

Title of Report	Granting of 125 Year Lease over Haggerston School, Weymouth Terrace, London E2 8LS
Key Decision No	FCR S257
For Consideration By	Cabinet
Meeting Date	17 August 2023
Cabinet Member	Mayor Philip Glanville
Classification	Open
Ward(s) Affected	The school is in Haggerston Ward, but serves all of Hackney
Key Decision & Reason	Yes Affects more than one ward
Implementation Date if Not Called In	25th August 2023
Group Director	Jackie Moylan, Acting Group Director of Finance and Jacquie Burke, Group Director of Children and Education

1. **Cabinet Member's Introduction**

- 1.1 This report seeks approval to a 125 year lease on peppercorn terms that will enable the transfer of land and buildings comprising Haggerston School, to enable its conversion to an academy by Community Schools Trust and will be referred to as such in the rest of this report.
- 1.2 Under the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 – 28 days notice needs to be given before the decision is taken, Regulation 9(2). However this is subject to Regulation 10 (General exception) and 11 (Cases of special urgency), see also Rule 16 and 17 (pages 260-262 of the Constitution). If Cabinet does not take this decision the Secretary of State has reserve powers to compel the Council to do so.
- 1.3 While the Council is required to transfer the title of land, it would be remiss of me to introduce this report without reiterating Hackney Council's opposition in principle to forced academisation; and the course of action embarked on by the leadership team at Haggerston School. We recognise that the decision to become an academy under current legislation lies with the school and its governing body - in consultation with parents, staff and the community.

- 1.4 During the course of this year Deputy Mayor Bramble and I made it clear to the school's leadership how much we valued their status as a community school, one of only two in the borough, and how maintaining such a partnership was good for the school and the borough. As a Council, we've also made significant investment in the school and myself, Deputy Mayor Bramble and senior officers presented a clear alternative approach if they remained a maintained school.
- 1.5 The school, however, has decided to become an academy at the start of this academic year and we are therefore conscious - however uncomfortable we might be with the decision and having to take it forward over the summer - that there are legal requirements we need to fulfil before this can happen. The Council has met with the Department for Education and the Community Schools Academy Trust to progress these obligations. This includes the transfer of the school building on a 125-year lease, which is a requirement of the process.
- 1.6 The Council values its close partnership with our schools across the borough, be they locally maintained, voluntary aided, free schools or academy schools. However, we firmly believe that we achieve the best results for children together, as a family of schools with a range of providers and ethos underpinned by a central education service, where all parties in the system can be held accountable to each other and to the communities whose interests they ultimately serve. This belief is why we have continued to take an active role in supporting and investing directly in our maintained schools such as Haggerston; and this style of partnership has meant that 100% of Hackney pupils in maintained secondary schools and 94% of those in primary schools attend a school rated Good or Outstanding by Ofsted.
- 1.7 In particular, the close partnership between the Council and Haggerston has facilitated high levels of support from the Council, despite unprecedented government cuts to both of our budgets. In the last seven years this has amounted to almost £3.8m, including £1.5m for the Haggerston Science Laboratory, and additional investment for repairs and maintenance. I hope that even after the transfer and signing of this lease Haggerston School will continue to make its excellent facilities open to the wider community, especially given the valuable role they play in supporting grassroots sport.
- 1.8 Nevertheless, while we disagree with the academisation path Haggerston school is taking and will feel this loss deeply, I reluctantly recognise the school leadership team's right to choose Haggerston School's destiny. Following the school's successful academisation application to the Department for Education, Cabinet is therefore seeking approval for these measures which are legally required to enable those decisions to be taken into effect.

1.9 I would like to finish by acknowledging the hard work of the school, its Head, leadership team, governors, teachers and support staff, pupils and wider community; and stress that, while Haggerston School will no longer have the status of a maintained school, I recognise and welcome the school's wish to continue to play an important part in our local Hackney family of schools. The Council is committed to maintaining a positive relationship with the school as part of this community, and providing the same full support and partnership as we do other academies in the borough and wish them every success for the future.

