

	<p align="center">London Borough of Hammersmith & Fulham</p> <p align="center">CABINET MEMBER DECISION</p> <p align="center">FEBRUARY 2015</p>
<p align="center">APPROVAL OF GREENSIDE PRIMARY SCHOOL ACADEMY CONVERSION</p>	
<p>Report of the Cabinet Member for Children & Education Services: Cllr Sue MacMillan</p>	
<p>Open Report</p>	
<p>Classification - For Decision</p>	
<p>Key Decision: No</p>	
<p>Wards Affected: Askew</p>	
<p>Accountable Executive Director: Andrew Christie, Tri-Borough Executive Director of Children's Services</p>	
<p>Report Author: Alan Wharton, Tri-Borough Head of Asset Strategy (Schools and Children's Services)</p>	<p>Contact Details: Tel: 020 7 641 2911 E-mail: awharton@westminster.gov.uk</p>

AUTHORISED BY:

The Cabinet Member has signed this report.

DATE: 13 February 2015.....

1. EXECUTIVE SUMMARY

1.1 In line with the delegated power from Cabinet from the 5th March 2012 the Cabinet Member for Children's Services in consultation with the Executive Director of Children's Services is requested to approve the following recommendations to enable the conversion of Greenside Primary School to become a sponsored academy.

2. RECOMMENDATIONS

2.1 To approve the grant of a 125 years lease of Greenside Primary School to The Elliot Foundation Academies Trust in accordance with the Academies Act 2010.

- 2.2 To note that the Council will enter into a Commercial Transfer Agreement transferring the schools assets, contracts and staff from Greenside Primary School to The Elliot Foundation Academies Trust.
- 2.3 To approve the grant of a separate lease of the site manager's house to The Elliot Foundation Academies Trust for a term expiring in accordance with clause 5.2 below.

These recommendations are dependent on the formal funding agreement between the Academy Trust and the Secretary of State.

3. REASONS FOR DECISION

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

4. INTRODUCTION AND BACKGROUND

- 4.1 As part of the Government drive to empower schools to be more in control of their delivery, schools are encouraged to convert to academy status. This has 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:
- 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
 - 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. The standard length of lease for an academy is 125 years. The Council has negotiated terms which broadly follow the DfE form of lease, in accordance with the Academies Act 2010 (but with the Council insuring the property and the school paying the premium), with a commencement date of 1 April 2015.
- 5.2. The School currently employs a site manager who occupies a house (the caretaker's house) adjacent to the entrance of the school. The Council has excluded the house from the lease of the school site, and proposes to grant a separate lease of the house to the academy trust so that on the current site manager's retirement or his vacating prior to this date, or on vacation or retirement of any successor serving exclusively as the site manager for Greenside Primary School, the house will revert to the Council. In the event that the lease is not completed at same time as the academy lease the Council may issue a 'tenancy at will' to the academy trust from 1 April 2015, pending agreement of the terms of this lease.
- 5.3 The transfer of the staff, assets and contracts is dealt with by way of a commercial transfer agreement 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 The Elliott Foundation Academies Trust has been based.
- 5.4 In typical cases, the Schools Contracts Team is responsible for maintenance and repair of kitchen equipment. In the case of Greenside Primary School, the equipment has been purchased by the school and is therefore school property. The Council has agreed a condition that appropriate arrangements are in place for maintenance and repair.

6. OPTIONS AND ANALYSIS OF OPTIONS

- 6.1 There are no alternative options to consider in this case.

7. CONSULTATION

- 7.1 There is no consultation required in this case.

8. EQUALITY IMPLICATIONS

- 8.1. There are no equality implications to consider in this case.

9. LEGAL IMPLICATIONS

- 9.1 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.
- 9.2 The Secretary of State for Education pursuant to his powers conferred under the Academies Act has exercised powers to convert Greenside Primary School to Academy status. The Academies Act provides that on the conversion date (1 April 2015) the school closes and opens as a sponsored academy under the academy arrangements under section 1 of the Academies Act.
- 9.3 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 has therefore, granted a lease of the land and buildings occupied by the school to the Academy Trust for a term of 125 years at a peppercorn rent.
- 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 have been agreed and incorporated unto the lease.
- 9.4 Non-compliance would prompt the issue of a Direction and the required decisions would be taken by the Secretary of State for Education.
- 9.5 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.
- 9.6 Legal Services have consulted with officers to finalise and agree the lease and commercial transfer agreement.

Implications verified/completed by: Kar-Yee Chan, Solicitor (Contracts), 0208 753 2772 and Rachel Silverstone, Solicitor (Property) 0208 753 2210

10. FINANCIAL AND RESOURCES IMPLICATIONS

- 10.1. The Director of Finance has been consulted during the preparation of the final documentation for both the lease and commercial transfer agreement, and notes that these decisions are required to enable the conversion of academies, and are based on model national documentation.
- 10.2. In accordance with guidance for maintained community schools transferring to Academy status, the land must 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.
- 10.3 In order to facilitate conversion, the school must have arranged transitional arrangements including the provision of payroll services. The school cannot convert without putting in place arrangements with their new payroll provider.

Implications verified/completed by: Dave McNamara (Director of Finance and Resources, Children's Services), tel: 020 8753 3404

LOCAL GOVERNMENT ACT 2000

LIST OF BACKGROUND PAPERS USED IN PREPARING THIS REPORT

No.	Description of Background Papers	Name/Ext of holder of file/copy	Department/ Location
1.	Cabinet Report 5 th March 2012 (School Organisation Report) - published	Alan Wharton, Head of Asset Strategy (Schools and Children's Services)	Children's Services, Kensington Town Hall

LIST OF APPENDICES:

none