

AGENDA ITEM: 13 Pages 1 – 6

Meeting	Cabinet Resources Committee
Date	19 July 2010
Subject	Conversion of schools to Academy status – transfer of land
Report of	Deputy Leader of the Council/Cabinet Member for Education, Children and Families Cabinet Member for Resources and Performance
Summary	A number of Barnet schools are likely to seek to convert to Academies. Where the school land is currently owned by the Council, a long lease will need to be granted to the Academy Trust.

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Status (public or exempt)	Public
Wards affected	All
Enclosures	Appendix – Draft Heads of Terms for an Academy lease
For decision by	Cabinet Resources Committee
Function of	Executive
Reason for urgency / exemption from call-in (if appropriate)	Not applicable

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1. RECOMMENDATIONS

- 1.1 That authority be delegated to the Cabinet Member for Resources and Performance to approve, subject to relevant legislation and any title issues, the grant of long leases or to make freehold transfers of school property assets to any school converting to Academy status.**

2. RELEVANT PREVIOUS DECISIONS

- 2.1 None.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 The Corporate Plan 2010-2013 priority 'A Successful London Suburb' has a strategic objective to "Ensure every school is a good school for every child". The granting of academy status to those schools that wish to convert will ensure that schools in Barnet remain popular and successful.

4. RISK MANAGEMENT ISSUES

- 4.1 A number of Barnet schools have applied to become Academies from September 2010. Where relevant, a long lease will need to be signed by September in order for the formal change to Academy status to occur. If the authority to approve the land transfer is not delegated to the Cabinet Member for Resources and Performance, there is a risk that the conversion process for schools will be delayed, as the next meeting of the Cabinet Resources Committee will not take place until September 2010.
- 4.2 The grant of 125 year leases to schools adopting Academy status will mean that the Council will have less flexibility in managing its school property portfolio. The Council will only retain a reversionary interest in the school. The Council would no longer have the ability to make changes to schools such as increasing or decreasing the size to meet pupil demand, setting up specialist units in schools or closure. However, the granting of a long lease is a pre-requisite for a school to become an Academy.

5. EQUALITIES AND DIVERSITY ISSUES

- 5.1 Barnet has an extremely diverse range of schools, including two Academies, and the development of new Academies will only add to this diversity. This will help to offer parents a wide range of successful and popular schools to choose from.
- 5.2 New Academies will not be allowed to change their admission arrangements to introduce selection (although selective schools becoming Academies will be able to retain selection). Academies are required to admit pupils mainly from their local area, which will ensure that Academies are accessible to all local pupils.
- 5.3 There will be an opportunity for special schools to become Academies at a later date.
- 5.4 The proposals will not give rise to any issues under the Council's Equalities Policy and do not compromise the Council in meeting its statutory equalities duties.

6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)

6.1 Finance

6.1.1 The Government have stated that academies will continue to be funded at a comparable level to maintained schools but will also get their share of the central funding that the Local Authority (LA) used to spend on their behalf. They will have freedom to allocate this funding in a way that focuses on the needs of their own pupils. This means therefore that the local authority's central schools budget will be reduced for every school that chooses to become an Academy. An amount for each Academy will therefore be top-sliced from the LA Central Spend Equivalent Grant (LACSEG). This varies between local authorities and will reflect the amount the local authority already holds back to pay for central services. The size and impact of this reduction on the centrally retained budgets is not yet clear but any impact is expected to be met within the schools budget.

6.1.2 The Council is likely to incur significant legal costs in negotiating and granting leases for Academies, if a number of schools choose to convert. The Department for Education (DfE) has indicated that a standard lease template will be produced, which would reduce costs to an extent although resource pressures are likely. Each school converting to Academy status will receive £25,000 from the DfE towards expenditure related to conversion. The Council will seek to recover legal costs from schools where appropriate. The revenue and funding impact of schools opting for Academy status will be kept under review and reported as part of CRC monitoring reports.

6.1.3 School teaching staff are likely to be participants in the Teachers Pensions Scheme and will be unaffected by the move to Academy status. With respect to non-teaching school staff who are eligible to participate in the Local Government Pension Scheme – administered by Barnet as an 'Administering Authority' – Academies can choose to apply for 'admitted body status' to the Local Government Pension Scheme. Alternatively, Academies could choose to join another broadly comparable pension scheme for non teaching staff. The process of carrying out the actuarial review for transferring staff will incur a cost and take some time.

6.2 Property

6.2.1 Government guidance addresses the issue of land and buildings occupied by a, relevant, school, being made available for use by the Academy. At present, community schools' land and buildings are owned by the LA. The government's intention is that the land and buildings will be made available, to the Academy, by way of a 125-year lease from the LA, but there may be special circumstances in individual cases. The Secretary of State will have the power to direct the transfer of public land if necessary. Nothing in the Bill affects wholly private land, such as that held by the trusts of most voluntary aided schools. In such cases the existing trust will negotiate the terms of transfer to any academy trust. This could involve leasing the land directly to the academy trust or leasing it to the LA, who would then sublease it to the academy trust.

6.2.2 In accordance with the Government's Guidance for schools becoming Academies, no premium for the lease will be payable by the school.

6.2.3 The user clause in the lease will be drafted as set out in the Appendix to limit the use of the premises solely for educational purposes. In the event of a breach of the user clause in the lease, the council would be entitled to take action – including action for forfeiture. At any time after expiry of the first 25 years of a 125 year lease, the Academy would be able to apply to vary/modify the user clause in the lease.

