

DELEGATED POWERS REPORT NO.

1964

SUBJECT: Conversion to Academy status – Commercial Transfer Agreement and Lease of the School premises

Control sheet

All of the following actions MUST be completed at each stage of the process and the signed and dated report MUST be passed to the Governance Service for publishing

All reports		
1. Governance Service receive draft report	Name of GSO Date	DPR inbox 24/02/2013
2. Governance Service cleared draft report as being constitutionally appropriate	Name of GSO Date	Paul Frost 27/02/2013
3. Finance clearance obtained (<i>report author to complete</i>)	Name of Fin. officer Date	Collette Sutton 07/03/2013
4. Staff and other resources issues clearance obtained (<i>report author to complete</i>)	Name of Res. officer Date	Deborah Shaw 05/03/2013
5. Strategic Procurement clearance obtained (<i>report author to complete</i>)	Name of SPO Date	Kevin Bates 04/03/2013
6. Legal clearance obtained from (<i>report author to complete</i>)	Name of Legal officer Date	John O'Hara & Philomena Jemide 06/03/2013 & 07/03/2013
7. Policy & Partnerships clearance obtained (<i>report author to complete</i>)	Name of P&P officer Date	Andrew Nathan 25/02/2013
8. Equalities & Diversity clearance obtained (<i>report author to complete</i>)	Name of officer Date	Andrew Nathan 25/02/2013
9. The above process has been checked and verified by Director, Head of Service or Deputy	Name Date	Kate Kennally 08/03/2013
10. Signed & dated report, <u>scanned or hard copy</u> received by Governance Service for publishing	Name of GSO Date	Paul Frost 14/03/13
11. Report published by Governance Service to website	Name of GSO Date	Paul Frost 21/03/13
12. Head of Service informed report is published	Name of GSO Date	Paul Frost 21/03/13
13. Expiry of call-in period	Date	N/A
14. Report circulated for call-in purposes to Business Management OSC members & copied to Cabinet Members & Head of Service	Name of GSO Date	N/A

ACTION TAKEN BY CABINET MEMBER(S) UNDER DELEGATED POWERS (EXECUTIVE FUNCTION)

Subject	Deansbrook Junior School: Conversion to Academy status – Commercial Transfer Agreement and Lease of the School premises
Cabinet Member(s)	Cabinet Member for Education, Children and Families Cabinet Member for Resources & Performance
Date of decision	14 March 2013
Date decision comes into effect	14 March 2013

Summary	<p>Deansbrook Junior School, a Community School, has been approved by the Secretary of State to convert to an Academy. As part of the conversion process, the Council, the Governing Body of the School and the Academy Trust are required to execute a Commercial Transfer Agreement.</p> <p>The Council is also required to grant a lease of the land and buildings used by the Deansbrook Junior School to the Academy Trust and this report sets out the terms of the lease.</p>
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Officer Contributors	Elaine Tuck, Head of Service Commissioning and Business improvement, Children's Service Suzanna Ellis, Property Services and Valuation, Commercial Service.
Status (public or exempt)	Public
Wards affected	Hale
Enclosures	Drawing 24425
Reason for exemption from call-in (if appropriate)	N/A
Key decision	No

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Serial No. 1964

1. RELEVANT PREVIOUS DECISIONS

- 1.1 Cabinet Resources Committee, 19 July 2010, 'Conversion of Schools to Academy Status – Transfer of Land' – delegated authority 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.
- 1.2 Cabinet Resources Committee, 'Quarter 1 Monitoring and Performance Report 2012/13' Appendix D (capital monitoring analysis) allocated £2m to other permanent expansions.

2. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 2.1 The Corporate Plan 2012-2013 priority 'Sharing opportunities, sharing responsibilities' has a strategic objective of "Ensuring every school is a good school for every child and targeting support at young people at risk of not fulfilling their potential". The granting of academy status to those schools that wish to convert will ensure that schools in Barnet remain popular and successful.

3. RISK MANAGEMENT ISSUES

- 3.1 If the Commercial Transfer Agreement is not signed and completed, the school cannot become an Academy.
- 3.2 If arrangements are not put in place for land transfer, the school cannot become an Academy. Property-related matters are set out in section 5.4 and 5.5 below.

4. EQUALITIES AND DIVERSITY ISSUES

- 4.1 The signing of the agreements 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.

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

Finance

- 5.1 Local Authorities are not involved in the decision as to whether a school becomes an Academy; this is a matter for the Secretary of State for Education. From April 2013 academies and maintained schools will be funded using exactly the same funding formula. However maintained schools (through the Schools Forum) have the option of 'de-delegating' funding back to the local authority for some central services and contingencies. Academies cannot 'de-delegate' but can buy back into services. Should academies decide not to buy back services, some services currently funded via the centrally retained budget may need to be reduced, with a consequential reduction in staff.

