



ACTION TAKEN UNDER DELEGATED POWERS BY OFFICER 26 February 2016

Title	Claremont Primary School Academy Conversion: Commercial Transfer Agreement and Lease of the School Premises
Report of	Commissioning Director for Children & Young People (Director of Children's Services)
Wards	Golders Green Ward
Status	Public
Enclosures	Drawing 24617 Academy lease plan
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Summary

Claremont Primary School, a Community School, has been approved by the Secretary of State to convert to an Academy as part of a multi-academy trust (The Elliot Foundation Academies Trust ("TEFAT")). As part of the conversion process, the Council is required to grant a lease of the land and buildings used by Claremont Primary School to the Academy Trust in the terms of the model long term Department for Education Academy Lease and this report sets out the main terms which incorporate appropriate provisions to accommodate any required rebuilding and expansion and/or relocation of the school in the event of the grant and implementation of planning permission for the regeneration of the area as the school falls within the Brent Cross Cricklewood south side development phase ("BXC").

The Council, the Governing Body of the School, and the Academy Trust are also required to execute a Commercial Transfer Agreement, which includes 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 Governing Body or the Local Authority to the

new Academy Trust; and (ii) 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 or the Governing Body, including obligations pertaining to the possible rebuilding and expansion and/or relocation of the school in the event of the grant and implementation of planning permission for the regeneration of BXC .

Decisions

- 1. That the Commissioning Director for Children & Young People having consulted with the Chief Operating Officer, Commissioning Director for Growth and Development and the Head of Estates be authorised to approve and confirm that the Council:**
 - (i) sign and complete the Commercial Transfer Agreement; and**
 - (ii) enter into an Academy lease of the whole site shown edged red on the attached drawing no. 24617 on the terms set out at section 1.7 with the Elliot Foundation Academies Trust.**

1. WHY THIS REPORT IS NEEDED

- 1.1 Claremont Primary 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 Elliot Foundation Academies Trust (“TEFAT”). The Secretary of State has approved the school’s application and the school is scheduled to convert on 1 March 2016.
- 1.2 In order for the school to convert, TEFAT has instructed their appointed legal representatives 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 Elliot Foundation, which must be signed by the current Governing Body of the school, TEFAT and the Local Authority.
- 1.3 The Agreement is intended to ensure that all information on the staff that are transferring to the academy is recorded and transferred to TEFAT so that the appropriate arrangements for payment of salaries, pension contributions, etc. as outlined in the report can be made. It also includes details of any assets or contracts that will transfer to TEFAT. The Commercial Transfer Agreement is based on the current model provided by the Department for Education. The Agreement also includes confirmation that TEFAT will pick up the Local Government Pension Scheme liabilities, with respect to staff transferring from the Governing Body to TEFAT.
- 1.4 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.
- 1.5 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 which includes the property to be comprised in the lease), free of charge and free from any encumbrance, to the Academy Trust.

1.6 The Agreement also contains additional obligations relating to the possible rebuilding and expansion and/or relocation of the school in the event of the grant and implementation of planning permission for the regeneration of BXC, these are in the main intended to reinforce and complement the provisions contained in the Academy lease and ensure that Claremont Primary School's conversion to Academy status does not prejudice the BXC regeneration programme. In brief these are:-

- (i) to act in good faith, fully co-operate with the Council and the Council's development partner and the Council's building contractor;
- (ii) on reasonable notice (in accordance with the relevant provisions in the Academy lease) vacate the buildings on the site and as indicated by the Council relocate the Academy to temporary accommodation;
- (vi) not to cause any undue delay or disruption to the rebuilding and expansion works or take any action which may cause the Council to be liable to pay any compensation under any building contract;
- (v) comply with all the relevant provisions in the Academy lease pertaining to the rebuilding and expansion works;
- (vi) acknowledge that as a result of the rebuilding and expansion works the size of the Academy may be expanded on the existing site or may be relocated; and
- (vii) acknowledge that nothing in the Agreement nor the Academy lease shall commit the Council or its development partner to carry out any rebuilding and expansion works.

