion process for and on behalf of the Council.

Recommendations:

This report makes the following recommendations to the Mayor in Cabinet:

1. Note the decisions of the Secretary of State for Education on 13 December 2023 and 24 April 2024, to approve the applications from the Governing Bodies of Columbia and Hermitage to convert the schools to academy status, and that the Council has a statutory duty under law to facilitate the conversion process.
2. Delegate to the Corporate Director for Children's Services, in consultation with the Executive Mayor, the overall management and timing of the conversion process working with all relevant parties.
3. Authorise the Council to enter into a commercial transfer agreement on suitably agreed terms, as well as any other necessary agreements with relevant third parties, as described in paragraphs 3.4 – 3.25. The School Agreement, The Principal Agreement, The Deed of Variation to the Project Agreement and the LGCA Certificate.
4. Authorise the Council to negotiate with the Academy Sponsor – London East Teacher Training Alliance (LETTA) Trust and agree the detailed terms of the leases for the Council owned land, to allow for the operation of the Academy from the transfer date. To grant these leases for a period of 125 years for a 'peppercorn rent', in accordance with the relevant standard documentation produced by the Department for Education
5. Authorise the Council to negotiate and conclude the terms for a Licence for Alterations to sit alongside the 125-year Lease at the Hermitage site to capture the works currently being undertaken pursuant to the building contract for the SEN Unit.
6. Authorise the Council to negotiate and conclude a Deed of Assignment of the current Council underlease at the Columbia site, to be entered into alongside the 125-year Lease.
7. Authorise the Divisional Director, Legal (Monitoring Officer), to execute all documentation required to implement the decisions
8. Note the equalities considerations as set out in Paragraph 5.1.

1 REASONS FOR THE DECISIONS

- 1.1 The Council has a statutory duty to facilitate the conversion of a school into an academy when an Academy Order has been issued by the Secretary of State. Under such a circumstance, agreement of Cabinet is required to enable officers to take necessary steps to facilitate the conversion of such schools to academy status as required by law, on receipt of the Academy Order.

2 ALTERNATIVE OPTIONS

- 2.1 The legislative framework for schools converting to Academy status does not provide the Council with options other than to facilitate the processes leading up to conversion by working in collaboration with all relevant stakeholders to ensure a smooth transfer of staff, contracts, services and assets to the Academy Sponsor by the agreed conversion date.

3 DETAILS OF THE REPORT

Background and Context

- 3.1 The Academies Act 2010 makes provision for existing maintained schools to convert to Academy status. Columbia and Hermitage Schools are currently maintained by the local authority. They have applied to convert to academy status and join the LETTA Multi Academy Trust. Their applications were initially reviewed by the Department of Education (DFE) and subsequently approved by the Secretary of State for Education. Academy Orders were then issued for Columbia on the 13 December 2023, and for Hermitage on 25 April 2024. These are provided in the Appendices to this report.
- 3.2 The DFE sets out the process of academy conversion and the key dates by which these must be completed, relative to chosen conversion date(s). In the case of these two schools there is an expectation that the conversion date will be as soon as possible, as it is recognised that any unnecessary delays would not be in the best interests of the parties involved in the conversion process, particularly the schools whose main focus is the provision of high quality education. All parties are currently in agreement that it would be possible to complete the conversion process for the two schools by 1 September 2024.
- 3.3 In carrying out the requirements of the Academies Act 2010 the Council is obliged to cease maintaining a school on the date it opens as an Academy and must take all reasonable steps to facilitate the conversion of a school into an Academy once an Academy Order has been made. In this regard, all necessary legal agreements associated with the conversion must be completed and confirmed to the DfE well in advance so that the conversion process can be completed by 1 September 2024.

