

CABINET	AGENDA ITEM No. 9
17 SEPTEMBER 2024	PUBLIC REPORT

Report of:	John Gregg, Director of Children’s Services Isabel Clark, Interim Head of School Place Planning	
Cabinet Member(s) responsible:	Councillor Katy Cole, Cabinet Member for Children’s Services	
Contact Officer(s):	Isabel Clark Interim Head of School Place Planning	Tel: 07711804965

ACADEMY CONVERSION OF A SCHOOL

RECOMMENDATIONS	
FROM: Interim Head of School Place Planning	Deadline date: N/A

It is recommended that Cabinet:

1. Authorises the Council to enter into the following:
 - a. A Commercial Transfer Agreement (CTA) between the Council, the Governing Body of Newborough Church of England Primary School (the “School”) and Peterborough Diocese Education Trust (“PDET”).
 - b. Deeds of Novation/Assignment between the Council, PDET and (if applicable) the relevant third-party contractors including any building/constructions contracts, for the Council’s interest in the contract entered into by the Council for the purpose of operating the school to be novated or assigned to PDET.

2. Authorises the Council to enter into the following:
 - a. A lease of 125 years of the playing fields occupied by the School, at a peppercorn rent granted by the Council to PDET
 - b. A statutory transfer of hardstanding areas and built land on the school site from the Council to Peterborough Diocesan Board of Finance (“Diocese”)

the main terms of which are set out in Appendix 1 (or such alternative terms as the Executive Director for Children’s Services, in consultation with the Director for Legal and Governance and the Executive Director for Corporate Services, determines are necessary to facilitate the academy conversion of the School).

3. Delegate authority to the Executive Director for Children’s Services, in consultation with the Director for Legal and Governance and the Executive Director for Corporate Services to negotiate and enter into any documentation reasonably required to facilitate the academy conversion of the school.

1. ORIGIN OF REPORT

1.1 This report is presented to Cabinet following receipt of an Academy Order in relation to the School.

2. PURPOSE AND REASON FOR REPORT

2.1 The purpose of this report is for Cabinet to authorise the documentation necessary to facilitate the conversion of the School to an academy.

2.2 This report is for Cabinet to consider under its Terms of Reference No. 3.2.2, *'To take collective responsibility for any Executive decision that has significant implications across two or more portfolios.'*

3. TIMESCALES

Is this a Major Policy Item/Statutory Plan?	NO	If yes, date for Cabinet meeting	N/A
---	----	----------------------------------	-----

4. BACKGROUND AND KEY ISSUES

4.1 Newborough Church of England Primary School (the "school") is currently a maintained voluntary aided (VA) school which is undergoing conversion to academy status by virtue of an Academy Order made by the Secretary of State under the Academies Act 2010. Once converted to an academy, the School will be operated by an academy trust (the "Trust"). The "Trust" in this case is envisaged to be PDET.

4.2 As part of conversion to an Academy, Department for Education guidance specifies that if the land is held by the Local Authority, then it is to be leased to academy trusts on a 125-year lease, for a peppercorn rent. In this case, this consists of the playing fields of the school, as authorised by recommendation 2.

4.3 For Voluntary Aided schools, any built areas and hard surfaces of the school which are owned by the Local Authority, should be transferred to the Diocese pursuant to Schedule 3 paragraph 9 of the Schools Standards and Framework Act 1998. Any outstanding statutory transfers to the Diocese will be dealt with and authorised by separate governance (as these are required irrespective of academy conversion). The Diocese (Ely Diocesan Board of Finance) will then enter into their own arrangements with the Trust to make this land available to the Trust.

4.4 In addition to the lease and any statutory transfers required, Local Authorities also enter into a Commercial Transfer Agreement ("CTA") as part of the conversion, to set out the respective obligations of the parties in relation to the conversion (including in relation to employees, the transfer of assets (other than land), contracts and liabilities). The CTA is authorised by recommendation 1a.

