

LONDON BOROUGH OF TOWER HAMLETS
MAYORAL DECISION PROFORMA

Mayoral Decision Log No: 010

**Title: Academy Conversion: Sir William Burrough and Bethnal Green
Technology College**

Is this a Key Decision: Yes

UNRESTRICTED

1. EXECUTIVE SUMMARY

- 1.1 The attached report seeks Mayoral approval under the constitution which requires authorisation for officers to complete the documentation to transfer land, staff and assets in relation to Academies at Sir William Burrough primary school and Bethnal Green Technology College created by the Secretary of State for Education.
- 1.2 The Governing Bodies of both schools resolved to convert to Academy status earlier this year and the Secretary of State approved both applications and issued Academy Orders were to the local authority. These orders require the Council to make the transfers in accordance with the Academies Act 2010. The Council has no legal choice in the matter and the secretary of State has reserve powers to effect the transfer where the Council fails to do so.
- 1.3 The Council has since this stage been working with the schools on matters related to academy conversion. The Council is required by the 2010 Act to proceed with these conversions and grant a 125 year lease for the community school land to the Academy Trust. Full details are set out in the report attached.

2. DECISION

- 2.1 The Mayor is asked to:

- Approve the land disposal for both schools and authorise the Assistant Chief Executive (Legal Services) in consultation with the Corporate Director Children Schools and Families to enter into 125 year leases to effect this disposal ;
- Approve the Council to put into effect the commercial and staffing transfers for both schools; and authorise the Assistant Chief Executive (Legal Services) in consultation with the Corporate Director Children Schools and Families to enter into all necessary documentation to achieve this
- Authorise the Corporate Director Children, Schools and Families, Assistant Chief Executive Legal Services and Corporate Director Resources to enter into and undertake remaining issues associated with the conversion for the two schools.

APPROVALS

1. Corporate Director

I approve the attached report and recommendations above for submission to the Mayor.

Signed *A. Lattin* Date *29/11/11*

2. Chief Finance Officer

I have been consulted on the above recommendations and my comments are included in the attached report.

Signed *C. Naylor* Date *29/11/11*

3. Assistant Chief Executive (Legal Services)

I have been consulted on the above recommendations and my comments are included in the attached report.

I confirm that this decision is urgent and subject to the 'General Exception' or 'Special Urgency' provision at paragraph 18 or 19 respectively of the Access to Information Procedure Rules.

Signed *Subella Rees* Date *29.11.11*

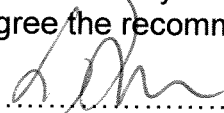
4. Chief Executive

I approve the attached report and recommendation for submission to the Mayor

Signed *A. Lattin* Date *29/11/11*

6. Mayor

I am strongly opposed to the creation of Academy Schools, the Council's Education service has achieved excellent results in improving school performance and achievements. However I am advised that I have no viable legal opportunity to challenge this process and therefore my authority is limited to that set out in the recommendations. However under para 8.4 I have insisted that the Council safeguard and maximise community use of these buildings in the leases. On that basis I agree the recommendations

Signed  Date 02/12/11

The Mayor of London Borough of Tower Hamlets

5. Chair of Overview and Scrutiny Committee

I am satisfied that the decisions proposed in the attached report to be decided by the Mayor cannot reasonably be deferred.

Signed Ann Jackson Date 29/11/11

Councillor Ann Jackson
Chair Overview and Scrutiny Committee

6. Mayor

I am strongly opposed to the creation of Academy Schools, the Council's Education service has achieved excellent results in improving school performance and achievements. However I am advised that I have no viable legal opportunity to challenge this process and therefore my authority is limited to that set out in the recommendations. On that basis I agree the recommendations

Signed Date

The Mayor of London Borough of Tower Hamlets

Committee/Meeting: Mayoral decision	Date: November 2011	Classification: Unrestricted	Report No:
Report of: Corporate Director Children, Schools and Families Assistant Chief Executive, Legal Services Originating officer(s) Kate Bingham, Acting Service Head Resources, Children, Schools and Families		Title: Academy Conversion: Sir William Burrough and Bethnal Green Technology College Wards Affected: All	

REASONS FOR URGENCY

The report could not be delayed until the next Cabinet meeting (December 2012) because the Secretary of State for Education requires the first transfer to take place by 1st December 2011 and the second by 1st January 2012 and transfer issues need to be resolved prior to conversion. The decision is subject to the call-in procedure but as the two LBTH maintained schools are planning to convert to academy status on 1 December 2011 and 1 January 2012 the consent of the Chair of Overview and Scrutiny to an urgent decision has been obtained.

1. SUMMARY

- 1.1 This report asks for Mayoral approval for the land and commercial transfer related to the academy transfer of Sir William Burrough primary school and Bethnal Green Technology College (secondary).

