

MINOR PROPERTY TRANSACTION: ACADEMY TRANSFER OF ST BERNADETTE CATHOLIC PRIMARY SCHOOL

Cabinet Member & Portfolio	Cllr Jonathan Bianco - Cabinet Member for Corporate Services & Property Cllr Susan O'Brien - Cabinet Member for Children, Families and Education
Responsible Officer	Julie Kelly – Corporate Director Children Services Dan Kennedy – Corporate Director of Residents Services
Report Author & Directorate	Gary Binstead - Education & SEND and Andrew Low - Residents Services
Papers with report	NIL

HEADLINES

Summary	<p>St Bernadette Catholic Primary School, a Voluntary Aided (VA) institution, would like to academise and join The Diocese of Westminster Academy Trust (DoWAT). In response to a formal request from the Diocese, it is proposed that the Council:</p> <ol style="list-style-type: none">1. Transfers the freehold of the land and building currently occupied by the nursery to the Diocese for 1st October 20252. Grants a 125-year lease on standard terms for the surrounding land to support the school's transition into the academy trust.
Putting our Residents First Delivering on the Council Strategy 2022-2026	<p>This report supports our ambition for residents / the Council of: An efficient, well-run, digital-enabled council working with partners to deliver services to improve the lives of all our residents</p> <p>This report supports our commitments to residents of: Thriving, Healthy Households</p>
Financial Cost	Academisation will have the effect of removing the school balance from the books of the LA thereby reducing the schools' balances on the balance sheet by an equal amount.
Select Committee	Children, Families & Education
Ward(s)	Hillingdon East

RECOMMENDATIONS

That:

- 1) the intention of St Bernadette Catholic Primary School, a Voluntary Aided (VA) school to academise and join The Diocese of Westminster Academy Trust (DoWAT), be noted.
- 2) the request from the Diocese be reviewed and a freehold transfer of the land on which the nursery is situated, together with the building, be agreed and a 125-year lease on standard terms for the surrounding land be granted, as set out in the report and site plan;

Reasons for recommendation

The Council and schools are expected to plan for the future of each school, making sure they provide the best education for children and young people, and remain sustainable over time.

The Local Authority is in support of St Bernadette Catholic Primary School joining DoWAT.

Furthermore, the provisions of the School Standards and Framework Act 1998 appear to support a statutory transfer. In particular, paragraph 4 of Schedule 3 requires the local authority to transfer to the governing body, foundation body, or trustees (as appropriate) any land—excluding playing fields—that is held or used for the purposes of the school, where the school falls within the scope of the legislation.

Options considered / rejected

- A. To agree to the requests of the Diocese and agree to a freehold transfer of the land on which the nursery sits together with the building and grant a 125-year lease on standard terms for the surrounding land. As the freehold of the land on which the building sits is transferred to the Diocese, any risks to the Council arising from the possible breach of the restrictive covenant (not to build any buildings on the land other than residential properties) are extinguished.
- B. To refuse the transfer on the basis that the land is Council owned and the school as occupier has breached restrictive covenants. To refuse to consider the application until the breach is remedied, or a satisfactory solution agreed with the council.
- C. To agree a lease of the land and buildings for 125-year lease on standard lease terms, which include nil rent, outside the 1954 act statutory protection and the requirement for the land and building is to only be used by the school for the purposes of the delivery of the school. The lease is to be non-transferrable, and alienation is prohibited. As a requirement of granting this lease, the LA will need to be named on the restrictive covenant indemnity policy as a beneficiary and will need to have an undertaking that the school will be responsible for any premium payable or rectification costs associated with remedying the breach, should a claim be made as a result of the restrictive covenant.

With option A (recommended), the Council will lose any rights to require the nursery operation in the nursery building to be run by the school, but it may be possible to restrict access across the council land for this purpose only and the Council will review this. Legal advice would need to be sought to understand if this is possible and how this restriction could be documented. Any restriction like this would need to be agreed with the school who may resist or object to it.

Under option C the Council can require the nursery building to only be used for the delivery of a school-based nursery and would reserve the right to re-consider the position if this changed in the future. This would ensure that early years education provision would remain in place for children and families.

Select Committee comments

None at this stage.

SUPPORTING INFORMATION

Background

- 1) An application was made by the governing body of St Bernadette Catholic Primary School to become an academy and join The Diocese of Westminster Academy Trust (DOWAT).
- 2) The Academy Order was agreed by the Secretary of State dated 27th February 2025.
- 3) St Bernadette Catholic Primary School is a Local Authority Maintained Voluntary Aided (VA) School which means that the school buildings and land are owned by the foundation or trust that established the school - commonly a religious body like a diocese or parish.
- 4) 1st June was the original date provided for the Academy Transfer which was supported by the LA. This was moved to 1st July by request of the Trust and now to the 1st October due to estate queries.