4.5 Under the terms of the Council's standard CTA, the Council is obliged to assign and/or novate the benefit of contracts entered into by the Council for the purpose of operating the school, to the Trust. If the Council has previously entered into contracts in relation to building/construction works carried out at the School, the Council will be entering into the Deeds of Novation/Assignment in relation to those contracts (as detailed within recommendation 1b), which will enable the Trust to have the benefit of those contracts (and any claims arising out of the building/construction works), instead of the Council. The novation/assignment does not involve a change of contractor, and therefore, the reference in the Council's Contract Rules for reference to have been made to the assignment in the tender documents, do not arise.

- 4.6 Depending upon the circumstances of the conversion, it may transpire that additional documentation is required to facilitate the conversion, specific to the school or site. This is reflected in recommendations 3 of this report.
- 4.7 The Trust will be responsible for the operation of the Academy upon conversion and will be the employer of school staff. As the School is Voluntary Aided, the Governing Body is the current employer of the school staff, who will therefore transfer to the Trust under the Transfer of Undertakings (Protection of Employment) Regulations 2006.
- 4.8 The anticipated conversion date is 1 October 2024; however, this is subject to change.

5. CONSULTATION

- 5.1 Once an Academy Order has been obtained, the Governing Body of the school is obliged to carry out the DfE required consultations with stakeholders including staff and parents of children on roll at the School.
- 5.2 As part of the academy process Council officers in finance, insurance, property and education, together with the relevant Ward Councillors, will be informed of the proposed conversion.

6. ANTICIPATED OUTCOMES OR IMPACT

- 6.1 The anticipated outcome is that the school will close as a maintained school and re-open as an Academy operated by a Trust. The playing fields currently occupied by the school (owned by the Council) will be leased to the Trust; the hardstanding areas will be transferred to the Diocese, and the staff, assets and contracts relating to the school will be transferred to the Trust to enable it to operate the Academy from the conversion date.

7. REASON FOR THE RECOMMENDATION

- 7.1 The Council is obliged under the Academies Act 2010 to cease maintaining a school on the date it opens as an Academy and must take all reasonable steps to facilitate the conversion of a school into an Academy once an Academy Order has been made.
- 7.2 The Council's consent is not required for a school to convert to an Academy and if the Council does not cooperate with the conversion process by negotiating and entering into lease and property arrangements and also the CTA, it would be in breach of its statutory obligations to facilitate the conversion.
- 7.3 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. It is, therefore, preferable for the Council to reach agreement with the Governing Body of the School and the Trust and enter into the CTA, lease and associated documents in respect of these matters, rather than be subject to transfer schemes made by the Secretary of State.
- 7.4 In the early stages of an academy conversion, it is not possible to confirm, with certainty, what documentation will be required and the provisions which will be contained within such documentation, as this is subject to the relevant due diligence being carried out (such as looking into the circumstances of the site, for example) and subsequent negotiation with the Trust and Governing Body of the School. Accordingly, although the main proposed terms of the lease and statutory transfer are detailed in Appendix 1, recommendation 2 contains a delegation for the Executive Director for Children's Services (in consultation with the Director for Legal and Governance and the Executive Director for Corporate Services) to amend these proposed terms if necessary, to facilitate the academy conversion of the School. Similarly, recommendation 3 contains a delegation to negotiate and enter into any further documentation reasonably required to facilitate the academy conversion.

8. ALTERNATIVE OPTIONS CONSIDERED

- 8.1 Refuse the closure of the school and the conversion to academy status and not enter into a CTA or lease:
Once a school has been accepted for academy status by the Secretary of State, the Council is required to support the decision and take reasonable steps to facilitate the conversion. Failure to cooperate or negotiate a CTA and lease could result in the Secretary of State making transfer schemes which would be binding on the Council and would be in breach of the Council's statutory obligations under the Academies Act 2010.
- 8.2 Not to novate/assign the benefit of the Council's building contracts relating to the school, to the Trust. This option was rejected because, if the Council retained the benefit of the contracts, if any claim in relation to those works/services in respect of the school were to arise, it is likely that the Council would then have to become involved or take action on behalf of the Trust. novating/assigning the benefit of the contract allows the Trust to deal with any such claims directly.
- 8.3 Sell the playing fields to the Trust: This option was rejected because there is no requirement for the Trust to buy land (for which no funding has been made available) and the Council would prefer to retain ownership.

