

CABINET

15th August 2017

CONVERSION OF EXTON AND GREETHAM CHURCH OF ENGLAND PRIMARY SCHOOL TO ACADEMY STATUS

Report of the Director for People

Strategic Aim:	Creating a brighter future for all	
Key Decision: No	Forward Plan Reference:	
If not on Forward Plan:	Chief Executive Approved Leader Approved Scrutiny Chair Approved	
Reason for Urgency:	N/A	
Exempt Information	No	
Cabinet Member(s) Responsible:	Mr D Wilby, Portfolio Holder for Education	
Contact Officer(s):	Gill Curtis , Head of Learning and Skills	01572 758460 gcurtis@rutland.gov.uk
Ward Councillors	Councillor June Fox (Exton) and Councillor Nick Begy (Greetham)	

DECISION RECOMMENDATIONS

That Cabinet:

1. Authorise the grant of a 125 year lease of the land and buildings occupied by Exton and Greetham CofE Primary School to Rutland Learning Trust Limited;
2. Authorise the execution and completion of a Commercial Transfer Agreement (CTA) between the Council, Exton and Greetham CofE Primary School and Rutland Learning Trust Limited; and
3. Delegate authority to the Director - Places (Development and Economy) to complete the agreement of the final terms of the lease of land and buildings and the CTA referred to in recommendations 1 and 2.

1 PURPOSE OF THE REPORT

- 1.1 To provide information relating to the lease of land and buildings and the Commercial Transfer Agreement (CTA) as part of the Academy Conversion of Exton and Greetham CE Primary School.
- 1.2 To seek Cabinet approvals as set out in the recommendations above.

2 BACKGROUND AND MAIN CONSIDERATIONS

- 2.1 The Department for Education has confirmed that Exton and Greetham School is to convert to academy status, with the Academy to be operated by Rutland Learning Trust Limited. The anticipated date of conversion is 1 November 2017. The School is currently Local Authority maintained and is based in Exton, Rutland.
- 2.2 The DfE require that the lease, CTA and all arrangements be signed by 4th October 2017 to enable the School to convert on 1st November 2017.
- 2.3 The Council owns the freehold of the land and buildings (including the playing field) currently occupied by the School. A Statutory Transfer of the built areas, from the Council to the Diocese, should have taken place historically and this now is being progressed. The Statutory Transfer should take place even if the academy conversion process was halted for any reason.
- 2.4 As part of the conversion to an academy, DfE guidance specifies that land held by the Local Authority and occupied by the converting school is to be leased to the Academy Trust on a 125 year lease for a peppercorn rent. Local Authorities also enter into a CTA as part of the conversion, to set out the respective obligations of the parties in relation to the conversion (including in relation to the transfer of assets, contracts and liabilities).
- 2.5 The Council is obliged under the Academies Act 2010 to cease maintaining a school on the date it opens as an Academy. The DfE expect Local Authorities to cooperate with the academy conversion process once conversion has been approved by the Secretary of State for Education, and to have in place a system for schools converting to academy status. Currently, in Rutland, the following schools have converted to Academy status and are members of the following Multi Academy Trusts (MAT) or remain Single Academy Trusts (SAT) at this time:

Academy Trust		Schools	Date/ Type of Conversion (Converter/ Sponsored)	
MAT	Brooke Hill Academy Trust	BROOKE HILL primary	01/09/11	C
		EDITH WESTON primary	01/02/16	S
MAT	Rutland and Districts Schools' Federation	CATMOSE College	01/04/11	C
		HARINGTON SCHOOL (Post 16 free school)		
		CATMOSE primary	01/05/12	C
MAT	Rutland Learning Trust	LANGHAM C of E Primary	01/07/13	
		KETTON C of E Primary	01/10/14	C

		ST NICHOLAS (VA) C of E Primary	01/10/14	C
		WHISSENDINE C of E Primary	01/10/14	C
		EXTON & GREETHAM C of E Primary (VC) Academy Order (01/10/17)	TBC	C
MAT	Heighington Millfield	COTTESMORE primary	01/10/16	S
MAT	St Gilbert of Sempringham Catholic Multi Academy Trust	ENGLISH MARTYRS Catholic Voluntary primary	01/05/13	C
MAT	Discovery Schools Academy Trust	LEIGHFIELD primary	01/04/13	C
MAT	Peterborough Diocese Education Trust	RYHALL C of E primary (VC)	01/10/14	S
SAT	N/A	UPPINGHAM COMMUNITY COLLEGE	01/04/11	C
SAT	N/A	CASTERTON COLLEGE (RUTLAND COUNTY COLLEGE)	01/09/11	C

- 2.6 An Academy Order has been made on behalf of the Secretary of State for Education for Exton and Greetham CofE Primary School to convert to an Academy. The Council's consent is not required for the School to convert to an Academy and if the Council does not cooperate with the conversion process and negotiate and enter into lease arrangements and a CTA, the Secretary of State has the power to make transfer schemes under the Academies Act 2010 in relation to property, land, rights and liabilities (including rights and liabilities in relation to staff) which would be binding on the Council.
- 2.7 It is preferable for the Council to reach agreement with the Governing Body of the School and the Trust and enter into the lease arrangements and a CTA in respect of these matters, rather than be subject to transfer schemes which may be made by the Secretary of State.
- 2.8 The Trust will be responsible for the operation of the Academy upon conversion and will be the employer of School staff. The Council employees in respect of the School will therefore transfer from the Council to the Trust under the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE"). The respective liabilities of the Council and the Trust in relation to those employees are dealt with within the CTA.