2. Group Directors' introduction

2.1 The Council is required to transfer the title of land it holds for the purpose of a school which falls within the remit of the School Standards & Framework Act 1998 and Academies Act 2010 which offers all schools the opportunity to become academies. Academies are publicly funded independent schools, free from local authority and national government control. Other freedoms include setting their own pay and conditions for staff, delivery of the curriculum, and the ability to change the length of their terms and school days.

2.2 The conversion of a school to academy status can only take place under the terms of a Funding Agreement between the Academy Trust and the DfE. This is dependent on the completion of a Commercial Transfer Agreement (CTA) between the Academy Trust, the Governing Body and the Council which governs the transfer of the education undertaking, and a lease which enables the transfer of the school property.

2.3 The Secretary of State for Education has given approval to the formation of the new Academy and for it to become independent from the Council's control. In conjunction with the CTA, which the Director of Children and Young People's Services has delegated authority to complete, the process will involve the transfer of land and buildings used by the existing school for educational purposes and owned by the London Borough of Hackney under the terms of a model 125 year peppercorn lease recommended by the Department for Education.

2.4 In finalising the agreement and the leases it is important to safeguard both the Council's interests as a local education authority and public landowner. Where a key provision, such as community interest in the property, cannot be made under the terms of the model lease then officers will seek to include that provision in the CTA.

3. Recommendations

3.1 Authorise the granting by the Council to the Community Schools Trust a lease for a term of 125 years at a peppercorn rent for land and buildings comprising Haggerston Community Secondary School, shown edged red on Plan 1 attached to this report, subject to the terms of the

Department for Education's model lease (subject to reasonable updating and modification).

- 3.2 Authorise the Acting Group Director of Finance and the Group Director of Children and Education, in consultation with the Mayor and lead member for Education, to agree the commercial terms of the relevant Commercial Transfer Agreement in connection with the academy transfer.**
- 3.3 Authorise the Acting Director of Legal, Democratic and Electoral Services to prepare, agree, settle and sign the legal documentation envisaged to complete the transactions set out in this report, together with any ancillary legal documentation.**

4. Reason for decision

- 4.1 The Department for Education has stipulated that where a local authority owned community school wishes to convert to academy status the local authority must lease to the school the land and buildings used for educational purposes on a 125 year lease at a peppercorn rent.

5. Details of alternative options considered and rejected

- 5.1 The Secretary of State has agreed in principle to establishing Haggerston School as an Academy and holds powers to enforce that decision and transfer the land, if required.

6. Background

Policy Context

- 6.1 The Council does not support or approve the creation of academy status for schools and this proposal will further reduce the number of secondary schools under Council control. It could directly impact the Council's statutory duty to ensure there are sufficient high quality school places for our children, and that places are planned effectively. It is therefore important for the Council to maintain a dialogue with the school over its potential for reduction and/or expansion in the future.
- 6.2 The Council would wish to retain the right to negotiate through the lease or the CTA the expansion of the school when circumstances dictate and funding is available.
- 6.3 Furthermore, the Council as landlord would, either through the lease or through the CTA, wish to retain the right to work with the Academy Trust on the design of any capital works to either extend or improve the school or oversee the execution of such works to safeguard its land and property.

Equality impact assessment

- 6.4 No direct impacts on equalities have been identified.

Sustainability and climate change

- 6.5 This proposal has no current sustainability or climate change implications.

Consultations

- 6.6 The proposal has completed a formal consultation process as required by the School Standards and Framework Act. This consultation went to all wards, as children across Hackney may attend this school. The outcomes of the school consultation showed that 42% of parents who responded disagreed with the proposal to join Community Schools Trust, 36% agreed and 22% had no strong feelings either way. For staff 37.5% were in agreement and 37.5% disagreed with the proposal whilst 25% had no strong feelings either way.
- 6.7 Despite the above results the school governing body resolved to make an academy application to the Department for Education for an academy order to enable academisation to proceed and the Department has made the Academy Order.

