

Cabinet 7 March 2017	 TOWER HAMLETS
Report of: Debbie Jones, Corporate Director, Children's Services and Graham White, Interim Corporate Director, Governance	Classification: Unrestricted
Academy Conversions: Bygrove and Stebon Primary Schools.	

Lead Member	Councillor Rachael Saunders, Deputy Mayor and Cabinet Member for Education and Children's Services.
Originating Officer(s)	Layla Richards, Service Manager Policy Programmes and Community Insight. Peter Stone, Academy Conversions Project Manager.
Wards affected	Lansbury and Mile End
Key Decision?	Yes
Community Plan Theme	A great place to live A fair and prosperous community A safe and cohesive community A healthy and supportive community.

Executive Summary

This report asks for Mayoral approval for completion of lease arrangements and commercial transfers, related to the academy conversions of Bygrove and Stebon Primary Schools.

Both schools have indicated their wish to convert to academies on 1 April 2017.

Recommendations:

The Mayor in Cabinet is recommended to:

1. Agree to the grant of a 125-year lease to the new academy trust for Stebon Primary School;
2. Note that the proposed grant of a 125 year lease to the new Academy Trust for Stebon Primary School will be subject to the Commissioners' consent;
3. Agree that the Council's existing lease for Bygrove Primary School site may be surrendered, in order to allow a new lease to be agreed between

the Westminster Diocese and the academy trust;

4. Authorise the Corporate Director, Place, to agree the final terms and conditions for the grant of the new lease for Stebon Primary School and the surrender of the existing lease for Bygrove Primary School;
5. Approve the Council to enter into commercial and staffing transfer agreements for both schools;
6. Authorise the Corporate Director, Children's Services, after consultation with the Acting Corporate Director, Governance and the Corporate Director, Resources to enter into and undertake any remaining issues and/or agreements associated with the conversion of the two schools;
7. Authorise the Acting Corporate Director Governance to execute all documentation required to implement the decisions;
8. Authorise the Corporate Director, Resources to execute the Local Government (Contract) Act 1997 Certificate required to implement the decisions.

1. REASONS FOR THE RECOMMENDATIONS

- 1.1 Both schools are maintained community schools and received academy orders dated 17 October 2016. The schools intend to convert simultaneously and form a new multi academy trust.
- 1.2 Both schools have indicated their wish to convert to academies on 1 April 2017.

2. ALTERNATIVE OPTIONS

- 2.1 There is no alternative to the planned course of action. Once applications from Governing Bodies have been approved by the Secretary of State, the expectation is that the local authority will work with schools on all transfer matters.

3. ACADEMY CONVERSION

Background

- 3.1 Conversion usually involves two key transactions for the Council, these being the land transfer and commercial transfer. The commercial transfer deals with the transfer of existing contracts, staff, associated assets and liabilities and is effected by a Commercial Transfer Agreement ("CTA"). The Council is the employer of staff at both schools in this case and staff consultation will be carried out with the support of the Council's HR team. Execution of the CTA is the final severance between the school and the local authority.

- 3.2 Both schools currently planning to convert are community schools. The Council owns the land on which Stebon School is situated but holds the Bygrove site on a lease from Westminster Diocese. The expectation is that the Council will transfer the land of Stebon School to the Academy Trust and will, if necessary, surrender its lease of the Bygrove site if that is required for the Trust to acquire an interest. The Guidance from the Department of Education is that the transfer of Council land 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. The 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 educational services;
 - not to assign/transfer the lease to anybody 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).
- 3.3 As these conversions will involve "disposal" of land, the Commissioners' consent is required.

Conversion process – property implications

- 3.4 The Council owns the land and buildings of Stebon School. It is proposed that the Council will enter into a lease for 125 years with the trust under the standard form of academy lease. There are no special matters requiring additional consents.
- 3.5 The Council holds the Bygrove site on a lease from Westminster Diocese. The current lease is for 10 years until 2020. The school, the DfE and the Diocese are working to agree the lease arrangements for the academy trust. The Council is not party to the proposed new lease but will agree to surrender the existing lease for a new lease to take effect.

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 In both cases there will be transfer of staff, as the LA is the employer. Staff are entitled to transfer under their existing employment terms and conditions,

under the Transfer of Undertakings Protection of Employment (TUPE) Regulations 2006 as amended. The newly formed trust must inform the current employer (the LA) in writing, of any measures it envisages taking in relation to staff after transfer. For Bygrove Primary School this may affect up to 48 LA employees and for Stebon Primary School, up to 112 employees.