2. DECISIONS REQUIRED

The Mayor is asked to:

- 2.1 Approve the land disposal for both schools and authorise the Assistant Chief Executive (Legal Services) in consultation with the Corporate Director Children Schools and Families to enter into 125 year leases to effect this disposal ;
- 2.2 Approve the Council to put into effect the commercial and staffing transfers for both schools; and authorise the Assistant Chief Executive (Legal Services) in consultation with the Corporate Director Children Schools and Families to enter into all necessary documentation to achieve this
- 2.3 Authorise the Corporate Director Children, Schools and Families, Assistant Chief Executive Legal Services and Corporate Director Resources to enter

into and undertake remaining issues associated with the conversion for the two schools.

3. REASONS FOR THE DECISIONS

- 3.1 Earlier this year the Governing Bodies for Sir William Burrough and Bethnal Green Technology College passed resolutions in favour of academy conversion and formally applied for Academy status with the Department for Education (DfE). Both applications were subsequently approved by the Secretary of State and Academy Orders were issued to the Council. At this point the Council had to work with both schools on all matters of transfer.

4. ALTERNATIVE OPTIONS

- 4.1 There is no alternative to the planned course of action. Once the application from a Governing Body has been approved by the Secretary of State the expectation is that the local authority will work with the school in all transfer matters. This means that the community school land, owned by the local authority, will normally be leased to the Academy Trust on a 125 year lease to be used for the purposes of the school. The Secretary of State also has the power to direct the transfer of public land if necessary.

5. BACKGROUND

- 5.1 Academy schools were introduced by the previous government with a focus on raising standards in underperforming schools. Under the coalition government the policy has been extended to all schools with the Education Bill making provision for the expansion of the academies programme. As at 1 November 2011 there were 1,419 Academies open in England. This includes both the sponsored type of Academy under the previous government's programme and more recent converter Academies.
- 5.2 Tower Hamlets, unlike many other areas, has had no Academy Schools to date. Sir William Burrough and Bethnal Green Technology College are therefore the first schools in the borough to make the conversion.
- 5.3 Academy orders were issued by the Secretary of State for Sir William Burrough and Bethnal Green Technology College on 29 July 2011 and 22 August 2011 respectively. Following receipt of the Academy Orders the local authority has been required to work with the two schools on matters related to land, commercial and staffing transfer.
- 5.4 The conversion dates we are obliged to work towards are 1 December 2011 for Sir William Burrough and 1 January 2012 for Bethnal Green Technology College. On conversion the local authority will cease to maintain these schools.

6. KEY ISSUES

6.1 The Council is required by the Academies Act 2010 to proceed with these conversions. The significant effect on the Council is that the Council will cease to receive funding to maintain the schools and the academies will receive their funding directly from the DfE.

6.2 The conversion occurs by two main transactions for the Council. These are the land transfer and the commercial transfer; the commercial transfer being the transfer of existing contracts, staff, associated goods and also the agreement of the services still to be provided by the Council for example, HR and payroll.

Land Transfer

6.3 Both schools currently planning to convert are community schools and, as such, the land is owned by the local authority. The Council has an obligation under the Academies Act 2010 to transfer the land to the Academy Trusts on a 125 year lease for a peppercorn rent. Through each lease we have sought 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 educational services
- not to assign/transfer the lease to any body other than a successor charitable or public body approved by the Secretary of State
- not to take out any charge or loan on the schools 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 Department for Education (DfE).

If we do not enter into the Leases to transfer the land the Secretary of State for Education has the power to direct the transfer of the land and we will lose the benefit of the strict user clauses we have inserted to protect the land for education use.

Commercial transfer

6.4 The commercial transfer agreement documents the transfer of the assets from the existing school and the benefit of any contracts required after the conversion to the Academy Trust. These include an indemnity for the Council from obligations under existing contracts entered into by and on behalf of the schools

TUPE and transfer of staff

6.5 Until the point of conversion the Council remains the employer of staff in the two schools and has a responsibility to ensure that the Council's TUPE process is duly followed. Consultation lasts 28 days according to the Council's policy and has already taken place with staff at Sir William Burrough. Consultation commenced with the staff of Bethnal Green Technology College on 16 November 2011 and will be completed by 14 December 2011.

- 6.6 Neither school has proposed changes to the terms and conditions of staff through the conversion. No issues were raised during the consultation with Sir William Burrough staff. The consultation with Bethnal Green Technology College will involve the local authority and be run according to our TUPE policy.
- 6.7 All staff at both schools have been written to with the Notification of Transfer and Proposed Actions under the Transfer of Undertakings (Protection of Employment Regulations) 2006 (Reg. 13). A variation of employer letter will also be issued to all staff at both schools as soon as the Local Authority receives confirmation from the Secretary of State that funding agreements have been signed with the schools.