3 PROPOSED HEADS OF TERMS

- 3.1 The proposed terms of the Lease are as follows:
- a) The Lessee: Rutland Learning Trust Limited;
 - b) Term: 125 years from the date of conversion to academy status (anticipated to be 1st November 2017);
 - c) Rent: Peppercorn rent for the full term of the lease;
 - d) User: Use of demised premises for provision of educational services by the lessee and for community fund raising and recreational purposes

- e) Repairs and maintenance: Lessee to be responsible for repairs and maintenance;
- f) Alienation: Lessee to be able to assign the whole to the Secretary of State, a proprietor or proposed proprietor of an Academy, or to a successor charitable or public body with Secretary of State consent;
- g) Termination: The lease will determine in circumstances where there is no Funding Agreement in existence unless either:
 - i) the Council has received prior notice in writing from the Secretary of State for Education of an intention for the Lease to be assigned; or
 - ii) the Lease has been assigned.

The lease will be contracted out of security of tenure provisions.

- h) Demised area: A plan of the area to be leased is attached at Appendix A.

3.2 The terms of the proposed Lease are based on the current version of the DfE Model Lease (with such amendments as are advised by Legal Services/negotiated with the Trust).

3.3 The proposed CTA sets out the respective obligations of the Governing Body of the School, the Council and the Trust arising from the academy conversion in relation to employees, contracts and assets (other than land), and the liabilities of each of the parties in that regard. This document is based on the published DfE Model Transfer Agreement (with such amendments as are advised by Legal Services/negotiated with the Trust). Information is being collated by various Council departments to enable the relevant provisions to be agreed and finalised in respect of contracts, assets and liabilities which are to transfer to the Trust and those which are to be retained, and the relevant staffing and TUPE information.

3.4 Legal Services have been instructed to assist and advise, in the negotiation and finalising the terms of both the proposed lease, the statutory transfer and the CTA.

4 CONSULTATION

4.1 Consultation has involved Property Services, HR, Finances, and Legal Services.

4.2 Meetings and consultation have been held with parents, staff and trade unions. The prescribed consultation required under TUPE has been carried out.

5 ALTERNATIVE OPTIONS

5.1 Refuse to enter into the lease to the Trust and the CTA: as detailed within paragraph 2 above, as the School has been accepted for academy status by the Secretary of State and an Academy Order has been made, the Council is expected to cooperate. Failure to cooperate and negotiate and enter into the lease and CTA could result in the Secretary of State making transfer schemes which would be binding on the Council.

5.2 Sell the School site to the Trust: there is no requirement for the Trust to buy the land or for the Council to sell it because the DfE guidance instead specifies that

land is to be leased to academy trusts on a 125 year lease for a peppercorn rent. It is also felt to be preferable that the Council retain freehold ownership of the site.

6 FINANCIAL IMPLICATIONS

- 6.1 The Trust will be responsible for all outgoings related to the land to include public liability and premises insurances, and repairs / maintenance.
- 6.2 The Council will retain a landlord role but the lease will contain provisions for recovering costs for approvals required under the terms of the lease e.g. for alterations.
- 6.3 When a school is to join the academy trust (AT) of an external sponsor and open as a sponsored academy, the law requires that the surplus will transfer to the AT. Where a school with a deficit is to join the AT of an external sponsor and open as a sponsored academy, the deficit remains with the LA, to be funded from its core budget.

At present, it is anticipated that Exton and Greetham CofE Primary School will have a budget surplus but this will be confirmed when accounts are finalised following conversion.

- 6.4 The Trust will receive its funding direct from the DfE. Government funding for Rutland schools will be reduced proportionately.

7 LEGAL AND GOVERNANCE CONSIDERATIONS

- 7.1 As detailed within paragraphs 2.4 above, the Council is obliged under the Academies Act 2010 to cease maintaining a school on the date it opens as an academy. Paragraph 2.6 – 2.7 of this report set out the implications if the Council fails to cooperate and enter into a lease and CTA.

8 EQUALITY IMPACT ASSESSMENT

- 8.1 An Equality Impact Assessment (EqIA) has not been completed because no service, policy or organisational changes are being proposed.

9 COMMUNITY SAFETY IMPLICATIONS

- 9.1 None identified.

10 HEALTH AND WELLBEING IMPLICATIONS

- 10.1 None identified.

11 ORGANISATIONAL IMPLICATIONS

- 11.1 Environmental implications

None identified

- 11.2 Human Resource implications

As detailed in paragraph 2.8 above, the Council employees in respect of the School will transfer from the Council to the Trust under TUPE. The school's HR is

dealing with these human resource implications.

11.3 Procurement Implications

None.

12 CONCLUSION AND SUMMARY OF REASONS FOR THE RECOMMENDATIONS

The Academy Order from the Secretary of State has been received confirming that Exton and Greetham CofE Primary School will convert to an academy. The DfE expect the Council to cooperate with the conversion process and if the recommendations are not approved, there is a risk of the Secretary of State making transfer schemes binding on the Council.

13 BACKGROUND PAPERS

There are no additional background papers to the report.

14 APPENDICES

Appendix A: Site Plan. –attached

Appendix A. Site Plan

APPENDIX A Exton & Greetham C of E

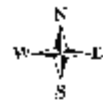


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