Transfer of Staff, SLAs and Contracts

- 3.4 The process for academy conversions makes provision for a Commercial Transfer Agreement (CTA) between the current employer and the Academy Sponsor (LETTA Trust) of a converting school to deal with transfer of staff, services and contracts. The detailed arrangements for this are part of model agreements published by the DfE.
- 3.5 In general, the 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 LETTA 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 LETTA Trust will be adopting all relevant Council policies and procedures. Consultation with staff has been led by each of the schools and their governing bodies.
- 3.7 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.

- 3.8 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.
- 3.9 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.
- 3.10 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.
- 3.11 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.
- 3.12 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.
- 3.13 Access to the Teachers' Pension Scheme (TPS) must also be provided for teaching staff, the academy must remit contributions to the TPS.
- 3.14 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.
- 3.15 The schools are provided with a number of services through Service Level Agreements ("SLAs") with the Council. It may be that the schools will confirm their intention to carry on with these arrangements post conversion, at which point they will be able to enter into new SLAs with the Council, like other schools.
- 3.16 All other contracts and licences currently held by the schools are being confirmed, along with the schools' intentions regarding the continuation of the contracts post conversion.
- 3.17 If the contracts are to cease, they will cease prior to transfer and any liabilities accounted for from the schools pre-transfer budget.

Transfer of Land and Buildings

3.18 The expectation is that the Council will transfer the land to the academy trust – in this case the LETTA Trust. The guidance from the DfE is for this 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 land without prior approval by the council;
- Not to underlet the whole of the land 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.

3.19 The 125-year leases for each school will be in line with a prescribed template provided by the DfE, with a variation to the lease for Columbia Primary School as follows.

PFI contract arrangements – Columbia Primary

3.20 Columbia Primary School is currently included in the Tower Hamlets Grouped Schools PFI contract. The DfE has established arrangements for these circumstances whereby the school will remain part of the contract and new contractual arrangements between the school, the Council and the DfE are put in place to ensure that the existing PFI contract arrangements can continue. The PFI contract remains between the Council and the contractor. The new agreements will ensure that the Council will continue to receive the financial contributions from the school as it would have done without the academy conversion, and that there is no impact on the contractor or its funders.

- (i) The School Agreement: this is between the Council and the LETTA Trust. It sets out the school's liability for the continuing financial contribution for the contract services and the school's obligations relating to the contract.
- (ii) The Principal Agreement: this is between the DfE, the Council and the LETTA Trust. It provides that the Council can call on the DfE should the academy fail in its obligations, including payments, in relation to the contract.
- (iii) Deed of Variation to the PFI contract: this is between the Council and the PFI contractor. It allows for the change of status of a school, requires the LETTA Trust to be named on insurances and allows the contractor to retain access to the transferred land in order to provide the services. The Deed also includes (at Schedule 2) a Local Government (Contract) Act Certification, which certifies the vires (power) of the Council to enter into the contract.
- (iv) Deed of Assignment of the Council's PFI Underlease: the Deed will be entered into between the Council and the LETTA Trust and will assign to the LETTA Trust the Council's current Underlease of the Columbia site.

- 3.21 These documents will remain in force until the expiry of the Council's Grouped Schools PFI contract in 2027/28.
- 3.22 The 125 year lease granted to Columbia Primary School will therefore be granted subject to the PFI provisions set out above and to a principle already agreed and approved in prior PFI academy conversions

Building Works and SEN Resource Provision – Hermitage Primary

- 3.23 There is at present a building project in progress to provide an extension block at Hermitage Primary School, to house its SEN Resource for the Local Authority, which the Council is funding. These works will not be finished until after the academy conversion. The Council will therefore retain responsibility for the building contract and will assign the benefits to the academy trust in due course.
- 3.24 The CTA will include a separate Service Level Agreement between the Council and Hermitage Primary School, setting out the roles, responsibilities, accountabilities and funding conditions for both parties in relation to the delivery of the SEN Resource Provision on behalf of the Local Authority and for children across the borough.
- 3.25 The Council and the LETTA Trust will enter into a Licence for Alterations which will be entered into alongside the 125-year Lease and will provide for the works to be carried out on the site for the SEN Unit in accordance with the building contract. Upon conclusion of the works these will form part of the site covered by the 125-year Lease.

