



## EXECUTIVE DECISION NOTICE

<b>SERVICE AREA:</b>	<b>CHILDRENS SERVICES</b> Learning
<b>SUBJECT MATTER:</b>	<b>GREENFIELD PRIMARY SCHOOL AND EARLY YEARS CENTRE HYDE – CONVERSION TO ACADEMY STATUS</b>
<b>DECISION:</b>	<p>That it be DETERMINED that:</p> <ul style="list-style-type: none"> <li>(a) the Borough Solicitor be authorised to enter into a 125 year Lease in respect to the school site with the Harmony Academy Trust in the form set out in <b>Appendix 2</b>;</li> <li>(b) the Borough Solicitor be authorised to enter into the Commercial Transfer Agreement, in the form set out in <b>Appendix 3</b>, which takes into account the principle that risk and liability does not transfer back to the Council and in respect of which the funds and reserves to manage the risks/liabilities will transfer to the Academy and consequently the Council should be in no worse position because of the transfer.</li> <li>(c) The pension arrangements be agreed so that Academy Trust funds are pooled with Council funds, as set out in the report.</li> <li>(d) Delegation of authority to the Assistant Executive Director, Finance or their nominated representative to execute any necessary Greater Manchester Pension Fund for Transferee Admission Bodies documentation.</li> <li>(e) The Borough Solicitor be authorised to enter into a Deed of Novation which relates to the transfer of an existing interest free loan which the school has with Salix Finance Ltd to the Academy Trust, in the form set out in <b>Appendix 4</b>.</li> </ul>
<b>DECISION TAKER(S):</b>	Councillor Leanne Feeley
<b>DESIGNATION OF DECISION TAKER (S):</b>	Executive Member (Lifelong Learning, Equalities, Culture and Heritage)
<b>DATE OF DECISION:</b>	5 August 2020
<b>REASON FOR DECISION:</b>	To support Tameside Schools to convert to Academy Status
<b>ALTERNATIVE OPTIONS REJECTED (if any):</b>	No alternatives were considered as the school was required to convert under Section 4 of the Academies Act 2010
<b>CONSULTEES:</b>	<p>Department for Education</p> <p>Education Funding Agency</p> <p>Staff at Greenfield Primary School and Early Years Centre</p> <p>The Governing Board of Greenfield Primary School and Early Years Centre</p> <p>Parents of pupils at Greenfield Primary School and Early Years Centre</p> <p>Trade Unions</p> <p>Eversheds Sutherland Solicitors</p>



<b>FINANCIAL IMPLICATIONS:</b> <b>(Authorised by the Section 151 Officer)</b>	<p>The School's estimated surplus at the end of 2020-21 is £60,258. A revised outturn balance will be calculated on conversion to Academy status which will transfer to the converted Academy after all expenditure and income attributable to the maintained School have been paid or deducted.</p> <p>The School has currently paid £29,279 to purchase services from the council in 2020/21. Affected council services will need to re-negotiate new service level agreements with the Academy if they choose to purchase these services in future. This may result in a loss of income in future years.</p>
<b>LEGAL IMPLICATIONS:</b> <b>(Authorised by Borough Solicitor)</b>	<p>These are set out in the body of the report and reflected in the lease at <b>Appendix 2</b> and the Commercial Transfer Agreement at <b>Appendix 3</b> in order to protect the interests of all the parties and ensure that appropriate fairness is achieved between the School population generally and the pupils of Greenfield Primary School. This additionally includes the novation of an interest free loan the school has with Salix to the Academy Trust.</p>
<b>CONFLICT OF INTEREST:</b>	None known.
<b>DISPENSATION GRANTED BY STANDARDS COMMITTEE ATTACHED:</b>	n/a
<b>ACCESS TO INFORMATION:</b>	<p>Is the report to be considered in public or private? If private state relevant paragraph</p> <p>Background papers relating to this report can be inspected by contacting:</p> <p>Joanne Rendell School Liaison Manager</p> <p> Telephone: 0161 342 3246</p> <p> E-mail: <a href="mailto:joanne.rendell@tameside.gov.uk">joanne.rendell@tameside.gov.uk</a></p>



