


Cabinet 24 July 2024	 TOWER HAMLETS
Report of: Steve Reddy, Corporate Director, Children Services	Classification: Unrestricted
Conversion to Academy Status: Bishop Challoner RC Secondary, St Anne's and Guardian Angels RC Primary and St Elizabeth RC Primary Schools	

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	04/06/2024
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 on 24th October 2023, in respect of three maintained catholic schools:

- Bishop Challoner RC Secondary,
- St Anne’s Guardian Angels RC Primary, and
- St Elizabeth RC Primary;

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 decision of the Secretary of State for Education on 24 October 2023 to approve the applications from the Governing Bodies of Bishop Challoner RC, St Anne’s and Guardian Angels RC, and St Elizabeth RC 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, if necessary and if agreed by all parties, on suitably agreed terms, as well as any other necessary agreements with relevant third parties, as described in paragraphs 3.1 – 3.11.
4. Authorise the council to negotiate with the Academy Sponsor – Lux Mundi Trust and the Department for Education to agree the form and detailed terms of the appropriate documentation in relation to any council owned land to allow for the operation of the Academy from the transfer date. Depending on the type of land and any directions received from the Secretary of State for Education, this may take the form of freehold transfers or the grant of 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 Divisional Director, Legal (Monitoring Officer), to execute all documentation required to implement the decisions
6. 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. Bishop Challoner, St Anne's and Guardian Angels, and St Elizabeth are catholic voluntary aided schools that are currently maintained by the local authority. They have applied to convert to academy status and join the Lux Mundi 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 for the three schools were then issued on the 24 October 2023 and they 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 three 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 three 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

When a maintained school converts to academy status a Commercial Transfer Agreement is entered into to address the transfer of staff and contracts. There is a model DfE template for the CTA. Where the maintained school is a community school or a voluntary controlled school where staff are employed by the local authority then the local authority will need to be a party to that agreement. Where the maintained schools are voluntary aided schools, as is the case for the schools subject to this report, and the governing body is the employer of the staff it is not a requirement that the local authority is a party to the CTA. In the case of these schools the Academy Trust has confirmed that it wishes to proceed to enter into the CTAs as between it and the relevant governing bodies, without the Council being a party. This does not preclude the Council working collaboratively with the governing bodies and Academy Trust to effect the conversions, as is set out otherwise in this report.

- 3.4 The process for academy conversions therefore makes provision for a Commercial Transfer Agreement (CTA) between the current employer and the Academy Sponsor (Lux Mundi 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 The staff at each of the three schools are employed by their Governing Body who is responsible for the movement of employees from the schools to the Lux Mundi Trust. A TUPE consultation will need to be undertaken as part of the process. The Governing Body as the current 'Employer' within the School is responsible for this along with the Trust. Consultation with the Council's trade unions will also be necessary in respect of any effects of the TUPE transfer to Council employees.
- 3.6 Under the requirements of TUPE, there is a legal obligation upon Governing Body of each school to provide written information about the transfer to their employee representatives (which will be their trade union). The information that the Governing Body must provide in writing to the employee representatives is as follows:
- The fact that the transfer is to take place, when and why.
 - The "legal, economic and social implications" of the transfer for the affected employees.
 - The "measures" which the Governing Body envisages it will take in connection with the transfer or, if no measures are envisaged, that fact; and
 - Any measures which the Governing Body envisages the Lux Mundi Trust envisages taking in connection with the transfer in respect of the transferring employees or, if no measures are envisaged, that fact.
- 3.7 By virtue of TUPE, terms and conditions of employment should be protected in

accordance with the legislation. The Lux Mundi Trust will be required to provide full details to each school's Governing Body to allow meaningful consultation. No specific timescale is provided for consultation, but it must be meaningful with legal penalties and remedies in respect of consultation if it does not take place as required.

