

CABINET

22 May 2018

CONVERSION OF ACADEMIES

Report of the Director for People

Strategic Aim:	Creating a brighter future for all	
Key Decision: No	Forward Plan Reference: FP/270318	
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	N/A	

DECISION RECOMMENDATIONS

That Cabinet:

1. Delegate authority to the Director of People in consultation with the Portfolio Holder for Education to negotiate and sign a Commercial Transfer Agreement (CTA) with the school/sponsor in relation to assets, third party contracts, staffing and information transfer when schools convert to academy status;
2. Delegate authority to the Strategic Director of Places in consultation with the Portfolio Holder for Education to determine the terms of the land transfer based on the model 125 year lease issued by the Department for Education (DfE), including the extent of the school premises and licences for land outside of the lease arrangements;
3. Delegate authority to the Strategic Director of Places in consultation with the Portfolio Holder for Education and/or Portfolio Holder for Property to complete any outstanding statutory transfers of land.

1 PURPOSE OF THE REPORT

- 1.1 To seek delegated authority to progress with school conversions to academy status.
- 1.2 To seek Cabinet approvals as set out in the recommendations above.

2 BACKGROUND AND MAIN CONSIDERATIONS

- 2.1 Schools and proposers in Rutland have been receptive to the Government's academy schools programme. There are 3 state-funded secondary schools, 17 state-funded primary schools and one special nursery school in Rutland. Since April 2011, there have been 15 academy conversions in Rutland.
- 2.2 Given the Government's policy to encourage schools to convert to academy status, it is expected that more schools will convert over time at different times. The Council currently maintains five schools which may convert over the coming years; three are currently in the early stages of application to the Secretary of State for Education to convert to academy status with expected conversion dates within this financial year.
- 2.3 An established cross council officer group ensures a corporate approach is adopted to support academy school conversions as there are council wide implications. This is particularly, but not exclusively, where the local authority is the land owner and the staff employer.
- 2.4 The proposed delegations informed by the Council's Education Strategic Plan 2015-2018 and established approaches to wider matters will ensure a consistent, effective and timely approach is adopted to future conversions. The reduction of reports to Cabinet will be a more efficient use of resources. Updates on academy conversions will be included in quarterly monitoring reports to Cabinet.
- 2.5 Rather than present reports to Cabinet for each individual conversion it is proposed, that Cabinet agree the delegations for any future conversions. If there are matters that are not resolved within the delegations then a report would be presented to Cabinet.
- 2.6 In anticipation of further conversions, this report sets out the Council's position in relation to the academies programme and proposes the approach to any future school conversions to academy status.

The Process

- 2.7 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.
- 2.8 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.

Academy Order

- 2.9 The formal process begins when the Secretary of State for Education makes an Academy Order on behalf of a school to convert to an Academy. The Council is notified that the Order has been made and 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.

Transfer of Assets

- 2.10 In the event that any school does decide to become an academy school, the Academies Act (and related guidance) requires the Local Authority, the transferring school and the new Academy Trust to enter a Commercial Transfer Agreement. The Department for Education (DfE) has provided a model document which covers issues such as transfer of non-land assets, contracts, staff and information as well as issues around warranties and indemnities expected in the transfer of a sizeable going concern.
- 2.11 The delegation proposed would allow the Director of Resources to enter into the Commercial Transfer Agreement based upon the DfE model document.

Transfer of Land to Academy Trust

- 2.12 The Act requires the Local Authority to transfer any buildings and/or land used exclusively by the school. The DfE has provided a model 125 year lease to transfer the school premises, as defined by the Act. In the event that the school and the Local Authority cannot agree on the terms of the lease, including the extent of the school premises, the Secretary of State has power to compel the transfer of land.
- 2.13 As part of the transfer process of a school on council owned land, Legal Services will prepare site constraints reports for each school which will be used to decide on the land to be transferred in consultation with the schools.
- 2.14 In order to enable officers to progress with the necessary work and negotiations, Cabinet authority is sought prior to the schools making final decisions. It is proposed that delegated authority is given to the Director of Resources in consultation with relevant Portfolio Holder to deal with site specific issues arising on a school-by-school basis. By way of illustration, the type of local level land issues anticipated to arise for each school might include shared land use, community uses, access ways, how to deal with any caretakers houses, licences to use off site playing fields and dealing with any restrictive covenants on the land.
- 2.15 The delegation proposed would also enable the Council to enter into 125 year lease based on the DfE's model lease.

Outstanding Statutory Transfers

- 2.16 For unknown historic reasons the statutory transfers of built up areas of voluntary aided and voluntary maintained schools were not all progressed at the time that the schools were built. However the Secretary of State requires that statutory transfers and title registration must be completed prior to academy conversion.

- 2.17 The delegation proposed would enable the Council to complete these outstanding statutory transfers and title registrations, in order that any potential future conversions would not be delayed by this matter.

3 CONSULTATION

- 3.1 During the process, consultations will take place with Property Services, HR, Finance, and Legal Services.
- 3.2 The school will hold meetings and consultation with parents, staff and trade unions prior and during any conversions. The prescribed consultation required under TUPE will be carried out.

4 ALTERNATIVE OPTIONS

- 4.1 Refuse to approve the proposed delegations and bring Cabinet reports on an individual basis for each academy conversion.
- 4.2 This is not thought to be the best use of resources as individual reports are similar in nature.
- 4.3 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. Therefore Cabinets decision making power is limited.
- 4.4 Failure to complete the statutory transfers and title registrations could jeopardize the conversion process.

5 FINANCIAL IMPLICATIONS

- 5.1 The Academy will be responsible for all outgoings related to the land to include public liability and premises insurances, and repairs / maintenance.
- 5.2 The Council will retain a landlord role but the leases will contain provisions for recovering costs for approvals required under the terms of the leases e.g. for alterations.
- 5.3 When a school is to join an 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.
- 5.4 The Trust will receive its funding direct from the DfE. Government funding for Rutland schools will be reduced proportionately.
- 5.5 The Council will be required to pay the Diocese' reasonable legal costs incurred in the statutory transfer process.

6 LEGAL AND GOVERNANCE CONSIDERATIONS

- 6.1 The Council is obliged under the Academies Act 2010 to cease maintaining a school on the date it opens as an academy. The report set out the implications if the Council fails to cooperate and enter into a lease and CTA.

7 EQUALITY IMPACT ASSESSMENT

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

8 COMMUNITY SAFETY IMPLICATIONS

- 8.1 None identified.

9 HEALTH AND WELLBEING IMPLICATIONS

- 9.1 None identified.

10 ORGANISATIONAL IMPLICATIONS

- 10.1 Environmental implications

None identified

- 10.2 Human Resource implications

The Council employees in respect of the School will transfer from the Council to the Academy under TUPE regulations. The school's HR provider is dealing with the human resource implications although the Council will keep a watching brief to ensure all statutory requirements are met.

- 10.3 Procurement Implications

None.

11 CONCLUSION AND SUMMARY OF REASONS FOR THE RECOMMENDATIONS

Rutland schools are continuing to request conversion to Academies. The DfE expect the Council to cooperate with the conversion process and the recommendations represent the most efficient way of cooperating with the process.

12 BACKGROUND PAPERS

There are no additional background papers to the report.

13 APPENDICES

None