- 5.2 Deansbrook Junior School is a member of Barnet's Excellence in Clusters group of schools and as such receives additional Excellence in Clusters funding. From April 2013, this is due to be included within schools' budgets, rather than as a discrete element. When the school converts to academy status, it will receive its portion of this funding directly from the Department for Education.
- 5.3 As part of the Council's investment in primary school places a permanent expansion is proposed at Deansbrook Infant and Junior schools, and £2m included in the capital programme to help meet costs during 2012/13 (see 1.2). Any further funding required will be allocated to projects when the 2013/14 basic needs funding allocation from government is received. Subject to consultation, the Council will commission, fund and manage works to increase the physical capacity of Deansbrook and Infant and Junior schools to accommodate an additional 30 Reception and an additional 30 Year 3 pupils each year. The schools currently have additional classes in Reception and Year 3. This does not represent a commitment to cover any associated revenue costs, which the school will need to meet from within its budget. This will be referenced within the Commercial Transfer Agreement.

Property

- 5.4 As a maintained school, the land associated with Deansbrook Junior School is currently held by the local authority. The property is linked to the Deansbrook Infant School, of which Barnet Council is the freeholder, where there is an established relationship where both schools share both sites in particular, access, the dining room facilities, utilities, and playground and sports field provision. The Council as freeholder of the school land is required to transfer the land to the new Academy and accordingly under the Academies Act 2010, the land and premises occupied by the school at Deansbrook Junior School, Hale Drive, Mill Hill, London, NW7 3ED will be transferred to the Academy Trust on a 125 year lease at a peppercorn rent to enable the school to meet its intended conversion date of 1 April 2013. The land in question is shown edged re on the attached drawing.
- 5.5 All rights of access etc for utilities and media, as may be required at any time in the future will also be provided for within the lease. The schools have both been identified for future expansion and land required to do this is to be made available from the Infant and Junior Schools, as to be set out in the transfer agreements.

Staffing

- 5.6 As a community school, all staff at the school are employed by the Local Authority. When Deansbrook Junior School becomes an Academy, pursuant to the Transfer of Undertakings (Protection) of Employment Regulations 2006 (TUPE), the contracts of employment of any employees of the Council who are assigned to the School will transfer to Deansbrook Junior School / Academy Trust. The effect of TUPE is that the contracts of employment made between the Local Authority and the transferring employees will have effect from and after the transfer date as if originally made between Deansbrook

Junior School and the transferring employees. Therefore, with effect from the conversion date, Deansbrook Junior School will be responsible for all emoluments and outgoings in respect of the transferring employees (including all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions and pension contributions). As outlined in paragraph 5.1 above there may be a reduction in the number of staff funded from the centrally retained budget should academies decide not to buy back services. The cost of any redundancies of centrally retained funded staff is met from the Council's central redundancies budget.

Pensions

- 5.7 Non-teaching staff in a maintained school converting to academy status either belong to or are entitled to belong to the Local Government Pension Scheme (LGPS) and have their pension dealt with by the 'Administering Authority' applicable to schools in that Local Authority. Academies are separate scheme employers under the LGPS. Academies are 'scheduled body' employers, being listed in Part 1 of Schedule 2 to the LGPS Administration Regulations 2008 [SI2008/239] (as amended). They are not 'admitted bodies'.
- 5.8 Academies' funding agreements require them to offer LGPS membership to all non-teaching staff. Where maintained schools apply to convert to Academies under section 3 of the Academies Act 2010 and an Academy order is made under section 4, those existing staff who are already members of the LGPS by virtue of the Administration Regulations would not be affected by the conversion. Their membership of the LGPS would continue unaffected. After conversion, new non-teaching staff will be eligible to join the LGPS and will be automatically enrolled in the Scheme when employed. Whatever arrangements apply currently for remitting contributions as a maintained school, the academy will itself be responsible for remitting employer and employee contributions to the council as the 'Administering Authority' for Barnet's Local Government Pension Scheme Fund.
- 5.9 Teaching staff in a maintained school converting to academy status either belong to or are entitled to belong to the Teachers' Pension Scheme which is administered nationally by Teacher Pensions. On conversion to Academy status their membership will continue unchanged. All newly employed Teaching staff will also continue to have entitlement to join the Teaching Pensions Scheme.

6. LEGAL ISSUES

- 6.1 Under the Academies Act 2010 (the Act) section 3, the governing body of a maintained school in England may apply to the Secretary of State for an Academy order to be made in respect of the school. Section 4 of the Act provides that the Secretary of State may make an Academy order in respect of a maintained school in England, if the governing body of the school make an application under section 3. An Academy order in respect of a school is an order for the purpose of enabling the school to be converted into an Academy.

If an Academy order is made in respect of a school, the Secretary of State must give a copy of the order to: (a) the governing body and head teacher of the school, and (b) the local authority.