- 3.8 Again, by virtue of TUPE, the terms and conditions for employees should be protected. The contractual documentation should address this. Pension issues should also be addressed accordingly in the process between the Governing Bodies and the Lux Mundi Trust.
- 3.9 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.
- 3.10 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.
- 3.11 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

- 3.12 For each of these schools the principal operational site (land) where their buildings are located is owned by the Roman Catholic Diocese of Westminster. The land will remain under the ownership of the Diocese, who will grant the academy trust a licence to use the land under a 'Church Supplemental Agreement'. This agreement is entered into by the Secretary of State (DfE), the Diocese and the Lux Mundi Trust, and sets out the terms upon which the Academy may occupy the school site. It also acts to protect the religious designation of the schools and aims to allow the land arrangements to continue 'as is' following their academy conversion. The Council is not a party to this land use agreement.
- 3.13 Title due diligence has revealed that parts of the St Anne's and Guardian Angels and St Elizabeth's sites are owned by the Council. The Council, the Academy Trust and the DfE are negotiating the appropriate way in which this Council land will be made available to the Academy. DfE Guidance provides that the expectation for land at voluntary aided schools is that there would be a freehold transfer of any non-playing field land and that a 125-year lease would be granted of any playing field land.
- 3.14 The land owned by the Council at St Anne's and Guardian Angels does not appear to include playing field land, and the DfE and the Academy Trust have therefore confirmed that their expectation is that the freehold of the parcels of land currently owned by the Council on this site would be transferred to the Diocese. The Diocese would then be able to include the whole school site in the Church Supplemental Agreement granted by the Diocese to the Academy, giving it licence to use the site for the purposes of the school.
- 3.15 The land owned by the Council at St Elizabeth's is understood to be used for the purposes of recreation. The parties are working to determine whether this area is properly defined as 'playing field land' or 'non-playing field land'. If it is non-playing field land, then the expectation is that the freehold will transfer to the Diocese. If it is 'playing field land' then statutory guidance suggests that a 125-year lease of the land will be granted by the Council. Notwithstanding this, the Secretary of State

has the power to make a direction under the Academies Act 2010 that such land should transfer freehold in any event.

- 3.16 The DfE and the Academy Trust have indicated that their preference is for a freehold transfer of this land. The Council has indicated that if the land is 'playing field land' then their preference would be to grant a 125-year lease but that if directed to transfer the freehold by the Secretary of State then it will do so.
- 3.17 Failure to transfer or to delay transferring can lead to intervention by the DfE under the Academies Act 2010.
- 3.18 If it is agreed between the parties that it is appropriate to put an academy lease in place, then in summary such 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 lease will be in line with a prescribed template provided by the DfE.

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 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 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 RELEVANT 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 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

- 6.2 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 £59,950 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 At the end of the 2023/24 financial year, St Elizabeth RC Primary School reported a deficit position of -£230,624 and this is likely to increase by the proposed conversion date. The DfE's policy would be to reimburse the Local Authority the final deficit

position and recover the money back from the academy through abatement of General Annual Grant (GAG). The Council is not intending to absorb any of the schools' deficit. An extract from the DfE's guidance is below:

“Deficit balances unlike surplus balances are not covered in the same way by primary legislation and regulations. The Department’s policy, however, is to treat deficits in a similar way, so the Department reimburses LAs and recovers the money back from the academy through abatement of General Annual Grant (GAG). The Department has to ensure the amount due is a true reflection of what is owed and will only pay once the amount is agreed by both parties. In the event of a disputed deficit balance, the Academy Trust (AT) may apply to the Secretary of State (SoS) for a review. The SoS will base his decision on the evidence provided by both parties.

If a school is concerned that the size of its deficit could prevent it from converting, but the school is not eligible for intervention or otherwise eligible to be treated as a sponsored academy, it is open to the LA to agree to absorb part or all of the deficit rather than insist on it being repaid by the school. This is most likely to apply where the school is joining the AT of an external sponsor, but as a converter academy.”

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 Diocese. Therefore the CTA will need to be completed at the same time as the diocese grants access to the diocese owned land. The Council is not a party to this land transaction although there may be other areas of land used by the school and reasonably necessary for the assets to continue to operate as a school post transfer in which case the Council will need to grant a lease of these associated areas 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.
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Appendices

Appendix A	Academy Order for Bishop Challoner RC Secondary School
Appendix B	Academy Order for St Anne's and Guardian Angels RC Primary School
Appendix C	Academy Order for St Elizabeth RC 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