

MAYOR AND CABINET		
Report Title	Academy conversion of Tidemill Primary School – granting of lease	
Key Decision	Yes	Item No.:
Ward	New Cross	
Contributors	Executive Director for Children & Young People Executive Director for Resources Head of Law	
Class	Open	Date: 14 September 2011

1 Summary

- 1.1 This report seeks the agreement of the Mayor that the land and buildings set out in this report be leased to the Tidemill Community Academy Trust.

2 Purpose

- 2.1 This proposal enables the conversion of Tidemill Primary School to academy status through the provision of a lease for its existing building and another, in due course, for the use of parts of the new Deptford Lounge complex for exclusive use by the school and parts for shared use.

3 Recommendations

That the Mayor:

- 3.1 notes that on 14 July 2011 the Secretary of State made an Academy Order in respect of Tidemill Primary School and that Tidemill Primary School converted from Community to Academy status on 1st September 2011.
- 3.2 notes that it is a requirement for the land and buildings occupied by the school to be transferred to the Tidemill Community Academy Trust so that they are available for use from the conversion date and that the Secretary of State has asked the Council to lease the land and buildings to Tidemill Community Academy Trust through a 125 year lease;
- 3.3 notes that the Deptford Lounge complex which incorporates the new Tidemill Primary School building is not likely to be ready for occupation until October 2011 and that the conversion date has taken place whilst the school is still located in the existing building;
- 3.4 notes that the Director of Programme Management & Property, on the advice of the Head of Law, acting under his delegated authority, has agreed to the Tidemill Community Academy Trust occupying the existing building

on the basis of a Tenancy at Will, pending the new building being completed.

- 3.5 agrees that the new building set out in this report be leased to the Tidemill Community Academy Trust on a 125 year lease.
- 3.6 delegates authority to the Director of Programme Management & Property, on the advice of the Head of Law, to resolve the final terms of the lease of the new building, and to agree and conclude any other outstanding issues in connection with the land transfer arrangements and the conversion.

4 Policy Context

- 4.1 The report is consistent with the Council's policy framework. The Council's priorities include a commitment to "*young people's achievement and involvement: raising educational attainment and improving facilities for young people through partnership working*".
- 4.2 Lewisham's Children & Young People's Plan (CYPP) describes how partnership agencies working with children, young people and their families will support the delivery of the borough's priorities for the wider community which are set out in Lewisham's Sustainable Community Strategy 2008-2020, and, in particular in relation to this report, its priority *Ambitious and Achieving* – where people are inspired and supported to achieve their potential.

5 Background

A new Tidemill school as part of an integrated Deptford Regeneration Programme

- 5.1 The new Tidemill School has been built on the site of the old AccessPoint and Wavelengths car park, and is now adjacent to the Wavelengths Leisure Centre completed in 2008,. It was conceived as a state-of-the art Community school with a prominent main entrance on Giffin Square, a landscaped play garden directly accessible from all classrooms, and a ball court and sports hall with a design compliant with Sport England requirements. The new school will maintain two forms of entry, a nursery and a Special Needs unit. It has been designed to provide an extensive programme of evening, weekend and holiday events, sharing its facilities with the community, and thus enabling many of these to be used outside of school hours. The new school will occupy premises a third larger than in its present location.
- 5.2 As a school graded outstanding by Ofsted Tidemill has an good record in improving the life chances of children and their families in Deptford. The new Tidemill was conceived and has been planned to form, with the adjoining *Deptford Lounge*, part of an integrated complex which combines a number of different Council facilities, including a new library, Council access point, community facilities, office space, art gallery, artists' studios, residential accommodation, cafe and public toilets. The complex has been designed

to make the most efficient use of space in this busy town centre location by co-locating a number of different services for the community, thus creating a hub better to serve the population.