- 6.2 As addressed in the body of the report, as part of the conversion process, a Commercial Transfer Agreement must be signed by the Local Authority, the Governing Body of the School and the Academy Trust. The Commercial Transfer Agreement will contain information relating to: (i) any employees of the Council or the Governing Body who are assigned to the School and who will transfer from the employment of the Local Authority or the Governing Body to the new Academy Trust; and (ii) any assets and contracts which will transfer from the Local Authority or the Governing Body to the new Academy Trust, together with other rights and obligations of the Council, the Governing Body, or the Academy Trust .
- 6.3 Section 13 (Schedule 1) of the Act makes provision about land transfers to the Academies. The Act refers to transfer of land pursuant to one or more directions from the Secretary of State. Under the Act, references to a transfer of land are to the transfer of a freehold or leasehold interest in the land or to the grant of a lease in respect of the land.
- 6.4 The access and sharing arrangements between the two schools referred to in paragraph 5.4 and any other such arrangements will need to be provided for and documented within the Academy Lease and/or dealt with in a separate written Agreement between the School and the Academy.
- 6.5 In the event of the parties not being able to conclude the 125 year Lease by 1 April 2013 as an interim measure the Council could grant to the Academy a tenancy at will of the premises which will continue pending formal completion of the 125 year Academy Lease .

7. CONSTITUTIONAL POWERS

- 7.1 Constitution, Part 3, Responsibility for Functions, Sections 3.2 and 3.3 detail the powers of Cabinet Members which includes to the power to 'discharge the executive functions that fall within their portfolio'.

8. BACKGROUND INFORMATION

- 8.1 Deansbrook Junior School is currently a maintained school. The governing body has applied to become an Academy, under the provisions of the Academies Act 2010. The school has applied to become an Academy within the London Academy. The Secretary of State has approved the school's application and the school is aiming to convert on 1 April 2013.
- 8.2 In order for the school to convert, the school has instructed their legal firm to complete the necessary documents and agreements. To this effect, the Council has sent a Commercial Transfer Agreement (the Agreement) from the Solicitor acting for the School, which must be signed by the current Governing Body of the school, the new Academy Trust and the Local Authority.

- 8.3 The Agreement is intended to ensure that all information on the staff who are transferring to the academy is recorded and transferred to the Academy Trust so that the appropriate arrangements for payment of salaries, pension contributions, etc. can be made. It also includes details of any assets or contracts that will transfer to the Academy Trust. The Agreement is based on the model provided by the Department for Education. The Agreement also includes confirmation that the Academy Trust will pick up the Local Government Pension Scheme liabilities, with respect to staff transferring from the Governing Body to the Academy Trust.
- 8.4 The transfer of staff, assets and contracts is the principal purpose of the Agreement, and the Council does have certain other rights and obligations, mainly in relation to any balance remaining from the School's budget following completion of due accounting procedures.
- 8.5 With respect to the transfer of assets, under the Agreement, the Council and/or the Governing Body (as applicable) will transfer (or to the extent that it is not the owner thereof shall procure the transfer of) the legal and beneficial interest in the Assets (as defined in the Agreement), free of charge and free from any encumbrance, to the Academy Trust.
- 8.6 As a community school, the Council is the current freeholder of the school land at Deansbrook Junior School, Hale Drive, Mill Hill, London, NW7 3ED before required to transfer the premises to the school in order for The Deansbrook Junior School to become an Academy. Premises will be transferred on a 125 year lease.
- 8.7 The principal terms of the Academy lease, which is proscribed by the Department for Education are:

Lease terms	Details
Landlord	The London Borough of Barnet
Tenant	Deansbrook Junior School – Academy Trust
Premises	See Drawing 24425
Term	125 years.
Rent	One peppercorn if demanded.
Repairs	To keep the property in a good and substantial repair clean and tidy condition and to repair and damage caused and make good any deterioration to comply with the obligations to keep the property in a clean and tidy condition.
Alterations	Landlord's consent not be unreasonably withheld to the erection or alteration of any structures.

Statutory obligations	To comply with all laws affecting the property the physical condition or the user of them.
Use	Not to use the premises otherwise than for the purposes of the provision of educational services by the tenant and for community, fundraising and recreational purposes which are ancillary to this use.
Alienation	<p>The tenant may share occupation of part of the property with a body or individual providing services or facilities which are ancillary to the uses referred to in the user clause.</p> <p>Not to assign or transfer any part or parts of the whole property.</p> <p>The tenant is permitted to assign or transfer the whole property to a successor charitable or public body where the Secretary of State has to give approval to such an assignment.</p> <p>Not to underlet any part or parts or the whole of the property.</p>
Insurance	The Landlord to Insure
The security of tenure provisions of the Landlord and tenant Act 1954 are excluded	Excluded.

The leases to include such other terms or variations of the principal terms as may be deemed appropriate by the Council and agreed by the Academy.

9. LIST OF BACKGROUND PAPERS

9.1 None

10. DECISION OF THE CABINET MEMBERS

We authorise the following actions

- 10.1 (i)The signing and completion of the Commercial Transfer Agreement; (ii) the grant of an Academy lease of the Junior school premises on the principal terms set out above; (iii) if required, the entering into and completion of an Agreement between the Council and the Academy to document and provide for access and sharing and any other arrangements existing between the parties that may not otherwise be**

provided for within the Academy Lease; (iv) if, for any reason, practical agreement means the lease cannot be completed then a tenancy at will can be put in place.

Signed



Cabinet Member for Education, Children & Families

Date

13 March 2013

Signed



**Cabinet Member for Resources & Performance/Deputy
Leader of the Council**

Date

14 March 2013