Signed **Councillor Leanne Feeley, Executive Member (Lifelong Learning, Equalities, Culture and Heritage)** **Dated: 5 August 2020**

## EXECUTIVE DECISION REPORT

<b>SERVICE AREA:</b>	<b>CHILDRENS SERVICES</b> Learning
<b>SUBJECT MATTER:</b>	<b>GREENFIELD PRIMARY SCHOOL AND EARLY YEARS CENTRE HYDE – CONVERSION TO ACADEMY STATUS</b>
<b>DATE OF DECISION:</b>	5 August 2020
<b>DECISION TAKER(S):</b>	Councillor Leanne Feeley
<b>DESIGNATION OF DECISION TAKER (S):</b>	Executive Member (Lifelong Learning, Equalities, Culture and Heritage)
<b>REPORTING OFFICER:</b>	Tim Bowman AED Education
<b>REPORT SUMMARY:</b>	To support Greenfield Primary School and Early Years Centre to convert to Academy Status
<b>RECOMMENDATION:</b>	<ul style="list-style-type: none"><li>(i) the Borough Solicitor be authorised to enter into a 125 year Lease in respect to the school site with the Harmony Academy Trust in the form set out in <b>Appendix 2</b>;</li><li>(ii) the Borough Solicitor be authorised to enter into the Commercial Transfer Agreement, in the form set out in <b>Appendix 3</b>, on the principle that risk and liability does not transfer back to the Council and in respect of which the funds and reserves to manage the risks/liabilities will transfer to the Academy and consequently the Council should be in no worse position because of the transfer.</li><li>(iii) The pension arrangements be agreed so that Academy Trust funds are pooled with Council funds, as set out in the report.</li><li>(iv) Delegation of authority to the Assistant Executive Director, Finance or their nominated representative to execute any necessary Greater Manchester Pension Fund for Transferee Admission Bodies documentation.</li><li>(v) The Borough Solicitor be authorised to enter into a Deed of Novation which relates to the transfer of an existing interest free loan which the school has with Salix Finance Ltd to the Academy Trust, in the form set out in <b>Appendix 4</b>.</li></ul>
<b>JUSTIFICATION FOR THE DECISION:</b>	The conversion process is closely prescribed by DfE guidance and standard documentation. The government has the power to enforce a conversion by statutory order if the standard documentation and guidance is not reasonably followed or if the local authority cannot agree upon the detail of the conversion.
<b>ALTERNATIVE OPTIONS REJECTED (if any):</b>	No alternatives were considered as the school was required to convert under Section 4 of the Academies Act 2010.
<b>CONSULTEES:</b>	Department for Education Education Funding Agency Staff at Greenfield Primary School and Early Years Centre

	<p>The Governing Board of Greenfield Primary School and Early Years Centre</p> <p>Parents of pupils at Greenfield Primary School and Early Years Centre</p> <p>Trade Unions</p> <p>Eversheds Sutherland Solicitors</p>
<p><b>FINANCIAL IMPLICATIONS:</b> (Authorised by Section 151 Officer)</p>	<p>The School's estimated surplus at the end of 2020-21 is £60,258. A revised outturn balance will be calculated on conversion to Academy status which will transfer to the converted Academy after all expenditure and income attributable to the maintained School have been paid or deducted.</p> <p>The School has currently paid £29,279 to purchase services from the council in 2020/21. Affected council services will need to re-negotiate new service level agreements with the Academy if they choose to purchase these services in future. This may result in a loss of income in future years.</p>
<p><b>LEGAL IMPLICATIONS:</b> (Authorised by Borough Solicitor)</p>	<p>These are set out in the body of the report and reflected in the lease at <b>Appendix 2</b> and the Commercial Transfer Agreement at <b>Appendix 3</b> in order to protect the interests of all the parties and ensure that appropriate fairness is achieved between the School population generally and the pupils of Greenfield Primary School. This additionally includes the novation of an interest free loan the school has with Salix to the Academy Trust.</p>
<p><b>CONFLICT OF INTEREST:</b></p>	<p>Insert details of any conflict of interest that those involved in the decision making may have</p>
<p><b>DISPENSATION GRANTED BY STANDARDS COMMITTEE ATTACHED:</b></p>	<p>n/a</p>
<p><b>ACCESS TO INFORMATION:</b></p>	<p>The background papers relating to this report can be inspected by contacting report writer Joanne Rendell by:</p> <p> Telephone: 0161 342 3246</p> <p> E-mail: <a href="mailto:joanne.rendell@tameside.gov.uk">joanne.rendell@tameside.gov.uk</a></p>

