

## ACADEMY CONVERSION: West Drayton Primary School, Kingston Lane, West Drayton

<b>Cabinet Member</b>	Councillor Jonathan Bianco
<b>Cabinet Portfolio</b>	Finance Property and Business Services
<b>Officer Contact(s)</b>	Mike Paterson, Residents Services
<b>Papers with report</b>	Site Plans

### HEADLINES

<b>Summary</b>	<p>This report seeks Cabinet approval to the granting of 125 year lease of West Drayton Primary School as part of the process required for the school to convert to an academy. The school is due to convert on 1<sup>st</sup> September 2017 when it will join The Park Federation Academy Trust. The lease will be based on the current Department for Education (DfE) template academy lease, save for amendments relevant to the individual circumstances affecting the school.</p> <p>The school site has an area of some 5,413m<sup>2</sup> above the minimum total site area as required by the DfE guidelines for a school of this size. This area will be leased to the school on a separate lease for a term of 7 years less 10 days. It will be contracted out of the Landlord &amp; Tenant Act 1954 security of tenure provisions and will also include a Landlord's break option to provide that the lease can be terminated at the absolute discretion of the Council should there be a need for the site to be used for future school expansion.</p>
<b>Putting our Residents First</b>	This report supports the following Council objectives of: <i>Our People; Our Built Environment;</i>
<b>Financial Cost</b>	None
<b>Relevant Policy Overview Committee</b>	Children, Young People and Learning
<b>Ward(s) affected</b>	West Drayton

## RECOMMENDATIONS

### That Cabinet:

1. Approves the grant of a 125 year lease of West Drayton Primary School to The Park Federation Academy Trust on the main terms outlined in this report in order to facilitate the conversion of the school to an Academy.
2. Approves the grant of a lease of 7 years less 10 days to The Park Federation Academy Trust on the main terms outlined in this report of the area identified as an overprovision above the minimum area requirement for a school of this size.

### Reasons for recommendation

1. The grant of a 125 year lease to the school is required as part of the process for the conversion of the school to an academy.
2. Under the Council's Constitution, the grant of a 125 year lease must be approved by Cabinet.
3. The area of overprovision above the minimum area requirement for a school of this size is to be excluded from the main transfer but the school is to be granted a lease of this land on terms allowing its use for educational purposes but enabling the lease to be terminated and used for school expansion should this be required in future.

### Alternative options considered / risk management

Decisions regarding academies are made by the Secretary of State for Education and by implication, the Council has no choice other than to progress with the transfer of the premises. For example, The Academies Act 2010 includes provisions which:

- Allow maintained schools to apply to become academies and permit the Secretary of State to issue an Academy Order requiring the local authority to cease to maintain the school.
- Allow the Secretary of State to require schools that are eligible for intervention to convert into Academies.
- Provide for secondary, primary and special schools to become Academies.
- Allow schools that apply to become Academies to keep any surplus financial balance.
- Deem Academies to be charities.
- Ensure that a converting school will continue, as an Academy, to be able to occupy the land/buildings it had as a maintained school, and that the school's other assets may also transfer to the new academy for the benefit and use of the pupils of that school.
- Allow the Secretary of State to make a scheme in relation to land that essentially necessitates the transfer of such land to the proprietor of the Academy.

### Comments of Policy Overview Committee(s)

None at this stage.