Pensions

- 6.8 Teachers working in an academy fall within the scope of the Teacher's Pension Scheme (TPS), just as if they were employed in a local authority maintained school. As an employer, the academy is responsible for remitting contributions to the TPS and for all other administrative responsibilities that fall to employers who employ teachers who are subject to the teachers' pension regulations.
- 6.9 In respect of non-teaching staff, an academy is a "Scheduled Body" within the Local Government Pension Scheme (LGPS) which allows non teaching staff to be members of the local authority's pension scheme, with members of staff transferring from the "old" maintained school to the "new" academy retaining their membership of the LGPS. New academy non-teaching staff also have the right to join the scheme.
- 6.10 As such, each 'converting' academy should have its own contribution rate calculated and will be responsible for a share of the LGPS deficit. In order to calculate that contribution rate, both the appropriate share of the deficit and the deficit recovery period must be determined and agreed by the Pension Committee.
- 6.11 The Pensions Committee on 17 November 2011, agreed a deficit recovery period of 14 years for the amount of deficit attributable to active transferring members and that attributable to deferred and pensioner members of the LGPS to Sir William Burrough Primary School and Bethnal Green Technology College on the creation of the two respective academies.

7. COMMENTS OF THE CHIEF FINANCIAL OFFICER

- 7.1 The school will receive funding based on the level of local authority funding already calculated for the school, and in addition they will receive a sum of money amounting to what is usually retained by the local authority to fund central services that the local authority will no longer provide. The academy will also receive grant funding to meet the additional VAT that they incur and

to meet their insurance costs. A grant of up to £25,000 is also available to assist with the cost of conversion.

7.2 In order to protect the Council, the appropriate financial arrangements have been made for assets and ensuring financial liability transfers with those assets, as per the Commercial Transfer Agreement.

8. CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE (LEGAL SERVICES)

8.1 The Academies Act 2010 introduced a fast track procedure for maintained schools wishing to transfer to academy status. The Act provides a procedure for the transfer of assets, land and buildings to the newly established academy.

8.2 Regarding the transfer of land and buildings, the two schools are situated on and owned by the Council, a 125 year lease is granted which is based on a model lease produced by the Department for Education (DfE). The terms of the model lease follow the model lease under the BSF/PfS schemes.

8.3 The non-negotiable terms of the model lease are:

- 125 year term from the date of transfer of the school to Academy Status
- Peppercorn rent
- Repair, clean and tidy, make good decoration
- Alterations
- Statutory compliance
- Dealings – assignment to Secretary of State approved successor
- Insurance – Academy to insure
- Forfeiture – limited to breach of use or insurance only
- Termination – termination of Funding Agreement

8.4 Negotiable terms are;

- rights/reservations over the school or adjoining land owned by the Council
- dealings
- permitted use

8.5 The transfer of assets, contracts and employees is done by way of a “commercial transfer agreement” which is based on the model transfer agreement as published by the DfE.

8.6 The model transfer agreement deals with the transfer of things necessary for the operation of the Academy, namely:

- Transfer of Assets
- Assignments/novation of contracts
- Employee/TUPE issues

8.7 Typical terms of the model transfer agreement deals with issues, namely:-

- Transfer and apportionment of assets

- Transfer, novation/apportionment and termination of contracts which are either school specific or council wide contracts
- transfer of employees in accordance with TUPE regulations e.g. staffing information and warranties, apportionments, information and consultation, indemnities and warranties, pensions
- transfer of records e.g. documents on personnel, pupils

8.8 In preparing this documentation account is taken of any contracts that need to be novated or assigned to the Academy e.g. for existing equipment like photocopiers and where the school is receiving services under Service Level Agreements from the Council and wishes to continue these arrangements, the Service level Agreements are converted into formal contracts. Appropriate indemnities are included for the benefit of the Council under the Commercial Transfer Agreement.

9. ONE TOWER HAMLETS CONSIDERATIONS

9.1 The DfE has published an Equality Impact Assessment for the Academies programme which can be found at www.education.gov.uk

10. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

10.1 There are no specific implications arising from the recommendations of this report. Following the transfer, both schools will become responsible for their own premises and activities and for managing energy and carbon emissions.

11. RISK MANAGEMENT IMPLICATIONS

11.1 The negotiations on the terms of the lease and the commercial transfer agreement have sought to ensure that the Council mitigates risks arising from the transfer.

12. CRIME AND DISORDER REDUCTION IMPLICATIONS

12.1 There are no implications arising from this report.

13. EFFICIENCY STATEMENT

13.1 The Council is required by law to enter into proposed leases in the relevant circumstances. The terms of the lease will ensure assets remain in use for the provision of education in the maintained sector.

14. APPENDICES

None

Local Government Act, 1972 Section 100D (As amended)
List of "Background Papers" used in the preparation of this report

Brief description of "background papers" Name and telephone number of holder
and address where open to inspection.

Report authors should refer to the section of the report writing guide which relates to Background Papers when completing this section. Please note that any documents listed in this section may be disclosed for public inspection. Report authors must check with Legal Services before listing any document as 'background papers'.