4 CONTINUING RELATIONSHIP FOLLOWING CONVERSION

Pupil Admissions

- 4.1 Academies are required to adopt clear and fair admission arrangements in line with school admissions law and the School Admissions Code. This will involve periodic public 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 these academy schools will continue to be part of the Council's coordinated admissions arrangements for the normal points of school entry, as well as participate in the local 'Fair Access' arrangements to ensure that children and young people can be placed in school quickly.

Pupils with Special Education Needs and Disabilities

- 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 Council 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 EHC plans for children in academies at least annually and each six months for children under five.

Pupil Exclusions

- 4.4 The DfE statutory Guidance on Exclusion is equally applicable to Academies and Free Schools. Whilst academies are not required to have Local Authority (LA) representation at exclusion review hearings, parents can request the attendance of the LA's Exclusions Officer. 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.

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 Tower Hamlets 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 Where there is a lease of the buildings and or land for 125 years, the Council retains the responsibility for landlord functions under this arrangement. In general terms this is about ensuring the academy has adequate insurance, due regard to health and safety of staff and pupils, and maintains the buildings in a 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 (PSED), and they must also have a policy in place for relationships education, relationships and sex education (RSE) and health education.

5. EQUALITIES IMPLICATIONS

- 5.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no apparent equality impact on end users.

6. OTHER SPECIFIC STATUTORY IMPLICATIONS

Safeguarding

- 8.1 The statutory guidance, 'Keeping Children Safe in Education', 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 these schools to safeguard and promote the welfare of all children in the borough.

Data Protection

- 8.2 The terms of the CTA will include the sharing of personal data relating to staff and pupils at the schools being transferred, in accordance with the requirements of the relevant data protection legislation.

7. COMMENTS OF THE CHIEF FINANCE OFFICER

- 7.1 When schools convert to academies, the revenue funding will still be met from the allocated Dedicated Schools Grant (DSG) but it will be paid directly to them by the Education and Skills Funding Agency and not by the Local Authority. The calculated budgets for the schools are recouped from the gross DSG and the net grant is then paid to the Council. A contribution made by the schools to support central services and de delegated budgets would cease from the date of conversion. If the schools converted on 1 September 2024, this would equate to a combined reduction in income of £25,571 to the Council.
- 7.2 Tower Hamlets Council will retain the responsibility of funding additional costs in relation to pupils with EHC plans.
- 7.3 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 statutory basic needs duty.
- 7.4 As part of the Council's Capital Programme, £3m has been approved for works to the Hermitage SEN resource provision. To date, £0.52m has been spent on this project with the remaining budget profiled to be spent in 2024/25. The £3m is financed through DfE grants - £2.855m through the High Needs Provision Capital Allocation (HNPCA) and £145k through the Special Provision Capita Fund (SPCF). As works will not be completed until after the Academy conversion, it is prudent that the CTA ensures that a supplementary contract is in place to enable the works to be completed, along with suitable provisions of warranty and indemnity to protect the Council's capital investment and any future liabilities.
- 7.5 Regarding the Columbia Primary School's PFI contract; post conversion, the academy would continue to be part of the contract and make contributions on the same basis as maintained schools.

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 required to transfer to the academy trust such land and other assets and items as are held by the Council for the purposes of running the schools immediately prior to the date of academy transfer. 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 (where the land is owned by the Council) will put this transfer into effect.
- 8.3 The principal area of land used as a school is owned by the Council. Therefore the Council will need to grant a lease of the land to the Trust in order to comply with the academy order
- 8.4 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.
- 8.5 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.

Appendices

Appendix A	Academy Order Columbia Primary School
Appendix B	Academy Order Hermitage Primary School

Linked Reports and Background Documents

Linked Report

None

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

NONE

Officer contact details for documents: N/A