## SUPPORTING INFORMATION

1. West Drayton Primary School is proposing to convert to an academy by joining The Park Federation Academy Trust and part of the process requires a 125 year lease to be granted of the School's premises. The school is due to convert on 1<sup>st</sup> September 2017. The lease will be based on the current Department for Education (DfE) template academy lease, save for amendments relevant to the individual circumstances affecting the School. The extent of the premises to be demised under the 125 year lease is shown edged red on the attached plan numbered GEN1065/13.
2. The school site has an area of some 5,413m<sup>2</sup> above the minimum total site area as required by the DfE guidelines for a school of this size. This area, shown edged red and hatched black on the attached plan numbered GEN1065/13a, will be leased to the school on a separate lease for a term of 7 years less 10 days. It will be contracted out of the Landlord & Tenant Act 1954 security of tenure provisions and will also include a Landlord's break option to provide that the lease can be terminated at the absolute discretion of the Council should there be a need for the site to be used for future school expansion.
3. There is a caretaker's house within the school site and whilst the Council's practice is to exclude caretaker's houses from the 125 year lease, the house is unusual in that it is accessed through the school site, without an existing separate access onto the public highway. In the circumstances the caretaker's house will be treated as an exception and included in the 125 year lease.
4. The 125 year lease will also prescribe arrangements for the tariff income and the maintenance responsibilities for the photo voltaic solar panels located on the school site. There are no shared facilities or Children's Centre on site.
5. The 125 year template academy lease includes the following main terms;
  - The annual rent is to be a peppercorn for the duration of the term.
  - The academy will take on full repairing and insuring responsibilities.
  - There is no ability for the academy to assign or transfer the premises demised without consent from the Secretary of State for Education in all instances and the Council include as a provision that assignment or transfer must have the Council's consent for any term which is in excess of 25 years.
  - There is the ability to underlet the premises but only with the Council's prior written consent for any term which is in excess of 25 years. Any such underletting is to be outside the Landlord and Tenant Act 1954, which avoids the tenant obtaining a secure business tenancy.
  - There is no ability to place a financial charge on any part of the premises.
  - The permitted use under the lease is "for the purposes of the provision of educational services by the tenant and for community fundraising and recreational purposes which are ancillary to that use".

- The academy as tenant will pay the landlord's reasonable costs in respect of any future service of notices and applications for licences and permissions in respect of the lease.

6. The school will be responsible for the Council's reasonable legal and surveyor's costs in granting these leases.

## **Financial Implications**

There are no financial implications relating to the grant of these leases, all costs relating to officer time in preparing the leases will be met by the school concerned. The implications of the asset transfer are described below in the corporate finance comments, but it does not impact upon actual costs.

## **RESIDENT BENEFIT & CONSULTATION**

### **The benefit or impact upon residents, service users and communities?**

The recommendations will allow the school to convert to academy status.

### **Consultation Carried Out or Required**

Education Services has been involved with the consultation processes carried out in relation to these proposals by the Department for Education (DfE).

## **CORPORATE CONSIDERATIONS**

### **Corporate Finance**

Corporate Finance has reviewed this report and concurs with the financial implications set out above; noting that all costs associated with grant of these leases will be borne by the school. The grant of these leases will result in the removal of this asset from the Council's balance sheet; however this does not impact the General Fund or Council Taxpayer. Maintenance of a separate lease arrangement for the areas of the school site over and above the minimum requirement will ensure that this land remains available to meet future demand for school places should this be appropriate.

### **Corporate Property and Construction**

Corporate Property and Construction has authored this report.

### **Legal Services**

Cabinet has before it a recommendation seeking authority to approve the grant of a 125 year lease and a 7 year less 10 days lease of West Drayton Primary School on the terms outlined in this report in order to facilitate the conversion of the School to an academy.

The provisions of section 123 of the Local Government Act 1972 ("the Act"), subject to certain constraints, allow a local authority to dispose of premises held by it in any manner it wishes. The

most important control is in relation to the consideration the local authority secures in respect of the disposal.

Except with the consent of the Secretary of State, a local authority shall not dispose of premises otherwise than by way of a short tenancy, for a consideration less than the best that can reasonably be obtained. A short tenancy is defined as a lease for a period of seven years or less.

However, pursuant to the General Consents provided by the Secretary of State, local authorities are able to dispose of any interest in land held under the Act which they consider will contribute to the promotion or improvement of the economic social or environmental well-being of their area for less than the best consideration reasonably obtainable. This is possible provided the undervalue does not exceed £2 million. Furthermore, the local authority must keep a record of every disposal at an undervalue so that it can show compliance with the General Consents. It would appear in this instance that the consent of the Secretary of State would not be required as the disposal for less than best consideration is covered by the General Consents.

The Academies Act 2010 and Education Act 2011 gives the Secretary of State various powers including the discretion to make a transfer scheme in relation to land. So where the local authority holds a freehold or leasehold interest in land that an academy occupies, the Secretary of State may make a scheme in relation to land that essentially necessitates the transfer of such land to the proprietor of the academy.

Legal relationships granting rights for the benefit of the School, imposing conditions on and reserving obligations to both parties would be created by virtue of the leases when completed. Accordingly, any future dealings with the School in respect of the land will be regulated by such leases. The necessary legal documentation would need to be considered, negotiated and prepared by officers in Legal Services.

I can see no legal impediments in proceeding with the proposed leases.

### **Education Services**

Education Services supports this report and the recommendations made.

## **BACKGROUND PAPERS**

NIL.