

**Report of: Director of the Director of Children’s Services**

**Report to: Executive Board**

**Date : 14 December 2011**

**Subject: Transfer of Council owned land and buildings to academies**

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

### Summary of main issues

1. Under the Academies Act 2010 (“the Act”) the Council is required to make available certain land for nil consideration to schools converting to academy status (“Academy Schools”). The requirements of the Act override the Council’s duty under section 123 of the Local Government Act 1972 to secure best consideration.
2. An effect of an Academy Order is that the local authority must cease to maintain the school in question on the date (the “conversion date”) on which the school, or a school that replaces it, opens as an Academy.
3. Leeds City Council does not approve a conversion to an Academy nor the need to grant a lease – the Council is not party to this process and the decision lies with a school’s governing body and the Department for Education (“the DfE”). The Council can not challenge the decision to become an Academy or the DfE’s order to grant a lease. It is an instruction that must be followed.

4. The land to be leased to the Academy School will in usual circumstances include the land and buildings used by the school prior to the consultation period.
5. In the cases of PFI schools, the schools remain in Council ownership and are leased to the PFI company for the term of the PFI contract. Conversion can not be prevented just because they are PFI.
6. Executive Board has previously been notified of individual disposals to schools converting to Academy status, however the timescales for the Council to comply with the requirements of the DfE for the disposal of land to a new academy are very restrictive and do not always fit within the cycle of meetings of Executive Board.
7. The Department for Education has produced a model 125 Lease at a peppercorn rent, which it expects all Local Authorities to use and does not expect the Lease to be amended except for site specific issues. The land being disposed of is required by the Academy in accordance with the Act and the Authority is required to make this land available for nil consideration. In default of agreement between the Council and the Academy School the matter would be referred to the Secretary of State.
8. An Academy will be responsible for insuring the school and for internal and external repair and maintenance of the school (in the case of a PFI school, the Academy will only be responsible for repair and maintenance on expiry of the PFI contract, but will remain liable for the cost of rectifying deliberate damage/vandalism for the duration of the PFI contract).
9. Given the above and the number of schools that are now proposing to convert to academy status, it is therefore now proposed that Executive Board approve the principle of disposing of land to Academy Schools at less-than-best consideration on the following basis (in line with the model Lease prepared by the DfE):
  - that the land being disposed of is required by the Academy in accordance with the Act;
  - that the Academy will be granted a 125 year lease at a peppercorn rent;

- that the Academy will be responsible for insuring the school and for internal and external repair and maintenance of the school;
- bar on assignment of whole unless with the consent of the Secretary of State;
- that the lease will be limited to use as a non profit making academy; and
- that if during the term of the lease the land ceases to be used as an academy, it will revert to the Council.

10. Subject to the above proposal being approved, it is also proposed that Executive Board delegate approval of the detailed terms for the grant of a lease to a school converting to academy status to the Director of City Development in consultation with the Director of Children's Service, lead members, and appropriate ward members and that a report be submitted to Executive Board every six months, identifying those schools where the Council has disposed of land, as set out in this report.

### **Recommendations**

11. Executive Board is requested to approve the process for the disposal of Council owned land to schools converting to academy status, as set out in this report.

## **1 Purpose of this report**

- 1.1 The purpose of this report is to seek approval in principal from Executive Board, to the disposal of land by way of a 125 year lease to schools converting to academy status in accordance with the Academies Act 2010.

## **2 Background information**

- 2.1 The Academies Act 2010 includes provisions to:

- allow maintained schools to apply to become academies and permit the Secretary of State for Education to issue an Academy Order requiring the local authority to cease to maintain the school; and
- ensure that a converting school will continue, as an academy, to be able to occupy the land/buildings it had done whilst being a maintained school.

- 2.1.2 Whilst the Act does not specify how a local authority should make land available to an academy, the DfE have made it clear that, except in exceptional circumstances (such as where the local authority does not have a sufficient interest in the land concerned) they would expect an academy to be granted a 125 year lease at a peppercorn rent.