Risk assessment

- 6.8 Failure to transfer the land voluntarily may result in the DfE stepping in and using other powers to transfer the land compulsorily, which will likely cause a breach with the school and reputational damage generally but specifically with the Department.

7. Comments of the Acting Group Director of Finance

- 7.1 This report proposes the transfer of land and buildings comprising Haggerston School to a new incorporated Academy Trust which is necessary for the school to become an academy under the Academies Act 2010.
- 7.2 The transfer of the main site (the land and buildings comprising the Haggerston School) will be on the basis of a 125 year lease modelled on the standard lease provided by the Department for Education for these purposes. This is on a full repairing and insuring basis so responsibility for insurance and maintenance of the school will pass to the Community Schools Trust on completion of the lease.
- 7.3 The Academy Trust will only be able to dispose of its interest in the main site to a successor charity or public body with the consent of the Secretary of State (and approval of the Council, as landlord). In addition, the model lease restricts the use of the site to educational purposes and for community, fundraising and recreational purposes. The framing of the lease in this way will protect the public ownership aspect of this transaction for future generations.
- 7.4 The transfer of the educational undertaking including the transfer of staff is governed by Transfer of Undertakings (Protection of Employees) ("TUPE") Regulations 2006 and incorporated in the Commercial Transfer Agreement (CTA) between the Council and the Academy Trust. This covers employment issues including the transfer of contracts and pension arrangements. Authority

for completing this agreement is delegated to the Director of Finance and the Group Director of Children and Education as set out in the recommendations.

8. VAT implications on land and property transactions

- 8.1 Assuming that the only consideration the Council is to receive is the peppercorn and nothing else will be received from the Trust, the lease will be a non-business supply so any VAT that the Council will incur on costs attributable to the lease will be recoverable in full. The only issue would be if additional consideration was received as the lease would then be exempt from VAT and VAT on attributable costs would need to be included in the Council's partial exemption calculation

9. Comments of the Acting Director of Legal, Democratic and Electoral Services

- 9.1 The meaning of academy is found in section 1 of the Academies Act 2010 ("2010 Act"). Section 5B(1) of the 2010 Act provides that where an Academy order has effect in respect of a school, the governing body of the school and the Council must take all reasonable steps to facilitate the conversion of the school into an Academy. Section 5B(2) of the 2010 Act provides that where the Secretary of State notifies the governing body or Council that the Secretary of State is minded to enter into Academy arrangements with a specified person then they are under a duty to take all reasonable steps to facilitate the making of Academy arrangements with that person. This therefore imposes a statutory duty on the Council. To confirm, although the Council has a duty under section 123(2) of the Local Government Act 1972 to secure the best consideration, that obligation is overridden by the requirements of the 2010 Act.
- 9.2 Where the school land is Council public land (as is the case here) then the DfE's expectation is that all land and facilities used wholly or mainly for the purpose of the converting school will transfer and be made available to the academy in accordance with the mechanisms set out in the guidance titled "Land Transfer Advice 2013":
- 9.3 Local authorities require the consent of the Secretary of State to dispose, Involving the Secretary of State in land transactions, Non-statutory guidance on how and when to involve the Secretary of State in transactions involving land held for the purposes of a school (September 2021). However this transaction is outside of scope.
- 9.4 The terms of the lease mainly follow the DfE'S model lease. The DfE expects local authorities and schools to take timely steps to ensure that such transfers are completed in time for conversion. However, in circumstances where the parties concerned cannot reach agreement and/ or in the DfE's view there are unacceptable delays to the process then the Secretary of State can exercise powers under Schedule 1 of the 2010 Act to either make a scheme compulsorily transferring school land, or a scheme or direction transferring any

existing interest, rights, or liabilities, see the guidance titled Land Transfer Advice 2013. As to the transfer of assets (other than land), contracts and employees, this is done by way of a CTA and this is based on the DfE'S model.