## 1 INTRODUCTION

- 1.1 The Secretary of State notified the Council that an Order, dated 27 January 2020, had been published, confirming her approval for the conversion of Greenfield Primary School and Early Years Centre. A copy of the letter is attached at **Appendix 1**.
- 1.2 The school was judged to be inadequate at its Ofsted Inspection in November 2019. Schools that have been judged inadequate are:
- any school Ofsted judges as requiring significant improvement (as addressed in section 61 of the Education and Inspections Act 2006); and
  - any school Ofsted judges as requiring special measures (as addressed in section 62 of the 2006 Act).
- 1.3 The Secretary of State has a duty to make an academy order in respect of any maintained school judged as inadequate by Ofsted, to enable it to become an academy and receive additional support from a sponsor. The Regional School's Commissioner, acting on behalf of the Secretary of State, takes responsibility for ensuring that the maintained school becomes a sponsored academy as swiftly as possible, including identifying the most suitable academy trust and brokering the new relationship between that trust and the maintained school.
- 1.4 This report supports the duty of the Secretary of State to ensure that the school becomes a sponsored academy with the Harmony Academy Trust and seeks approval from the decision taker, to a transfer and the granting of a 125 year lease of Council property to the Harmony Academy Trust, to enter into a Commercial Transfer Agreement, which addresses how matters such as staffing and assets will be transferred to the new legal entity and to enter into a Deed of Novation relating to the transfer of an interest free loan to the Harmony Academy Trust. It also details the process which has been followed to progress the conversion of the School and the implications for the Council if this is approved.

## 2 GREENFIELD PRIMARY SCHOOL AND EARLY YEARS CENTRE

- 2.1 Greenfield Primary School and Early Years Centre has a Planned Admission Number (PAN) of 45 and provides education for boys and girls aged four to eleven.
- 2.2 The analysis of the expected number of primary aged pupils on roll in September 2020, is as follows:

Year Group	Number of Mainstream Pupils on Roll
Reception	29
Year 1	36
Year 2	40
Year 3	33
Year 4	42
Year 5	45
Year 6	45
<b>Total</b>	<b>270</b>

- 2.3 The School was inspected by Ofsted on 5 November 2019 in a full inspection, when inspectors judged that the school was "INADEQUATE" overall.

### 3 LEGAL IMPLICATIONS

- 3.1 The conversion process is closely prescribed by DfE guidance and standard documentation. The government has the power to enforce a conversion by statutory order if the standard documentation and guidance is not reasonably followed or if the local authority cannot agree upon the detail of the conversion.
- 3.2 The principle documents are:
- A long Lease (125 years) of the School premises to the Academy Trustees, the proposed Lease is set out at **Appendix 2**;
  - A Commercial Transfer Agreement, the proposed Agreement is set out at **Appendix 3**;
  - A Deed of Novation, the proposed Agreement is set out at **Appendix 4**.
- 3.3 The Academy Trust has engaged Eversheds Sutherland Solicitors as external legal advisers, to assist with the conversion process.
- 3.4 It is possible that some services currently provided to the School under Service Level Agreement arrangements or otherwise, are not capable of being lawfully or cost effectively provided to the new Academy and in the case of Greenfield Primary School, it is anticipated that they will procure most of these services independently.
- 3.5 All assets including furniture, educational, ICT and catering equipment used exclusively by the current Greenfield Primary School and Early Years Centre, will transfer at no charge to the Academy. As described in paragraph 6.10 below, a loan which the School has with Salix Finance Ltd, in relation to a lighting upgrade, will also transfer to the Academy Trust.

