

BOROUGH OF POOLE

**CHILDREN'S SERVICES CAPITAL PROGRAMME BOARD
27TH JUNE 2013**

**CABINET
9TH JULY 2013**

REPORT OF THE HEAD OF CHILDREN, YOUNG PEOPLE AND LEARNING

ASHDOWN TECHNOLOGY COLLEGE – MAGNA ACADEMY

PART OF THE PUBLISHED FORWARD PLAN YES

STATUS: STRATEGIC

1. PURPOSE OF THE REPORT

- 1.1 To advise Cabinet on the assets and obligations that it is proposed to pass to Aspirations Academies Trust (AAT), the sponsor of Magna Academy which will replace Ashdown Technology College.

2. RECOMMENDATIONS

- 2.1 That Cabinet approve the transfer of assets and obligations to support AAT to sponsor Magna Academy whilst protecting the Council's interests.
- 2.2 That the land indicated within the area marked by a red line on the plan at Appendix A is assigned by the Council to the Academy Sponsor under a 125 year lease arrangement.
- 2.3 That the current leases and obligations on the buildings and land within the red line are assigned by the Council, with the agreement of the Academy Trust.
- 2.4 That the Council proceeds, as planned, to complete the building programme at the school acting as the client with the contractor and transferring its responsibilities after the defects liability period.

3. BACKGROUND

- 3.1 The Secretary of State for Education has approved the transfer of Ashdown Technology College to sponsored academy trust status to the Aspirations

Academies Trust (AAT) as the newly opened Magna Academy; the transfer is proposed to take place on 1st September 2013.

- 3.2 At its meeting on 18th December 2012, the Council agreed the precedent, in line with its own duties, not to indemnify the Department of Education, the Academy Trust or Sponsors from obligations that are theirs in law or through their actions in adopting academy status.
- 3.3 The Council accepts that it has an obligation to pass on all buildings to an Academy Trust in a state of repair which does not include any identified Priority 1 works. An extensive building and refurbishment programme is underway at the school which is due for completion at the end of October 2013.
- 3.4 Ashdown occupies a shared site with the Ashdown Leisure Centre and Haymoor School. The maps at Appendix A and Appendix B show the part of the site that will transfer to the sponsor. The joint use of the Leisure Centre by the school with Leisure Services will be governed by a joint use agreement drawn up between the Council and the sponsor. This agreement will identify times and days when the school has sole or shared use of the facilities at the centre.
- 3.5 All service providers and Service Units affected by the proposal for the assignment of the demise premises by the Council to the Academy Trust have been widely consulted on.
- 3.6 The land indicated within the area marked by a red line on the plan at Appendix A will need to be assigned by the Council to the Academy Trust under a 125 year lease arrangement.
- 3.7 Officers have drafted heads of terms for the land transfer and leases for agreement by all relevant parties, which include all existing obligations, leases and rights of access within or affecting the demise premises.
- 3.8 The Trust has a deadline to meet to enable the transfer to Academy status to take place on 1st September 2013.

4. FINANCIAL IMPLICATIONS

- 4.1 The Aspirations Academies Trust will have the responsibility to maintain the buildings occupied by Magna Academy.
- 4.2 By accepting the obligation to pass on all buildings to the Academy Trust in a state of repair which does not include any identified Priority 1 works, the council will retain the client role in relation to the contract with the construction company providing the new build and refurbishment works at the school.
- 4.3 The School and Council will complete an Asset Transfer Agreement in a standard form which will transfer from the Council to the Academy Trust all the school's assets which will include furniture and equipment and any

contracts for works, supplies or services which have been entered into by the Council for the benefit of the school.

5. RISK MANAGEMENT IMPLICATIONS

- 5.1 There remains a risk that the Academy Trust may not accept the proposal in full for the red-line, although the sponsor has indicated that the proposal is acceptable.
- 5.2 There is a risk to the Council from a shortage of resources in the Estates and Legal Services departments which have come under pressure through this and other projects. The additional work required to establish, with clarity, the leases and agreements can be hindered by being rushed or not assigned to officers with appropriate skills.
- 5.3 There is a reputational risk to the Council if the progress of the Academy conversion is impeded by not having regard to the interests of the children and the school when under its new governance by the Academy Trust or sponsor. This applies especially to our obligations to transfer the school in a fit physical, professional and financial state.
- 5.4 There is a risk that our good relationships with the Academy Trust will be damaged if the Council's wishes are at significant odds with them and no consensus can be reached.
- 5.5 There is a dependency between the red line proposal for Magna Academy and the proposal for draft transfers for Haymoor Middle School in respect of the playing field boundary.

6. EQUALITIES IMPLICATIONS

- 6.1 The Equality Act 2010 (Specific Duties) Regulations requires public authorities and those that exercise public functions (including schools and academies) to publish information showing their compliance with the general equality duty and to set and publish equality objectives.
- 6.2 Each governing body or academy proprietor should decide for itself what information it publishes. This will vary greatly depending on the size of the school and the range of functions it performs. The compliance information must then be published at least every year, with the equality objectives being published at least every four years.
- 6.3 The Regulations require all schools and academies to prepare and publish one or more objectives it thinks it should achieve in order to comply with the general equality duty.

7. LEGAL IMPLICATIONS

- 7.1 Using provisions in the Education Act (2002) sponsored academies are established by the Secretary of State entering into a legally binding contract – the Funding Agreement (FA) – with the Academy Trust set up by the sponsor. The Funding Agreement provides the framework within which the Academy must operate and each Academy's Funding Agreement will vary according to the needs of the area and the Academy Trust.
- 7.2 As a sponsored Academy Trust the sponsor will become the legal employer. The staffing establishment will transfer from the employment of the Borough to the employment of the Academy Trust. Their contractual conditions of service transfer under the Transfer of Undertakings Protection of Employment Regulations 1981 (TUPE) and 2006. Consultation with staff is currently taking place on this change in employer. Obligations which transfer are “all the transferor’s rights, powers, duties and liabilities in connection with such contract”. All employees transfer to the employment of the new employer (transferee), dismissal of employees at the time of, or prior to the transfer are deemed unfair if the reason for the dismissal is directly attributable or connected to the transfer itself unless that reason is in itself for economical, technical or organisational reasons relating to the workforce.
- 7.3 Before the conversion date, the School and Council will complete an Asset Transfer Agreement in a standard form which will transfer from the Council to the Academy Trust all the school’s assets which will include the staff (under TUPE), furniture and equipment and any contracts for works, supplies or services which have been entered into by the Council for the benefit of the school. The costs incurred in completing this agreement will be met by the Council for its own part but the School will employ its own legal advisers. The land and any real property will be dealt with under a long term lease which will also be in a standard form. The lease will be on the basis of a peppercorn rent with the school taking on all repairing and insurance liabilities.

8. **CONCLUSION**

- 8.1 As a school that has been deemed to be in need of ‘special measures’ to improve by OfSTED, the government requires that Ashdown should become a sponsored academy. The sponsor was chosen by the governors from a shortlist of three provided by the Office for the Schools’ Commissioner. This choice was then verified by the Minister responsible for academy schools.
- 8.2 Officers across the Council are working in partnership with the Sponsor to support this development.
- 8.3 The proposals for the transfer of buildings and land have been widely consulted on and then confirmed by Management Team. They will help the school to convert to academy status whilst protecting the Council’s interests.

Vicky Wales

COUNCIL - 16 JULY 2013

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