



CABINET MEMBER DECISION

DECEMBER 2014

APPROVAL OF CONVERSION OF HURLINGHAM & CHELSEA SCHOOL TO ACADEMY STATUS

Report of the Cabinet Member for Children and Education

Open Report

Classification - For Decision

Key Decision: No

Wards Affected:

Accountable Executive Director: Andrew Christie, Tri-Borough Executive Director of Children's Services

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The Cabinet Member has signed this report...

DATE: 19 December 2014

1. EXECUTIVE SUMMARY

- 1.1. This report relates to the conversion of Hurlingham & Chelsea School to academy status. United Learning Trust is the sponsor and will be granted a 125 year lease modelled on the DfE standard form. The lease requires use of the site for school purposes and will revert to the local authority on expiry.
- 1.2. In line with the delegated power from Cabinet from the 5th March 2012 the Cabinet Member is requested to approve the following recommendations to enable the conversion of Hurlingham & Chelsea School to a United Learning Trust academy.

2. RECOMMENDATIONS

- 2.1 To approve the grant of a 125 years lease of Hurlingham & Chelsea School site to United Learning Trust.
- 2.2 To approve the Council entering into a Commercial Transfer Agreement transferring the schools assets, contracts and staff from Hurlingham & Chelsea School to United Learning Trust.

3. REASONS FOR DECISION

- 3.1. The decision is required to comply with the procedures necessary to give effect to the conversion of Hurlingham & Chelsea School to academy status.

4. INTRODUCTION AND BACKGROUND

- 4.1 As part of the Government drive to raise school standards and further empower schools to be more in control of their delivery, further encouragement has been given to schools to convert to academy status. This has also included a simplification of the process and a generic standardisation of the required documentation to enable both existing trustees (usually local authorities or dioceses) and local authorities as the current funding bodies to effect the necessary change from maintained schools to academies.
- 4.2 This standard documentation is the end of a process that commenced when the schools individually registered their interest in considering academy status with the Secretary of State and then underwent a series of steps including broad stakeholder consultation and consideration of this by the governing body before making their final applications to the Secretary of State.
- 4.3 Once the Secretary of State has considered their requests and approved their conversion to academy status, then the following aspects are required before the school can formally convert:
 - that a funding agreement is approved between the Secretary of State and the academy
 - to enable the Secretary of State to enter into a funding agreement, the academy must have entered into a long term(125 years) lease with academy (in this case United Learning)
 - to enable the converting academy to deliver continuous education the existing staff are TUPE'd to the new academy and relevant contracts and assets are novated across under the terms of a commercial transfer agreement.
- 4.4 The latter action involves the local authority as a co-signatory.

5. PROPOSAL AND ISSUES

- 5.1 To deliver the conversion of Hurlingham & Chelsea school to an academy from a maintained community school, the Council is required by the Secretary of State to enter into a long term lease (125 years) with United Learning Trust. The Council is also required to transfer the employees, assets and contracts across to the new academy.
- 5.2 The transfer of the school land and buildings element is dealt with by way of a lease. The Government has set out a model lease for use by councils and academy trusts to facilitate a smooth transaction. However, the model lease provisions are not compulsory and can be negotiated
- 5.3 The transfer of the staff, assets and contracts is dealt with by way of a commercial transfer agreement (CTA) which sets out the staff, contracts and assets to be transferred as well as the respective rights, obligations and liabilities of the parties. There is a model form of contract provided by the DfE upon which the commercial transfer agreement between the Council and United Learning will be based.
- 5.4 Officers within the Council have worked with United Learning Trust as the sponsor of Hurlingham & Chelsea School to finalise the lease and CTA which will protect the Council's interests and enable the conversion of Hurlingham & Chelsea School to Hurlingham & Chelsea Academy.
- 5.5 The following matters have been agreed with United Learning Trust and are reflected in the terms of the lease and CTA:
- Insurance. The Council will insure the buildings and re-charge the premium in accordance with its usual practice. .
 - Caretaker's house. The house is an integral part of the site and cannot be separated from it and will not therefore be excluded from the transfer. There is no contractual obligation to rehouse the caretaker, so ULT will have no liability to re-house the caretaker at termination of employment or retirement. The Council's statutory obligations as a housing authority will apply.
 - The community library. This was provided in accordance with Planning Permission 2011/01578/FUL dated 4 August 2011, and is managed in accordance with a Community Use Policy (CUP)_relating to library facilities, school holiday programmes for students, adult learning, and partnership with sports clubs. The CUP was approved by the Governing Body on 21 November 2011. Future revisions are to be agreed by the Head Teacher, Chair of Governors and the Local Authority.