The criteria, which would need to be met, is stringent but there is a risk that the Lands Tribunal would not uphold the user clause. Should such circumstances arise and the user clause be discharged/modified, there is a further risk that the Academy would be able to sell the land at residential site value, thereby making a considerable financial gain.

6.2.4 If permitted by the forthcoming legislation, setting out the terms of the leases to Academies, it would be advisable that the Academies should not be permitted to use the lease as loan security. If this restriction is permitted, and applied, it would guard against a mortgagee taking possession of the school property and exercising a mortgagee's right of sale of the school in the event of its financial failure.

6.3 Staffing

6.3.1 In schools converting to Academy status, the new governing body will become the employer of the school staff on behalf of the Academy Trust. As the employer, they are responsible for setting pay and conditions, which gives them the freedom, subject to the provisions of the Transfer of Undertakings (Protection of Employment) Regulations, to alter these from the national framework if they wish.

6.3.2 The transitional process from their existing employer (the LA for community schools, or the governors if the school is a voluntary aided/Foundation/Trust school) will be managed through the TUPE process in all cases. Underpinning TUPE is staff and trade union consultation. The school would be expected to lead on the consultation process. However, because the Local Authority is the employer of staff in Community and voluntary aided Schools, the LA also needs to be involved in this consultation process.

7. **LEGAL ISSUES**

7.1 The legislation, which will deal with academies, is not yet in force. The Academies Bill is expected to become law in August 2010.

7.2 Clause 9 and Schedule 1 of the Bill make provision about land in relation to Academies. In addition to providing for grants of 125 year leases to Academies the, proposed, legislation will give the Secretary of State increased powers in respect of the provision of land for Academies and greater powers to intervene should there be a dispute between the parties over that provision.

7.3 Investigations of title will need to be carried out in respect of each, relevant, school.

8. **CONSTITUTIONAL POWERS**

8.1 The Council's Constitution in Part 3, Responsibility for Functions, paragraph 3.6 states the functions delegated to the Cabinet Resources Committee including all matters relating to land and buildings owned, rented or proposed to be acquired or disposed of by the Council.

8.2 In addition, any dealings with council-owned land must be conducted in accordance with the Management of Real Estate Property and Land provisions contained within the Constitution.

9. BACKGROUND INFORMATION

- 9.1 The Academies Bill was introduced into the House of Lords in May 2010. The purpose of the Bill is to 'enable more schools to become academies and give them the freedoms and flexibilities they need to continue to drive up standards'.
- 9.2 The Academies Bill includes provisions to:
- allow maintained schools to apply to become academies and permit the Secretary of State to issue an Academy Order requiring the local authority to cease to maintain the school.
 - allow the Secretary of State to require schools that are eligible for intervention to convert into academies.
 - provide for secondary, primary and special schools to become academies.
 - allow schools to begin the process of applying now, so that, if they wish, they are in a position to move swiftly towards academy status, subject to the Bill receiving Royal Assent.
 - ensure that a converting school will continue, as an academy, to be able to occupy the land/buildings it had as a maintained school, and that the school's other assets may also transfer to the new academy for the benefit and use of the pupils of that school.
- 9.3 Academies are effectively independent schools not maintained by the LA. They are governed by an Academy Trust and receive funding directly from the Government. At present, all schools judged to be 'Outstanding' by Ofsted have been invited to apply for Academy status. The Government has indicated that other schools will be able to apply at a later date. The Government is keen for the first Academies to open in September 2010.
- 9.4 The LA does not have to 'approve' the conversion of a school to Academy status, and there is no requirement to consult the LA. However, the LA's input is required at certain stages of the process, notably in facilitating the consultation regarding the transfer of staff under TUPE arrangements and – where the land is currently in the Council's ownership – in transferring the land to the Academy Trust.
- 9.5 A number of Barnet schools have applied to become Academies, several with effect from September 2010. For those schools where the council currently owns the school land and buildings, long leases will need to be drawn up and agreed before September 2010, in time for the conversions to Academy status. Matters relating to land and buildings owned, rented or proposed to be acquired or disposed of by the Council falls within the remit of Cabinet Resources Committee. Members are, therefore, requested to delegate authority to approve any land transfers/grants of lease(s) relating to Academies to the Cabinet Member for Resources and Performance.

10. LIST OF BACKGROUND PAPERS

- 10.1 The Academies Bill.
- 10.2 The DfE guidance paper for schools becoming Academies issued in June 2010.
- 10.3 Please contact Alice Bolton on 020 8359 3057 to consult these papers.

Appendix – Draft Heads of Terms for an Academy lease

A	Tenants	The governors of
B	Property to be let	See site plan...
C	Term	125 years. Government guidance is awaited on whether it will be possible to exclude the tenant's statutory rights to a 15 year maximum lease extension on expiry of the 125 year term.
D	Rent	One peppercorn if demanded
E	Reason for peppercorn rent	A peppercorn rent is likely to be required by central government
F	User	School: The permitted use of the site will be for a school within the meaning of section 4 (1)(b), of the Education Act 1996. (1) In this Act "school" means an educational institution which is outside the further education sector and the higher education sector.
G	Assignment or subletting of the leases	Total prohibition other than for shared use, so long as no landlord and tenant act security arises.
H	Alterations	Landlord's consent not to be unreasonably withheld to any alterations or additions to the premises
I	Determination	The lease can be ended if the education use of the premises permanently cease.
J	Insurance	Tenant to insure.
K	Repairs	Tenant to repair and maintain the school in good and tenatable repair and condition.