

Committee/Meeting: Cabinet	Date: 13 March 2013	Classification: Unrestricted	Report No: CAB 87/123
Report of: Corporate Director (Education, Social Care and Wellbeing) Assistant Chief Executive, Legal Services Originating officer(s) Kate Bingham, Interim Service Head Education, Social Care and Wellbeing Resources		Title: Academy Conversion: Old Ford and Culloden Primary Schools Wards Affected: East India & Lansbury and Bow East	

1. **SUMMARY**

- 1.1 This report asks for Mayoral approval for the land and commercial transfer related to the academy transfer of Old Ford and Culloden Primary Schools.

2. **DECISIONS REQUIRED**

The Mayor in Cabinet is recommended to:

- 2.1 Approve the land disposal for both schools;
- 2.2 Approve the Council to enter into commercial and staffing transfers for both schools;
- 2.3 Approve the Council to enter into all other necessary documentation to ensure the liability under the Grouped Schools PFI arrangements for Old Ford School are transferred to the Academy;
- 2.4 Authorise the Corporate Director, Education, Social Care and Well-Being in consultation with the Assistant Chief Executive Legal Services and Corporate Director Resources to settle remaining issues associated with the conversion for the two schools;
- 2.5 Authorise the Assistant Chief Executive (Legal Services) to execute all documentation required to implement those decisions at 2.1 to 2.4.
- 2.6 Authorise the Section 151 Officer to execute the *Local Government (Contract) Act 1997* Certificate required to implement the decisions at 2.1 to 2.4.

3. **REASONS FOR THE DECISIONS**

- 3.1 In August 2012 the Governing Bodies for Old Ford and Culloden Primary Schools 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 of 1 January 2013 there are 2619 academies open in England. This is an increase of 1,200 new academies since November 2011. This includes both the sponsored type of Academy under the previous government's programme and more recent converter Academies.
- 5.2 Sir William Burrough and Bethnal Green Technology College were the first schools in the borough to make the conversion. Four Free schools have also been established in the borough; Canary Wharf College, CET Primary, Wapping High and City Gateway 14-19 provision.
- 5.3 Academy orders were issued by the Secretary of State for Old Ford and Culloden Primary Schools on the 8th August 2012. Following receipt of the Academy Orders the local authority has been working with the two schools and the DfE on matters related to land, commercial and staffing transfer. The Local Authority has also been working with Old Ford on matters related to their existing PFI agreement.
- 5.4 The School governing bodies have completed a consultation with staff and parents, as required by legislation. Based on a suggested timetable from the DfE, it is anticipated that both schools will convert on 1st April 2013. On conversion the local authority will cease to maintain these schools.
- 5.5 Old Ford and Culloden Schools have been managed for some time under one Executive Head. The schools will convert simultaneously and be operated under one single Multi-Academy Trust.
- 5.6 Tower Hamlets Working with Academies and Free Schools (WAFS) sets out how the Council intends to work with academies and free schools. The Council is committed to and responsible for all children and young people

living in the borough as well as to our wider community. This means we are determined to build and maintain a strong partnership with all education providers in the borough including academies and free schools. Both to ensure that their pupils are able to reach their full potential and that schools maximise their role within the community.

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).

6.4 Further, the lease for Culloden addresses the current Council lease of the sub-station (Culloden has a sub-station where the Council leases the land on a peppercorn rent to the utility supplier) - it is a 45 year lease from 1973 (2018).

6.5 In addition, the lease granted to the Academy is subject to the rights of access granted to the PFI contractor by the Grouped Schools PFI contract in relation to OldFordSchool.

Commercial transfer

6.6 The commercial transfer agreement documents the transfer of the assets and liabilities from the existing school and the benefit of any contracts required after the conversion to the Academy Trust.

TUPE and transfer of staff

- 6.7 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 both schools.
- 6.8 Neither school proposed changes to the terms and conditions of staff through the conversion. Concerns were raised by the Trade Unions, concerning their recognition and agreement that there will be no changes to terms and conditions of newly appointed staff. These issues were discussed at the Children, Schools and Families Trade Union Forum the 17th January 2013 and the LA has agreed to broker discussions between the Trade Unions and both schools.
- 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 appointed 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 considered the appropriate employer contribution rate for the Multi-Academy Trust at its meeting on 21st February 2013.
- 6.12 The Committee 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 LBTH Local Government Pension

Scheme to Old Ford Primary School and Culloden Primary School on the creation of the Multi Academy Trust (MAT).

- 6.13 The MAT employer contribution rate, based on a deficit recovery period of 14 years for active members and that attributable to deferred and pensioner members, results in a total contribution of 32.9% of payroll.

Old Ford School – PFI contract arrangements

- 6.14 Old Ford School is included in the 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 for the academy school ensure that the Council will continue to receive the financial contributions from the school as it would have done without the conversion, and that there is no impact on the contractor or its funders.

- i. The School Agreement: this is between the Council and the Academy 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 Academy 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 the school, requires the academy 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.
- 6.15 These documents will remain in force until the expiry of the Grouped Schools PFI contract in 2027.

7. COMMENTS OF THE CHIEF FINANCIAL OFFICER

- 7.1 The school as an academy will receive funding from the Education Funding Agency on the basis of School Funding Reform, with the vast majority of their funding based on the same formula as for maintained schools. The only differences being for those services for which funding has been delegated for maintained schools, with the agreement of the School Forum, and they will receive Education Services Grant equating to the amount per pupil that the Authority receives for pupils in maintained schools.

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. There are particular issues regarding the transfer of Old Ford because it is part of the Grouped Schools PFI contract, but the regulations are clear that the academy would continue to be part of the contract and would continue to make contributions on the same basis as maintained schools.

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 As set out in the report, it is considered that the Transfer of Undertakings (Protection of Employees) (“TUPE”) Regulations 2006 apply to this academy transfer and to the staff of the existing two primary schools.

8.7 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

8.8 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

8.9 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. 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.

8.10 In the case of Old Ford School this is part of the Grouped Schools PFI arrangement which do not expire until 2027.

8.11 As part of the work on this Academy conversion process officers have liaised closely with DfE to ensure the PFI liabilities are passed to the new Academy Trust and although the Council remains primarily liable under the PFI agreements there is provision for the financial liability to be discharged by the new Academy Trust.

8.12 When discharging its responsibilities in relation to the academy transfer, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who don't. Information is set out in the report relevant to these considerations.

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 Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2012

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.
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None.