



CHIEF OFFICER DECISION

Title	Childs Hill Academy Conversion: Commercial Transfer Agreement and Lease of the School Premises
Report of	Executive Director of Children's Services
Wards	Child's Hill
Status	Public
Enclosures	The attached plan
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Summary

Childs Hill Primary School, a Community School (the School), has been approved by the Secretary of State to convert to an Academy as part of a multi-academy trust (The Elliot Foundation Academy Trust). As part of the conversion process, the Council is expected to grant a lease of the land and buildings used by Childs Hill 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.

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, the Governing Body or the Academy Trust.

Decisions

1. That the Executive Director Children's Services having consulted with the Deputy Chief Executive and the Assistant Director 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 to the Elliot Foundation Academy Trust of the whole site shown edged red on the attached drawing on the terms set out at section 1.6 with such amendments as may be approved by the Head of Estates;
 - (iii) enter into a sublease, licence or memorandum of understanding on terms to be approved by the Head of Estates between the Council and the Elliot Foundation Academy Trust for the Council to operate and manage the Children's Centre at the School.

1. WHY THIS REPORT IS NEEDED

- 1.1 Childs Hill 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 Academy Trust. The Secretary of State has approved the school's application and the school is scheduled to convert on 1 January 2020.
- 1.2 In order for the school to convert, the Elliot Foundation Academy Trust has instructed their appointed legal representatives to complete the necessary documents and agreements. To this effect, the Council has been sent a Commercial Transfer Agreement (the Agreement) from the Solicitor acting for The Elliot Foundation Academy Trust, which must be signed by the current Governing Body of the school, the Elliot Foundation Academy 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 Elliot Foundation Academy 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 Elliot Foundation Academy Trust. The Commercial Transfer Agreement is based on the current model provided by the Department for Education. The Agreement also includes confirmation that the Elliot Foundation Academy Trust will pick up the Local Government Pension Scheme liabilities, with respect to staff transferring from the Governing Body to the Elliot Foundation Academy Trust 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 as follows. It is proposed that the Department for Education's template academy lease should be used.

Lease Terms	
Landlord	The London Borough of Barnet
Tenant	The Elliot Foundation Academy Trust
Premises	See 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 use of them.
Memorandum of Understanding	For the landlord to be able to manage and operate the Children's Centre at the school

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	<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 or sublet any parts or the whole of the property except as follows</p> <p>The tenant is permitted to assign or transfer the whole property to the Secretary of State for Education, an academy, a successor charitable or public body where the Secretary of State has to give approval to such an assignment</p>
Insurance	The tenant to insure
The security of tenure provisions of the Landlord and Tenant Act 1954 are excluded	Confirmed

2. REASONS FOR DECISIONS

- 2.1 Childs Hill Primary School's Governing Body has decided to join the Elliot Foundation Academy Trust in order to open an Academy. To join the multi-academy trust, Childs Hill School must become an academy.

3. ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

Childs Hill School could continue to be maintained by the Local Authority, however it is the Governing Body's view that opening an Academy would benefit

the Borough's students. As the Secretary of State for Education has approved the proposal and made an Academy Order on 26 June 2019, the Council has no say in whether the school should convert to an academy.

4. POST DECISION IMPLEMENTATION

- 4.1 Once the decision has been approved, the Lease (and sublease, licence or memorandum of understanding) 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. The cost to the Council of this academy conversion are less than £189,330 meaning that the decision to allow the conversion can be taken by a Chief Officer.

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 expected by the Secretary of State for Education to transfer the school premises and rights over the site to the Elliot Foundation Academy Trust, by agreement with them. If the Council declines to do so the Secretary of State for Education has the power to make a transfer scheme vesting the freehold or a lease in the Elliot Foundation Academy Trust under the Academies Act 2010, by which the Council would be bound. Accordingly, the current land and premises occupied by the school at Dersingham Road, Childs Hill, London NW2 1SL 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 (modified with the approval of the Head of Estates if applicable) to enable the school to meet its intended conversion date of 1 January 2020, or such other conversion date as may be directed by the Secretary of State for Education. The land to be demised

is shown edged in red on the attached plan. The Secretary of State for Education will expect the Council and the Elliot Foundation to use the Department for Education's template academy lease.

5.2.6 Staffing

5.2.7 As a community school, all staff at the school are employed by the Local Authority. When Childs Hill 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 The Elliot Foundation 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 Childs Hill Primary School and the transferring employees. Therefore, with effect from the conversion date, The Elliot Foundation Academy 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 Childs Hill Primary 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. An Academy order has been made in relation to the School and is dated 26 June 2019.
- 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. HB Public Law shall assist with the drafting and execution of the Commercial Transfer Agreement.
- 5.3.3 The Secretary of State's power to make a transfer scheme as mentioned in para 5.2.5 above, is contained in Section 13 and Schedule 1 of the Act. Section 123 (2) and (2A) of the Local Government Act 1972 (Council's duty to obtain best consideration and to advertise disposal of public open space) do not apply to a lease made for the purposes of an academy, under para 20 of schedule 1 to the Act.
- 5.3.4 According to the Council's Constitution, Article 9.1, Delegated Authority to Chief Officers, the Council's Executive Director for Children and Young People (subject to the qualifications mentioned below) may make decisions that are not Key decisions and approve expenditure relating to the functions of his department provided the sums to be expended are within the approved budget for his department and the sum for any single matter does not exceed £189,330; and may determine employment matters relating to staff including all changes to staffing structures, not including changes to terms and conditions of employment or additional payments to any individual member of staff above £100K.

Article 9 provides that the Executive Director, Children and Young People will fulfil the role of the Director of Children's Services.

The Director of Children's Services is responsible for the delivery of the Council's education and social services functions for children, and any health functions for children delegated to the Council by an NHS body and as required by the Children Act 2004.

5.3.5 According to the Council's Constitution, Article 10 Table A, a compulsory transaction may be approved by an approved officer if the income or expenditure is less than £181,302.

5.3.6 These decisions are being taken by the Executive Director for Children and Young People after consultation with the Deputy Chief Executive and the Assistant Director 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 and the Secretary of State may compel land transfer on terms which it will decide.

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

5.6.1 The Governing Body consulted parents and staff about the academy conversion.

6. BACKGROUND PAPERS

6.1 None.

7. DECISION TAKER'S STATEMENT

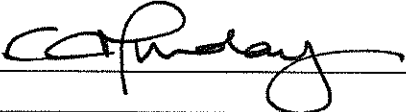
7.1 *I have the required powers to make the decision documented in this report. I am responsible for the report's content and am satisfied that all relevant advice has been sought in the preparation of this report and that it is compliant with the decision making framework of the organisation which includes 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 and completion of a sublease, licence or memorandum of understanding in relation to the Children's Centre.

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

Date  . 13/01/20