- 2.1.3 Section 123 of the Local Government Act 1972 provides that, except with the consent of the Secretary of State, the Council shall not dispose of land, other than by way of a lease for seven years or less, for a consideration less than the best that can reasonably be obtained. Whilst that provision is overridden by the provisions of the Academies Act 2010, it remains the case that disposals to schools converting to academy status will be disposals at less-than-best consideration for the purposes of the Council's policy on such disposals and will require Executive Board approval.

## **3 Main issues**

- 3.1 In order for a school to become an Academy, the DfE requires confirmation that the Council has agreed to lease the land previously used by the school to the academy. Given the timescales that the Council is having to work to in order to effect disposals, and that it is anticipated that an increasing number of schools will be converting to academy status within the next few years, it is proposed that Executive Board approve the principal of disposing of land to schools converting to academy status at less-than-best consideration subject to the following terms:

- that the academy will be granted a 125 year lease at a peppercorn rent;
- that the land to be leased to the academy is land that was used by the converting school and is required for the purposes of the academy in accordance with the provisions of the Academies Act 2010;
- that the lease will be limited to use as a non-profit making academy; and

- that if during the term of the lease the land ceases to be used for such purposes, it will revert to the Council.

If the above is agreed, it is also recommended that Executive Board delegate authority to the Director of City Development, Director of Children's Services and Lead Member to approve the final terms for the lease to the academy. It is also proposed that a report will be submitted to Executive Board every six months detailing the schools where land has been disposed of by the Council in accordance with this report.

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

- 4.1.1 All consultations regarding the proposed academy are undertaken by the Governing Body and it is for the Governing Body to decide upon a level of consultation which is deemed appropriate under the circumstances.

### **4.2 Equality and Diversity / Cohesion and Integration**

- 4.2.1 From an Asset Management perspective, the proposal has no specific implications for equality, diversity, cohesion and integration.
- 4.2.2 As the academy programme progresses, any equality issues which may arise will be addressed by Children's Services or the individual Academy concerned.

### **4.3 Council Policies and City Priorities**

- 4.3.1 The conversion of a school to academy status will impact on the "Narrowing the Gap" and "Going up a League" agendas. Academies in Leeds have the potential to contribute to the targets to meet key priorities within the Children and Young People's Plan and the work on the Local Area Agreement.

### **4.4 Resources and Value for Money**

- 4.4.1 Disposals at nil consideration are consistent with the Council's contribution to the delivery of the Academy scheme, which is consistent with the educational policies and objectives of the Council.
- 4.4.2 All academies are required to operate as schools serving their locality. Academies are dependent on funding from the DfE and should that funding be withdrawn or the academy cease to operate, the buildings and land will revert back to the council. The use of the land and buildings by an academy would represent a statutory obligation for the council and as such would not have less than best implications, as it is a statutory function of the Council to provide education for children in Leeds.

### **4.5 Legal Implications, Access to Information and Call In**

- 4.5.1 Although the Council has a duty under section 123 of the Local Government Act 1972 to secure the best consideration that it reasonably can on a disposal of land, that obligation is overridden by the requirements of the Academies Act 2010.

## **4.6 Risk Management**

- 4.6.1 Whilst there is a risk that an academy may fail at some point in the future, academies are supported by the Department for Education and if they cease to fund them or the academy ceases to operate, the land and buildings will revert to the Council.

## **5 Conclusions**

- 5.1 The proposals set out in this report should be supported to enable the Council to meet its obligations under the Academies Act 2010.

## **6 Recommendations**

- 6.1 Executive Board are requested to approve the principle of disposing of land to schools converting to academies on the basis set out in this report and to delegate final approval of the terms of such disposals to the Director of City Development in consultation with the Director of Children's Service lead members and appropriate ward members.

## **7 Background documents**

- 7.1 None.