### 4 PROPERTY IMPLICATIONS

- 4.1 The Council currently owns the freehold interest of the Greenfield Primary School property and site. It is not a current requirement of Academy conversion and it is not prescribed by the Government, that a School converting to an Academy must own the land and buildings.
- 4.2 It is a requirement of Academy conversion and it is prescribed by Government that a School converting to an Academy should have a legal interest in the land and buildings. It is proposed in accordance with Government guidance that the Council grants a 125 year Lease to the Harmony Academy Trust, in respect of the current Greenfield Primary School land and buildings. A copy of the proposed Lease is set out at **Appendix 2**.
- 4.3 These terms will be:
- Landlord – Tameside Metropolitan Borough Council;
  - Tenant – Harmony Academy Trust
  - Property – As shown on the outline plan attached to the Lease;
  - Term – 125 years;
  - Rent – £1 per annum;
  - Rent Reviews – There will be no rent reviews during the term of the Lease;
  - Repair – Harmony Academy Trust will be responsible for all repair, decoration and maintenance of the property;
  - Use – the property is to be used for the provision of educational services and ancillary purposes including charitable purposes;
  - Costs – Harmony Academy Trust will be responsible for all business rates, taxes, utility bills and standing charges associated with the occupation and use of the property plus service charges relating to any shared facilities;

- Alienation – Harmony Academy Trust may not assign, sublet or allow anyone else to have benefit of the Lease; and
- Alterations – Harmony Academy Trust may not make any alterations, extensions or changes to the property, without the written consent of the Council.

4.4 The standard form of lease prescribed by the Government anticipates that the whole of a School building will be leased to an Academy.

## **5 TUPE**

5.1 In accordance with The Transfer of Undertakings Protection of Employment Regulations 2006, (TUPE) the employment of staff at Greenfield Primary School will automatically transfer from Tameside Metropolitan Borough Council to Harmony Academy Trust on the date of the transfer, currently targeted for 1 September 2020. This means that individual contracts will be treated as if they had originally been made with the new organisation.

5.2 Staff will continue to work in the job that they are currently contracted to carry out, with the Council and their contractual terms and conditions are protected as at the date of the transfer.

5.3 Any changes to individual terms and conditions that are to the detriment of individual employees, will be unlawful under TUPE. Variation to employee terms and conditions can only be done lawfully if the new Academy can show that it was for an economic, technical or organisational reason unconnected with the transfer. A period of consultation has been undertaken with staff and trade union colleagues for all staff affected.

5.4 As part of the TUPE process, there is an obligation on the Council to make staff and trade union colleagues aware of any 'measures' that the Academy trust intends to take in connection with the proposed transfer. To that effect, staff and individuals have been advised of any anticipated changes to terms and conditions and also a letter from the Council to staff and Trade Unions which confirms the 'measures' which the Harmony Academy Trust has outlined to the Council

5.5 The Council and School will continue to work in partnership during the TUPE transfer process and ensure that all statutory obligations are fulfilled.

5.6 Arrangements for the transfer of records and payroll have been agreed to ensure that there is no break in the smooth running of the staffing. Harmony Academy Trust has advised the Council that they propose the following measures:-

### **Payroll Arrangements**

Individuals are currently paid by Tameside MBC on the 15<sup>th</sup> day of the month (Support Staff) or the 22<sup>nd</sup> day of the month (Teaching Staff). If the 15<sup>th</sup> or 22<sup>nd</sup> day of the month is on a Saturday, Sunday or public/statutory holiday you are paid on the nearest working day immediately preceding the 15 or 22. Upon transfer individuals will be paid by the Trust's payroll provider 'Working with Schools' on the same pay date as they are currently.

### **Trust HR Policies and Procedures**

The Harmony Trust is in the early stages of developing and consulting on the Harmony Trust HR policies and procedures. To date the Trust has agreed a Trust wide Capability Policy for Teachers. This Policy will apply on transfer to Teachers. In accordance with the TUPE Regulations, any contractual rights contained within the Tameside MBC current policies will be honoured. Any future policies/procedures to be reviewed and consulted on will also be applied to relevant staff.