- Other occupations. The Council has provided a schedule of occupations which will continue to be honoured whilst compatible with the business of the school.
- Use of community open space. The school has the use of adjoining open space in accordance with a separate agreement with the Council, which will not be included in the lease.
- Outstanding building works and financial contributions.
 - I. Maintenance. The Council's Maintenance Grant allocation from the EFA for 2014-15 is £1.5M with a similar amount top-slice from the DSG to fund maintenance expenditure for schools. A per capita allocation to Hurlingham & Chelsea would equate to approximately £140,000, of which works are already commissioned to the value of £41,000.
 - II. As part of their due diligence United Learning reviewed the Condition Survey undertaken on behalf of the Council in 2011-12 and commissioned their own health and safety survey. A comparison of both surveys identified approximately £31,000 of works that could be deemed to be the Councils' responsibility. The cost of these works will be funded from the allocation with the remainder paid to United Learning to facilitate other works. No further contributions will be made in respect of items contained in the condition survey.

The Council will not indemnify the school or ULT for works required to comply with statutory health and safety requirements since these are the school's responsibility,

6. OPTIONS AND ANALYSIS OF OPTIONS

- 6.1 The Council's options in relation to schools converting to academy status are extremely limited. Steps have been taken as outlined in paragraph 5.5 to protect the Council's property interests and maintain other services for the community.

7. CONSULTATION

- 7.1. The Council has worked closely with all stakeholders including the school and Department for Education.

8. LEGAL IMPLICATIONS

- 8.1 Under the Academies Act 2010 (the "Academies Act") the Secretary of State for Education may enter into Academy funding agreement with an Academy Trust for establishment of an independent school/ academy. Local authorities are required to comply with such Secretary of State decision to transfer land and assets to the Academy Trust. Further, the Academies Act gives the Secretary of State powers to make transfer

schemes relating to land, property, rights or liabilities to the Academy where agreement cannot be reached between the Local Authority and the Academy Trust.

- 8.2 The Secretary of State for Education pursuant to his powers conferred under the Academies Act had exercised powers to convert Hurlingham & Chelsea School to Academy status. The Academies Act provides that on the conversion date (1 January 2015) the school closes and opens as a sponsored academy under the academy arrangements under section 1 of the Academies Act.
- 8.3 Under the statutory provisions of the Academies Act, as the Council holds the school land and buildings as freeholder, it is required to negotiate and grant a lease of the land and buildings where it is used wholly or mainly for the purposes of the school. The Council will therefore, grant a lease of the land and buildings occupied by the school to the Academy Trusts for a term of 125 years at a peppercorn rent
- 8.4 The principal terms of the academy lease, which is recommended by the Department for Education together with other terms or variations of the principal terms as deemed appropriate by the Council and the Academy Trust were agreed and incorporated into the lease.
- 8.5 Non-compliance would prompt an issue of direction and the required decisions to be taken by the Secretary of State for Education.
- 8.6 The DfE has drawn up a model form of commercial transfer agreement which sets out the terms under which the assets, contracts and staff are transferred from the school or local authority to the new academy.
- 8.7 Legal services will work with officers to finalise and agree the lease and commercial transfer agreement.

Implications completed by: Kar-Yee Chan
Solicitor (Contracts) | Bi-Borough Legal Services Tel: 020 8753 2772 and Rachel
Silverstone, Solicitor (Property) Tel: 020 8753 2210.

9. **FINANCIAL AND RESOURCES IMPLICATIONS**

- 9.1. The Director of Finance has been consulted during the preparation of the final documentation for lease and both the commercial transfer agreements and notes that these decisions are required to enable the conversion of academies and are based on model national documentation.
- 9.2. On completion of the conversion the Council will transfer £99,000 in lieu of all obligations relating to the maintenance and upkeep of the building to be transferred.
- 9.3. In accordance with guidance for maintained community schools transferring to Academy status, the land will be leased to the academy sponsor on a 125 year (operating) lease for a peppercorn rent. As an

operating lease, the Council will continue to be the freeholder and the asset will continue to be recognised on the Council's balance sheet.

Implications completed by: Dave McNamara, Director of Finance, telephone 020 8753 3404.

LOCAL GOVERNMENT ACT 2000
LIST OF BACKGROUND PAPERS

No.	Description of Background Papers	Name/Ext of holder of file/copy	Department/ Location
1.			
2.			
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