9. IMPLICATIONS

Property Implications

- 9.1 The freehold title of the playing fields will remain under the ownership of the Council. A 125-year lease of the playing fields will be granted to the Trust subject to any termination clause (s) within the lease.

Financial Implications

- 9.2 The Academy Trust will receive its funding direct from the Department for Education. Government funding for Peterborough schools will be reduced proportionately.

When a school transfers to an academy on a 125 year lease the value of the asset is written out of the balance sheet, the carrying value of Newborough school on the Councils balance sheet is £22.3K. If the Council has previously borrowed money to fund building works at Newborough school this liability remains with the Council.

Legal Implications

- 9.3 As detailed within paragraph 7.1 of this report, the Council is obliged under the Academies Act 2010 to cease maintaining a school on the date it opens as an Academy and to take all reasonable steps to facilitate conversion to academy status. Paragraph 7 of this report sets out the implications if the Council fails to cooperate.

Equalities Implications

- 9.4 There are no equalities implications arising from this decision.

Carbon Impact Assessment

- 9.5 The proposed academy conversion of Newborough C of E Primary School is anticipated to have a neutral impact.

Admissions Implications

- 9.6 The Trust will continue to be its own admissions authority and will determine its own admissions arrangements. Places will continue to be allocated using the co-ordinated admissions process.

10. BACKGROUND DOCUMENTS

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985

10.1 None.

11. APPENDICES

11.1 Appendix 1 – Proposed Main Property Terms

Appendix 1 - Proposed Main Property Terms

Lease of Playing Fields:

Lease of Playing Fields:

	Task (to be completed by Officer)	Lease Out Outside the security of tenure provisions of the Landlord and Tenant Act 1954.
	by City Council for (scheme/purpose)	For the grant of an Academy Lease of land at Newborough Church of England Primary School
1	Property Tenure (Council's)	Freehold
2	Proposed Tenant	Peterborough Diocese Education Trust Bouverie Court, 6 The Lakes, Bedford Road, Northampton, NN4 7YD FAO: [NAME] Tel: [NUMBER] Email: [EMAIL]
3	Tenant's Solicitors	TBC Contact: Tel: Email:
4	Previous Tenancies and Passing Rent	N/A
5	New Term	125 Years from 1 st September 2024
6	Rental Figure	A peppercorn (if demanded) per annum
12	Repairs	The tenant is to be directly responsible for all repairs
13	Deed No.	Part Deed 8475cc, Registered Title CB317276
16	Proposed Use	For education purposes and for community, fundraising and recreational purposes which are ancillary to educational purposes
18	Other information	Tenancy at Will to be entered in to if lease does not complete by 1 st September 2024 See Lease Plan

Statutory Transfer:

Task to be completed	Transfer of remaining developed areas to the Diocese prior to academisation	
by City Council for (scheme/purpose)	Newborough Church of England Primary School	
1.	Property Tenure (Council's)	Freehold
2.	Proposed Transferee	Peterborough Diocesan Board of Finance, The Palace, Minster Precincts, Peterborough PE1 1YB
3.	Transferee's Solicitors	TBC
4.	Consideration	nil
5.	Deed No.	Part Deed 8475cc, Registered Title CB317276
6.	Proposed Use	For education purposes and for community, fundraising and recreational purposes which are ancillary to educational purposes
8.	Other information	Transfer of developed land to Diocese required as part of Academisation of the school See Statutory Transfer Plan