- 5.7 Teaching staff transferring to the Harmony Academy Trust will continue to access the teachers' pension fund. Other staff will continue to access the Local Government Pension Fund. The Council expects that whilst the Academy continues to be an employer in the Pension Fund, it will allow access to all eligible employees and not create a two tier workforce.
- 5.8 The teaching staff, are members of the Teachers' Pension Scheme. This is not a funded scheme and the Council has no liability to pay for any deficit. This scheme is managed centrally by the Government. Teaching staff will retain access to this scheme.
- 5.9 Non-teaching or support staff are currently eligible to be members of the Local Government Pension Scheme. Harmony Academy Trust will continue to offer this to staff who transfer. However the Council has to decide how the liabilities will transfer. The Local Government Pension Scheme is a funded scheme. Whilst the scheme is funded, if the liabilities of the scheme exceed the assets, then each employer will be responsible for a section of the overall deficit. The rates that an employer has to pay are calculated by reference to the deficit on the part of the scheme for which they are responsible.
- 5.10 There are two options for the Council and the Academy with respect to the future management of the fund:
- (a) **Pooled with the Council** - Under this arrangement the Council and the Academy will pay the same contribution rate going forward. This includes an allowance to cover certain 'pension strain' costs incurred by either employer (e.g. by ill health retirements). The pool contribution rate is based on the combined assets and liabilities of all employers in the pool (the Council has by far the largest share) and therefore the Council would meet the bulk of any additional costs due to membership experience at the Academy (such as high-pay growth).
  - (b) **Academy to be set up as a 'stand-alone' employer in GMPF** — From 1 April 2020 the Academy would pay a contribution rate based on its own membership and the funding position of its own section of GMPF. From 1 April 2020 ill-health early retirement costs would be met by a GMPF insurance arrangement, but the Academy would remain responsible for meeting any non-ill-health early retirement costs.
- 5.11 Under both options the amount of assets transferred from the Council's section of GMPF to the Academy's section of GMPF is set using standard factors issued by the Government Actuary's Department ('GAD'). Typically this results in the Academy having a funding deficit at the point of transfer, however this is largely irrelevant under the pooling approach outlined in option a) above. Members are asked to support the Academy Trust being pooled with the Council as per option a.

## 6 FINANCIAL IMPLICATIONS

- 6.1 As Academies are funded directly from central government, the Council will see a reduction in the amount of revenue income it receives through the Dedicated Schools Grant and capital funding for repair and maintenance of buildings. The DfE maintain that their desire is that schools which convert to Academy status will be neither better off, nor worse off in terms of the funding, that they receive. Academies also have access to capital grants for funding building needs for which they can submit an application twice a year.
- 6.2 Schools have been repaying the Council for a wide range of infrastructure and support services, which were previously provided for free including HR, ICT, Finance, Legal and Educational services. In common with all schools, Academies will not be obliged to purchase services from the Council. In addition, as more resources are paid directly to



Academies, the Council loses some of the economies of scale which it has previously enjoyed.

- 6.3 The School has been allocated an estimated delegated budget of £1,398,144 (including teachers pay and pension grant (£51,086) for the financial year 2020-21 from the Dedicated Schools Grant (DSG) plus other grants including £106,255 Pupil Premium Grant, £18,410 PE & Sports Grant and £32,338 Universal Infant Free School Meal Grant. School will also receive an element of the DSG based on estimated nursery pupil numbers and this will be adjusted to reflect actual numbers on the three pupil census that are carried out during the financial year, their current estimated funding is £32,425. The school is currently projecting a full year out turn balance of approx. £60,258 at the end of March 2021. A revised outturn balance will be calculated on conversion to Academy status which will transfer to the converted Academy after all expenditure and income attributable to the maintained School have been paid or deducted. The school also have Devolved Formula Capital Balances of £18,661 and these will be released to the school on conversion if they remain unspent at that date.
- 6.4 Unlike maintained schools that are funded on the traditional financial year basis (April to March), academies are funded from September to August to reflect the academic year. The funding for academies comes primarily in the form of a grant, known as the General Annual Grant (GAG), paid by the Education Funding Agency (EFA). The EFA will issue formal notification of grant funding for each School in the month prior to the date of conversion.
- 6.5 School core funding is the largest element of GAG and is also known as an Academy's School budget share. This will be calculated on a comparable basis to maintained schools in the same local authority.
- 6.6 The following items do not become the responsibility of the Academy and continue to rest with the local authority. These are:
- Ensuring provision of sufficient places;
  - home to School transport (including SEN);
  - education psychology, SEN Education Health and Care Plans and assessment;
  - monitoring of SEN provision, parent partnerships, etc;
  - prosecution of parents for non-attendance;
  - individually assigned SEN resources for pupils with rare conditions needing expensive tailored provision (this is usually a top-up to formula funding); and
  - provision of pupil referral units or education otherwise for a pupil who is no longer registered at an Academy.
- 6.7 The School currently pays £32,264 in Business Rates per annum, but this will reduce to approximately 20% of this value once they convert to Academy status and Business Rate Relief is applied.
- 6.8 The School has paid for the following services so far in the 2020/21 financial year. The costs shown in the table below have already been recharged to the School for the full financial year in 2020/21. As the School is converting on 1 September 2020 affected council services will need to re-negotiate new service level agreements with the Academy.