- 9.5 It is considered that the TUPE applies to this academy transfer and to the staff of the school. The CTA deals with the transfer of things necessary for the operation of the Academy, namely: assets, contracts, employee/TUPE issues.
- 9.6 Under the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 – 28 days notice needs to be given before the decision is taken, Regulation 9(2). However this is subject to Regulation 10 (General exception) and 11 (Cases of special urgency), see also Rule 16 and 17 (pages 260-262 of the Constitution).

“Regulation 10

- 10(1) Subject to regulation 11, where the publication of the intention to make a key decision under regulation 9 is impracticable, that decision may only be made;
- (a) where the proper officer has informed the chairman of the relevant overview and scrutiny committee or, if there is no such person, each member of the relevant overview and scrutiny committee by notice in writing, of the matter about which the decision is to be made;
 - (b) where the proper officer has made available at the offices of the relevant local authority for inspection by the public and published on the relevant local authority's website, if it has one, a copy of the notice given pursuant to sub-paragraph (a); and
 - (c) after five clear days have elapsed following the day on which the proper officer made available the notice referred to in sub-paragraph (b).
- 10(2) Where paragraph 10.1 applies to any matter, regulation 9 need not be complied with in relation to that matter.
- 10(3) As soon as reasonably practicable after the proper officer has complied with paragraph 10.1, he or she must;
- (a) make available at the offices of the relevant local authority a notice setting out the reasons why compliance with regulation 9 is impracticable; and
 - (b) publish that notice on the relevant local authority's website, if it has one.

Regulation 11

11(1) Where the date by which a key decision must be made, makes compliance with regulation 10 impracticable, the decision may only be made where the decision maker has obtained agreement from;

(a) the chairman of the relevant overview and scrutiny committee; or

(b) if there is no such person, or if the chairman of the relevant overview and scrutiny committee is unable to act, the chairman of the relevant local authority; or

(c) where there is no chairman of either the relevant overview and scrutiny committee or of the relevant local authority, the vice-chairman of the relevant local authority, that the making of the decision is urgent and cannot reasonably be deferred.

11(2) As soon as reasonably practicable after the decision maker has obtained agreement under paragraph 11.1 that the making of the decision is urgent and cannot reasonably be deferred, the decision maker must;

(a) make available at the offices of the relevant local authority a notice setting out the reasons that the meeting is urgent and cannot reasonably be deferred; and

(b) publish that notice on the relevant local authority's website, if it has one."

9.7 The DfE usually require agreed and signed documents a month before the academy conversion date, so by 1 August 2023. It has been agreed with the DfE that on this occasion the documents can be submitted to the DfE on 18 August 2023. Assuming this decision is not called in, it can be implemented in time for conversion on 1 September 2023. The next Cabinet meeting is scheduled for 25 September 2023, which would mean the academy conversion would not be able to take place until 1 November 2023. The matter of authority for the disposal of a 125 year lease was unfortunately initially overlooked and together with compliance with the DfE's requirements and timescales and lack of lead-in time meant that this matter could not otherwise get Cabinet approval in time for the 1 September 2023. The Interim Director of Education has noted that failure to meet the 1 September 2023 academy conversion date would result in possible reputational damage to the Council.

9.8 The Council is required when exercising its functions to comply with the duty set out in section 149 of the Equality Act 2010, namely to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity between those who share a protected characteristic and those who do not, and foster good relations between those who share a protected characteristic and those who do not. There are no direct equality implications arising from the proposed transactions as they are statutorily required to be made.

10. **Comments of the Director of Strategic Property Services**

- 10.1 The Council is granting a lease of 125 years at a peppercorn to fulfil its obligations under the Academies Act 2010, which requires the Council to grant a lease under these terms, consequently the Director is satisfied that the Council's obligation under section 123 of the Local Government Act 1972 has been discharged.

Appendices

Appendix 1 - Plan 1

Appendix 2 - Copy of Academy Order

Background documents

None

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