- 3.8 The consultation will be led by the Schools in conjunction with the Local Authority.
- 3.9 As regards pensions, when a maintained school becomes an academy, they must continue to provide access to the Teachers' Pension Scheme (TPS) for teaching staff and remit contributions to the TPS. 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. On conversion, the school becomes a separate employer in the LGPS and a separate employer contribution rate will need to be calculated by the relevant LGPS fund.
- 3.10 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 active transferring members, together with that 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.
- 3.11 Both schools have a number of 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 contracts with the Council, like any other school.

Conversion Process - Assets (not including land and buildings)

- 3.12 An asset register is being completed and all "other" assets will be transferred to the respective academies.

Conversion Process - Contracts

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

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 schools convert, they become admission authorities and therefore responsible for their own admission arrangements. This will involve periodic consultation, and regularly publishing their admission arrangements.
- 4.2 The Council retains the responsibility for ensuring that all children and young people in the borough have a school place. Stebon and Bygrove schools have expressed their intention to adopt the admissions arrangements that the Local Authority uses for its community schools. Each school is aware that it **must** continue to participate in the Local Authority's arrangements for the co-ordination of admissions at the various points of entry as well as the local Fair Access Protocol, which ensures that - outside the normal admissions round - unplaced children, especially the most vulnerable, are placed in school quickly.

Special Education Needs

- 4.3 Local authorities retain responsibility for pupils with statements or Education, Health and Care (EHC) plans in academies on the same basis as for such pupils in maintained schools. The Local Authority 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 invite the LA Exclusions Officer to Governors' Pupil Discipline Committee hearings, parents can request the LA Exclusions Officer to attend the hearing. 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. There can also 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 existing SLAs are honoured at current rates until the date of conversion.

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. In July 2012, the LBTH School Forum agreed to increase the membership of the Schools Forum with one academy representative to comply with those Regulations.

Insurance

- 4.7 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

- 4.8 Where the Council owns the freehold of a school site it will become the landlord in respect of the 125 year academy lease. The Council's landlord role is limited, consistent with the existence of a long term lease. It has a right to check that the academy is meeting its obligations under the lease including as to repairs and maintenance, statutory compliance and insurance.

Policies

- 4.9 Academies are required to have the following policies and other documents in place, by law.

Statutory policies required by education legislation:

- Charging and remissions policy
- School behaviour policy
- Sex education policy
- Special educational needs policy.

Statutory policies required by other legislation, which particularly impact on schools:

- Data protection
- Health and safety
- Accessibility Plan
- Central record of recruitment and vetting checks
- Complaints procedure statement

- Freedom of information
- Home-school agreement document
- Minutes of, and papers considered at, meetings of the governing body and its committee
- Premises management documents
- Equality information and objectives (public sector equality duty) statement for publication
- School information published on a website
- Register of pupils' admission to school
- Register of pupils' attendance
- Staff discipline, conduct and grievance (procedures for addressing).

Documents referenced in statutory guidance:

- Child protection policy and procedures
- Early Years Foundation Stage
- Statement of procedures for dealing with allegations of abuse against staff
- Supporting pupils with medical conditions.

5 COMMENTS OF THE CHIEF FINANCE OFFICER

- 5.1 As Academies the schools will in future receive funding from the Education Funding Agency, 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 de-delegated for maintained schools, with the agreement of the School Forum.
- 5.2 Schools which convert to academy status between April and August 2017 will receive Education Services Grant funding at the current rate of £77 per pupil prorated to the number of days open as an academy. Each academy school 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 for each school is available to assist with their cost of conversion.
- 5.3 The Council currently does not receive a direct source of funding to cover the costs linked to academy conversion. However there is an opportunity to apply for the '*Academy conversion grant for local authorities*', a one-off grant of between £35,000-£65,000. The deadline for applying was 10th February 2017. An application was made and the outcome expected on 24th February. An update will be given to Cabinet on 7th March. If grant funding is not awarded, this is likely to impact project timescales and incur additional Council expenditure.
- 5.4 Any accumulated surplus of the schools will also transfer with them on conversion. However, these amounts will be updated for 2016/17 when the year end balances are finalised.

- 5.5 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.