1.7 The principal terms of the Academy lease are

Lease Terms	
Landlord	The London Borough of Barnet
Tenant	The Elliot Foundation Academies Trust
Premises	See Drawing 24617 attached
Term	125 years
Rent	a peppercorn rent if demanded

Repairs	<p>To keep the property in a clean and tidy, condition, to make good any damage caused together with any deterioration that has occurred from the Term Commencement Date of the Lease (NB this excludes anything pre the date of grant of the Lease for which the Council remains responsible- see section 5.4.2). In the event of a new lease being granted if the school is rebuilt and expanded or relocated as part of the Brent Cross Cricklewood regeneration scheme, the repairing obligation will be altered to keep the property in good and substantial repair as TEFAT will have the benefit of warranties on a prescribed basis on which they can rely to enable them to make good any defects following the completion of the building work if required.</p>
Caretaker's Accommodation	<p>Provisions have been included to require the Council to re-provision the current caretaker's accommodation on any expanded site or new site so far as such may be still required. In the event of the accommodation no longer being required, TEFAT is required to surrender the land back to the Council for nil consideration.</p> <p>The form of the transfer by way of surrender to the Council if required will be settled in the absence of agreement by Conveyancing Counsel.</p>
Alterations	<p>Landlord's consent not to be unreasonably withheld to the</p>

	erection or alterations of any buildings or structures subject to the usual model form Academy lease caveats
Statutory Obligations	To comply with all laws affecting the property, the physical condition, or the users of them
Use	Not to use the property other than for the purposes of the provision of educational services by the tenant and for community, fundraising and recreational purposes which are linked to this use, and for play schemes and/or breakfast clubs and after school club activities provided no landlord and tenant relationship is created which is a mirror of the terms contained in TEFAT's Academy lease relating to the Hyde.
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>Underletting will be permitted of part or parts with the Council's consent and such underleases shall be excluded from security of tenure.</p>

Insurance	The tenant to insure
The security of tenure provisions of the Landlord and Tenant Act 1954 are excluded	Confirmed
Redevelopment Provision	<p>Provisions have been included which take account of the BXC regeneration. These include a requirement on the School to decant (provided that the School can still continue to provide its education services properly in such alternative premises) and relocate if required on the basis that any new lease granted to TEFAT will be on no worse terms and offer the same amenity. The new lease will replace the existing lease which will be terminated on not less than 3 months' notice and served at agreed times in the academic year.</p> <p>TEFAT will not be a party to the Council's Development Agreement with its preferred development partner but only to the Agreement for lease which must contain certain obligations on the Council to provide the warranties, and which includes a requirement for the Council to fully fund the development and an indemnity from either the Council or its development partners in favour of TEFAT for all costs and expenses arising from the Council's or its development partner's obligations.</p>

2. REASONS FOR DECISIONS

- 2.1 Claremont Primary School's Governing Body has decided to join TEFAT in order to secure the school's improvement. To join the multi-academy trust, Claremont Primary School must become an academy.

3. ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

- 3.1 Claremont Primary School could continue to be maintained by the Local Authority, however it is the Governing Body's view that securing the school improvement is best met through joining TEFAT.

4. POST DECISION IMPLEMENTATION

- 4.1 Once the decision has been approved, the Lease and Commercial Transfer Agreement will be sealed and signed by the Council.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 The Corporate Plan 2015-2020 Priority 1: 'To ensure that Barnet remains one of the best places in the country for children to grow up' is supported to ensure 'Continuing to maintain excellent school standards'. The granting of academy status to those schools that wish to convert will ensure that schools in Barnet remain popular and successful.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

5.2.1 Finance

- 5.2.2 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.

5.2.3 Property

- 5.2.4 The freehold interest in this maintained school is currently held by the Council.

- 5.2.5 The Council as freeholder of the school land is required to transfer the school premises and rights over the site to the new Academy and accordingly under the Academies Act 2010, the current land and premises occupied by the school at Claremont Road, London NW2 1AB will be transferred to the Academy Trust on a 125 year lease at a peppercorn rent in accordance with the Heads of Terms set out in section 1.6 of this report to enable the school to

meet its intended conversion date of 1 March 2016. The land to be demised is shown edged in red on the attached drawing 24617.

The prospective Brent Cross Cricklewood redevelopment has a direct bearing on the lease arrangements and provision has been made (in the event that it becomes necessary) to provide for the lease to be terminated and replaced by a substitute lease on the new site following the completion of the relevant redevelopment works once these have been completed pursuant to any development agreement. The proposed new lease will be preceded by an agreement for lease which will obligate Barnet and/or its development partner without cost to the school to provide an expanded site or an alternative lease site and rebuild or build a new school (which is to be constructed by the development partner) to TEFAT, a package of suitable construction warranties to guarantee the on-going integrity of any newly constructed building, and which will be in substantially the same terms as the model lease. The current lease will obligate both the Council and TEFAT to enter into an Agreement for Lease, if so required, to reflect the agreed negotiated appropriate arrangements to provide the required level of assurance and certainty to TEFAT in the context of any possible regeneration which directly affects the School and for the Council to provide the necessary documents to TEFAT such as warranties and to assume financial responsibility resultant on the potential relocation/expansion.

5.2.6 Staffing

5.2.7 As a community school, all staff at the school are employed by the Local Authority. When Claremont Primary 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 TEFAT. 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 Claremont Primary School and the transferring employees. Therefore, with effect from the conversion date, TEFAT 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). 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.