<b>Description of Service</b>	<b>Annual Cost 2020/21</b>
Data Pack	£370
Education Welfare	£2,000
Environmental Services (Energy Unit)	£450
FSM Eligibility Checks	£350

Governor Clerking	£2,650
HCSS Budget Planning Software	£500
Health & Safety	£1,091
Human Resources	£3,740
Legal Services	£550
Local Safeguarding Children Board contribution	£750
Pest Control Contract	£285
Recruitment & Payroll	£5,610
Schools Finance Team	£3,470
SIMS Licence	£1,176
SIMS Support Team	£3,150
Trade Unions	£1,715
Trade Waste	£1,421
<b>Total</b>	<b>£29,279</b>

- 6.9 There could therefore be a corresponding reduction of revenue funding received by the Council for the services no longer required from 2021/22 onwards.
- 6.10 Greenfield School signed up for an interest free loan during 2019/20. The loan is a scheme that is supported by the secretary of state to fund energy efficient schemes which must be paid for from school funds. The original loan amount was for £28,243.78, the school has made payments on time and the outstanding value of £23,536.50 will become the responsibility of the trust. The loan agreement will be novated over to the Academy Trust at the point of transfer, extinguishing the debt and any future responsibility in relation to this loan from the council. Loan documentation will be sealed.
- 6.11 Once Greenfield Primary School and Early Years Centre converts to Academy status, the Council will no longer have the responsibility or the funding to maintain the area of the building that is leased to the Trust.

## **7 CONCLUSIONS**

- 7.1 Greenfield Primary and Early Years Centre has followed the Government's prescribed Academy conversion process, supported by the Council and DfE. An Order confirming support for the conversion of the School to an Academy was published by the Secretary of State on 27 January 2020.
- 7.3 At the school's last Ofsted Inspection in November 2019 the school was judged to be 'Inadequate'. The Secretary of State has a duty to make an academy order in respect of any maintained school judged as inadequate by Ofsted, to enable it to become an academy and receive additional support from a sponsor.
- 7.4 The loss of income from traded services, will be offset in some cases by a reduction in the cost of delivering services and significant risks associated with operating the School will be transferred.

## **8 RECOMMENDATIONS**

- 8.1 These are set out at the front of the report.

# APPENDIX 1



Rt Hon Gavin Williamson CBE MP  
Secretary of State

Sanctuary Buildings Great Smith Street Westminster London SW1P 3BT  
tel: 0370 000 2288 www.education.gov.uk/help/contactus

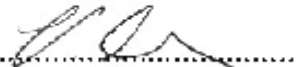
**To: The Chair of Governors of Greenfield Primary School and Early Years Centre**

**Tameside Metropolitan Borough Council**

## **ACADEMY ORDER**

1. This is an Academy Order made further to section 4(A1) of the Academies Act 2010.
2. I hereby order that on the conversion date Greenfield Primary School and Early Years Centre shall be converted into an Academy.
3. The conversion date shall be the date that the school opens as an Academy further to and as provided for in Academy arrangements made further to section 1 of the Academies Act 2010.
4. On the conversion date Tameside Metropolitan Borough Council shall cease to maintain Greenfield Primary School and Early Years Centre.
5. The independent school standards (as defined in section 157(2) of the Education Act 2002) are to be treated as met in relation to the Academy on the conversion date.

Signed on behalf of the Secretary of State for Education by:

Signed:  Date: 27 January 2020

**Vicky Beer CBE,  
Regional Schools Commissioner**