6 LEGAL COMMENTS

- 6.1 The Academies Act 2010 (**'the 2010 Act'**) 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. Section 5B(1) of the 2010 Act provides that where an Academy order has effect in respect of a school, the governing body of the school and the Council must take all reasonable steps to facilitate the conversion of the school into an Academy. Section 5B(2) of the 2010 Act provides that where the Secretary of State notifies the governing body or Council that the Secretary of State is minded to enter into Academy arrangements with a specified person then they are under a duty to take all reasonable steps to facilitate the making of Academy arrangements with that person. This therefore imposes a statutory duty on the Council.
- 6.2 Both schools are maintained community schools. The 2010 Act requires Academies to follow the same statutory framework for Special Educational Needs (SEN) as Council schools. Schools will receive funding for children with statements of SENs/Education Health Care Plans ('EHCP') in the same way, whether they are Academies or local authority schools. If children have statements/EHCPs with an enhanced package of support, both types of school will get additional funding directly from the Council, again, in the same way. Where children have special needs, but do not have a statement/EHCP, once again, Academies are required to have regard to the Code of Practice for SEN in exactly the same way as Council schools. This means that in both types of school, children will be supported according to the level of need and involvement of external agencies.
- 6.3 The Council owns the land and buildings at Stebon School. The Council will be required to grant the Trust a 125 year lease for a peppercorn rent. The Bygrove school site is currently held by the Council under a 10 year lease expiring in 2020 from the Diocese of Westminster. The parties will need to agree a surrender of existing lease and agree to grant a new 125 year lease to the Trust.
- 6.4 The DfE's expectation is that all land and facilities used wholly or mainly for the purpose of the converting school will transfer on an "as is" basis and be made available to the academy in accordance with the mechanisms set out in the guidance titled "Land Transfer Advice 2013". Under the Education Acts, local authorities require the consent of the Secretary of State to dispose of any interest in land. This includes where a school converts to academy status. Consent would normally involve application to the Secretary of State through the Education Funding Agency, but in the case of conversions, this need for consent is taken forward as part of agreeing the conversion, and the Department of Education ('DfE') does not require a distinct application.

- 6.5 The requirement for a 125 year lease is not contained in statute, but is the expectation of the DfE and the DfE provides model leases on its website and which can be used. There are also model land clauses preventing the academy trust from disposing of its leasehold interest in the public land and which will need to be included in the relevant academy's Funding Agreement.
- 6.6 The DfE expects local authorities and schools to take timely steps to ensure that such transfers are completed in time for conversion. However, in circumstances where the parties concerned cannot reach agreement and/ or in the DfE's view there are unacceptable delays to the process then the Secretary of State can exercise powers under Schedule 1 of the 2010 Act to either make a scheme compulsorily transferring school land, or a scheme or direction transferring any existing interest, rights, or liabilities.
- 6.7 The Direction issued by the Minister on 17th December 2014 (as amended) requires the Council, until 31st March 2017, to *"..... obtain the prior written agreement of the Commissioners **before** entering into any commitment to dispose of, or otherwise transfer to third parties, any real property other than existing single dwellings for the purposes of residential occupation."* Therefore, as this report involves the disposal of land by way of a 125 year lease, written consent will be required before any commitment to dispose takes place.
- 6.8 As to the transfer of assets (other than land), contracts and employees, this is done by way of a "commercial transfer agreement" and is based on the model transfer agreement as published by the DfE.
- 6.9 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.
- 6.10 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
- 6.11 Typical terms of the model transfer agreement also cover issues such as:-
- 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
- 6.12 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.

6.13 The Council is required when exercising its functions to comply with the duty set out in section 149 of the Equality Act 2010, namely to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity between those who share a protected characteristic and those who do not, and foster good relations between those who share a protected characteristic and those who do not. There are no direct equality implications arising from the proposed transactions as they are statutorily required to be made but relevant considerations have been made in the One Tower Hamlets Section of the report.

6.14 The Council is currently engaged via external counsel in negotiating a CTA with another school in the borough which also wishes to convert. This document should form a standard template for use in further school conversions. This will ensure parity of treatment of any schools that seek to convert in the future and produce efficiencies in the Council's internal processes.

7 ONE TOWER HAMLETS CONSIDERATION

7.1 Both schools work collaboratively to enable all children to experience the best possible educational opportunities, outcomes and life chances. Bygrove and Stebon schools are members of the developing Tower Hamlets Education partnership.

8 BEST VALUE (BV) IMPLICATIONS

8.1 None Identified.

9 SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

9.1 None identified.

10 CRIME AND DISORDER REDUCTION IMPLICATIONS

10.1 None identified.

11 SAFEGUARDING IMPLICATIONS

11.1 New statutory guidance for schools and colleges will come into effect from September 2016. This updated guidance lays greater emphasis on schools and colleges and their staff being part of a wider safeguarding system for children, as described in "Working Together to Safeguard Children" (March 2015) and the need to fulfil responsibilities in relation to this. On conversion, the LA will continue to work collaboratively with both schools, to safeguard and promote the welfare of all children in the borough.

Linked Report

None.

Appendices:

None.

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

None.

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