Land Query

- 5) Officers have been attending progress meetings with the school, the Trust, their legal representatives and the DfE.
- 6) It has since been brought to the attention of colleagues that while the main school site is owned by the school / governing body, the separate land (within the blue dotted area on the top of map below) is owned by the LA and it is on this land that the nursery building has been built potentially in breach of restrictive covenants which apply to the land. The site is designated in planning terms for educational use.
- 7) Officers have been unable to verify if the LA consented to the build, as the land owner.
- 8) The Trust would like the LA to give them the freehold of the land on which the nursery building sits (outline in green) as part of a 'statutory transfer' and arrange for a 125-year lease of the surrounding land (outlined in blue dotted line at the top of the image).
- 9) As a result, colleagues at the DfE have advised that there should be a statutory transfer but would be happy to review further evidence and information from the LA in relation to this.
- 10) The DfE have also confirmed that a decision has been taken to move the academy conversion to 1st October taking into account any internal approval the LA would need to progress with related to the land and Nursery building.

13) If not disposing of an asset under a statutory transfer, there are a number of statutory obligations that need to be met:

- To achieve best value under S123 of the Local Government Act 1972, it will be necessary to demonstrate the disposal is at best value level.
- If the asset is disposed of at less than best value as would be the case here, it will be necessary to produce a s123 valuation to show how much below best value the sale price is and if there are any mitigating community benefits which justify the disposal at less than best value.
- If the difference between disposal value and best value is greater than £2m then the Secretary of State needs to give consent. If under £2M it is the Council's decision, providing there are sufficient community benefits to support the lower price being achieved.
- In normal playing field transfers, land is usually under £2M in value so there is no requirement to obtain a valuation, but in this case where there is a building on the land a valuation may be required.

Financial Implications

St Bernadette is one of currently 50 maintained schools in the borough with a balance of £79k as at the start of the financial year. Academisation will have the effect of removing the school balance from the books of the LA thereby reducing the schools' balances on the balance sheet by an equal amount.

Academisation will also have a marginal impact on the traded services budget and the de-delegated budget for retained services as this reduces the number of maintained schools available to contribute to these budgets. Currently the combined effect of this reduction is estimated to be about £10k.

RESIDENT BENEFIT & CONSULTATION

The benefit or impact upon Hillingdon residents, service users and communities

As part of the school's transition to academy status through joining a multi-academy trust (MAT), a number of operational, legal, and strategic considerations arise, particularly in relation to the continued provision of nursery services on local authority-owned land. By agreeing to the statutory transfer and the lease, the continuation of nursery services under the Trust's management aligns with the Council's strategic priorities for early years education and family support. It ensures that high-quality provision remains accessible to children and families in the area, contributing to improved educational outcomes and community wellbeing.

The academisation of the school, through its conversion to academy status under DoWAT, is contingent upon the inclusion of the nursery provision within the statutory transfer. This is due to the requirement that the Department for Education's (DfE) funding agreement accurately reflects the full age range of the school, which spans from 3 to 11 years.

Excluding the nursery from the transfer would result in a misalignment between the school's operational structure and the terms of the funding agreement, thereby rendering the conversion

process non-compliant with statutory and regulatory expectations. As such, the nursery must be formally recognised as an integral part of the school's educational offer and included in the transfer arrangements to enable the academisation to proceed.

Consultation & Engagement carried out (or required)

No public consultation has been carried out or is required.

Conclusion

The recommended option is to proceed with **option A**. This appears to be the most reasonable solution as it:

- regularises the occupation of the building and the land by the school,
- enables the school (including the Nursery) to continue to operate and benefit from its investment in the building at little additional cost.
- enables the provision to continue to be used for the benefit of children and families
- removes any risk or liability for the Council related to the land owners consent to build the nursery on LA owned land.

CORPORATE CONSIDERATIONS

Corporate Finance

Corporate Finance have reviewed this report and concur with the Financial Implications set out above, noting the recommendations to note the intention of St Bernadette Catholic Primary School, a Voluntary Aided School, to academise and join The Diocese of Westminster Academy Trust, alongside the request from the Diocese to agree a freehold transfer of the land on which the nursery is situated on, together with the building for a 125-year lease on standard terms for the surrounding land.

Furthermore, it is noted that academisation will remove St Bernadette Catholic Primary School from the Local Authority books which will reduce the schools balance by an equal amount on the balance sheet. The combined reduction on the traded services budget and the delegated budget for retained services is an estimated £10k.

Legal

By approving the recommendations, the Council will;

1. effect a transfer of the freehold title in respect of the land and the building currently occupied by the nursery for the reasons set out in the body of the report and
2. grant a new lease in respect of the surrounding land to the Diocese for a term of 125 years.

The lease will set out the obligations and rights to be accepted by the Council as tenant and the obligations and rights to be accepted by the landlord. In the event of any disputes, regard will be had to the lease to determine what rights exist in respect of either party.

Legal relationships will be created by virtue of the lease and thus any future dealings with the landlord in respect of the property will be regulated by such leases.

Legal Services confirm that there are no legal impediments to the Council agreeing to the recommendations as set out in this report and will provide any assistance in respect of drafting and completing the transfer and lease as necessary.

BACKGROUND PAPERS

NIL