5.2.8 Pensions

5.2.9 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'.

5.2.10 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.

5.2.11 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.

5.3 Legal and Constitutional References

5.3.1 Claremont school is currently a maintained school, owned freehold by The London Borough of Barnet. 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.

5.3.2 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. The Commercial Transfer Agreement also places obligations on the Academy Trust to comply with the duties/obligations placed on it in relation to SEN pupils and obligations in relation to the regeneration, a summary of which is set out in paragraph 1.6 above.

- 5.3.3 Section 13 (Schedule 1) of the Act makes provision about land transfers to the Academies following the dissolution of the governing body on the conversion date following the making of the Academy Order. 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.
- 5.3.4 According to the Council's Constitution, section 15b, Scheme of Delegated Authority to Officers delegates inter alia the following delegated powers to the Commissioning Director for Children and Young People:
- Those duties conferred on or exercisable in its capacity as a local education authority.
 - Exercise all functions, powers and duties of a Children's Services Authority under all relevant legislation, but not limited to, Education, Social Services and Health functions.
- 5.3.5 According to the Council's Constitution, section 15b, Scheme of Delegated Authority to Officers delegates inter alia the following delegated powers to the Chief Operating Officer:
- The proper administration of the financial affairs of the Council, which responsibilities shall include all arrangements covering financial planning, financial control, banking accounts, banking accounts, income, insurances, investments, binds, loans, leasing, borrowing etc.,
 - Exercising the functions of the Council relating to procurement
- 5.3.6 According to the Council's Constitution, section 15b, Scheme of Delegated Authority to Officers delegates inter alia the following delegated powers to the Commissioning Director for Growth and Development:
- Having regard to section 3 (Delegation of Powers) authority for commissioning services and making any decision for the operational effectiveness of planning and development, management, regeneration, housing, enterprise skills, employment, building control, land charges and strategic planning.
- 5.3.7 According to the Council's Constitution, Section 15 – Responsibility for Functions section 3- Officer Delegations where a function has been delegated to those officers as set out at Section 15 Annex B (Responsibility for Functions Scheme of Delegated Authority to Officers) where such function has been delegated to a delegated officer, a decision may be taken in the name of (but not necessarily by) such delegated officer(s) by another officer in accordance with arrangements made from time to time by such delegated officer(s) for this purpose.
- 5.3.8 These decisions are being taken by the Commissioning Director for Children and Young People after consultation with the Chief Operating Officer, Commissioning Director for Growth and Development and the Head of Estates, given that the Claremont School is a community school currently run by the Local Education Authority given the implications of these decisions on the School and on the Council in the light of the proposed BXC regeneration

scheme.

5.4 Risk Management

5.4.1 If the Commercial Transfer Agreement is not signed and completed, the school cannot become an Academy. If arrangements are not put in place for land and premises transfer, the school cannot become an Academy. Property-related matters are set out in sections 1.7 and 5.2.3 and 5.2.5 of this report. There is a risk that regeneration plans for the BXC area, could be prejudiced if the land arrangements and the Agreement made as part of the Academy conversion process do not take account of the BXC regeneration.

5.4.2 The state and condition of the current school premises, as a result of the terms of the repairing obligation as contained in the model form lease referable to the current premises, may place a contingent liability on the Council to pay for historic repairs. TEFAT are not required to agree to a lease on terms other than the model form and in the circumstances it is not thought realistic to seek to alter this although negotiations have been undertaken to amend this which have been unsuccessful if TEFAT are required to take a new lease, then the Council will then mitigate this liability and will only be responsible for anything outside the obligations to be contained in any new lease based on the model academy form to the extent that they are not covered by any third party warranties which are to be provided to TEFAT on completion of the development.

5.5 Equalities and Diversity

5.5.1 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.

5.6 Consultation and Engagement

The Governing Body consulted parents and staff about the academy conversion. The TUPE consultation opened with union representatives on 8.12.15 and closed on 27.1.16.

6. BACKGROUND PAPERS

6.1 None.

7. DECISION TAKER'S STATEMENT

7.1 *I have the required powers to make the decision documented in this report. I am responsible for the report's content and am satisfied that all relevant advice has been sought in the preparation of this report and that it is compliant with the decision making framework of the organisation which includes Constitution, Scheme of Delegation, Budget and Policy Framework and Legal issues including Equalities obligations.*

8. OFFICER'S DECISION

I authorise the following action:

- 8.1 The signing and completion of the Commercial Transfer Agreement
- 8.2 The grant of an Academy lease of the whole site including the primary school premises shown edged red on the attached drawing no. 24617.

Signed **Chris Munday**
 Commissioning Director, Children and Young People

Date 26.2.2016
