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| | <p>ACTION TAKEN UNDER DELEGATED POWERS BY OFFICER 19 December 2016</p> |
| Title | Oak Lodge Special 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 | East Finchley Ward |
| Status | Public |
| Enclosures | Drawing 24658 Academy lease plan |
| Officer Contact Details | <p>Alison Dawes Head of Education Partnerships & Commercial Services, Education and Skills Service Alison.Dawes@barnet.gov.uk 0208 359 7698</p> <p>Huw Williams, Senior Property Lawyer, HB Law, Huw.Williams@harrow.gov.uk 0208 420 9393</p> |

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| <h2>Summary</h2> |
| <p>Oak Lodge Special School, a Community School, has been approved by the Secretary of State to convert to an Academy as part of a multi-academy trust (Barnet Special Education Trust). As part of the conversion process, the Council is required to grant a lease of the land and buildings used by Oak Lodge Special 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.</p> <p>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.</p> |

Decisions

- 1. That the Commissioning Director for Children & Young People having consulted with 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. 24658 on the terms set out at section 1.6 with the Barnet Special Education Trust .**

1. WHY THIS REPORT IS NEEDED

- 1.1 Oak Lodge Special 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 Barnet Special Education Trust . The Secretary of State has approved the school's application and the school is scheduled to convert on 1 January 2017.
- 1.2 In order for the school to convert, the Barnet Special Education Trust 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 Barnet Special Education Trust, which must be signed by the current Governing Body of the school, the Barnet Special Education Trust 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 the Barnet Special Education Trust, 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 the Barnet Special Education Trust. The Commercial Transfer Agreement is based on the current model provided by the Department for Education. The Agreement also includes confirmation that the Barnet Special Education Trust will pick up the Local Government Pension Scheme liabilities, with respect to staff transferring from the Governing Body to the Barnet Special Education Trust.
- 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 principal terms of the Academy lease are:-

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| Lease Terms | |
| Landlord | The London Borough of Barnet |
| Tenant | Barnet Special Education Trust |
| Premises | See Drawing 24658 attached |
| Term | 125 years |
| Rent | a peppercorn rent if demanded |
| Repairs | 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). |
| Alterations | Landlord's consent not to be unreasonably withheld to the 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 |
| Alienation | 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 |

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| | <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>The tenant may underlet part of the property with the consent of the landlord, such consent not to be unreasonably withheld</p> |
| Insurance | The tenant to insure |
| The security of tenure provisions of the Landlord and Tenant Act 1954 are excluded | Confirmed |

1.7 The Agreement and Lease also contain appropriate provisions to reflect the on-going construction works to the school pursuant to the NEC Contract (CS/069051) dated 15 January 2016 and made between the Council and Morgan Sindall Plc. These works will continue post the conversion date of the 1st January 2017.

2. REASONS FOR DECISIONS

2.1 Oak Lodge Special School's Governing Body has decided to join The Barnet Special Education Trust in order to open a Special Free School. To join the multi-academy trust, Oak Lodge Special School must become an academy.

3. ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

3.1 Oak Lodge Special School could continue to be maintained by the Local Authority, however it is the Governing Body's view that opening a Special Free School would benefit the Borough's students with Special Educational Needs and meet the demand for school places.

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 Heath View, off East End Road, Finchley, London N2 0QY 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 January 2017. The land to be demised is shown edged in red on the attached drawing 24658.

5.2.6 **Staffing**

5.2.7 As a community school, all staff at the school are employed by the Local Authority. When Oak Lodge Special 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 The Barnet Special Education 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 Oak Lodge Special School and the transferring employees. Therefore, with effect from the conversion date, The Barnet Special Education Trust 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 Oak Lodge Special 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, 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.

5.3.7 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 Head of Estates.

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.

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.

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. 24658

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

Date **19.12.2016**