- 5.3 Together the school and Deptford Lounge represent a key public focal point of a new civic quarter for Deptford. The Giffin Street regeneration programme is being delivered in New Cross, a Ward with both a high level of ethnic diversity and of socio-economic deprivation. The regeneration area is a large piece of Council owned land previously with multiple usage in the centre of Deptford, located south of the main railway line adjacent to Deptford High Street and Deptford Church Street.
- 5.4 In 2004 the Council received £4.5m of Targeted Capital Funding to rebuild Tidemill Primary School as a state-of-the-art primary school. The eventual £10,684,000 cost of the school and the £8,364,000 cost of Deptford Lounge have been part funded by Government support for the school (£2,550,000) and for the co-location of facilities (£5.5m), the balance being funded by the Council.
- 5.5 In November 2005 a Giffin Street regeneration programme master plan was commissioned from HKR architects, in May 2006 Council officers commenced initial design and feasibility work, and in March 2007 a report was published jointly with PTEa architects entitled *Tidemill School, The Lewisham Lounge and Giffin Street Regeneration Area*.
- 5.6 On 14th November 2007 the Mayor approved the *Giffin Street Regeneration Programme* business case, and on 11th June 2008 the appointment of London and Quadrant Housing Trust (L&Q) as the Council's Registered Social Landlord Partner for the Giffin Street Regeneration Programme. At the same Mayor and Cabinet meeting, the Mayor also approved the disposal of the "old" Tidemill School site once the new Tidemill School was delivered and opened on its new site.
- 5.7 Design work on the new Tidemill School has continued over the last three years to the end of the summer 2011. Since 2008 this has included significant ongoing negotiation on the content and balance of provision between the three elements of the *Deptford Lounge* complex, its management, and, in particular the extent and nature of shared usage of facilities between the school and the public areas.
- 5.8 Work on the new school building started in October 2009 and was due to be completed by August 2011, hand-over is now expected in October 2011.

Tidemill's application to convert to Academy status

- 5.9 In July 2010, the governors of Tidemill School registered with the DfE their interest in Tidemill converting from its Community status to become an Academy through a fast-track process for outstanding schools.

- 5.10 An Academy is a state funded school, subject to OFSTED inspections and required to provide a balanced and broadly based curriculum for mainly local pupils of all abilities. Academies have the same obligations as other schools for SEN provision.
- 5.11 The key differences between Academies and other state schools are that they:
- are governed by an Academy Trust, constituted as a company limited by guarantee and a charity;
 - are funded directly from central Government
 - take any direction (eg. to admit a pupil) from the Secretary of State rather than the Local Authority
 - are allowed to set their own terms and conditions for staff and their own term dates
 - do not have to follow the National Curriculum
- 5.12 In addition, in common with Voluntary Aided (VA) and Foundation schools, Academies:
- are responsible for their own admissions policies;
 - are responsible for their land and buildings. Local Authorities are required to transfer land to the Academy which is transferred back if the school ceases to be an Academy on that site;
 - employ their own staff.
- 5.13 In October 2010, an application to convert from the Tidemill governors was “pre-approved” by the DfE, and in October/November the governors proceeded to consult, principally with parents. On 15th November the Local Authority submitted its response which set out comprehensively the areas where it felt it was particularly important for governors to consider the implications of converting to Academy status. This included pointing up the complexities around the leasing of elements of the new premises to an Academy Trust, especially given that parts of the Deptford Lounge were designed for shared use between the school and the community.
- 5.14 Having considered the responses to the consultation, the governors met on the 2nd December and decided to convert to an Academy Trust with a target date of April 1st 2011. However, as a result of a subsequent legal challenge pertaining to the consultation process, the governors withdrew the application. Following further consultation, in May 2011 the governors subsequently submitted a second application to the DfE with a revised target date for conversion of 1st September 2011, subject to a Funding Agreement being in place with the Secretary of State. This application was approved by the DfE on 20 July 2011.
- 5.15 Since October 2010, the Council has entered into detailed discussions with the governing body and Head Teacher of Tidemill to attempt to resolve the complications of shared use of the new Deptford Lounge/Tidemill School facility which would ensue from the school acquiring academy status, and, in particular, the terms of the lease which would be more complicated than normal. Officers have sought during this process to ensure that the school

would be enabled to work well as an institution whilst the overall aims of the Deptford Lounge project were not compromised.

- 5.16 At a practical level, the school, Council and community users share a combined mechanical and electrical infrastructure, served from a large plant room in the basement and another plant room on the top floor of the Deptford Lounge building. Shared costs have been negotiated.
- 5.17 In addition the building has been designed so that a number of the rooms which are for the sole use of the school during normal school hours and term times, are an accessible and hireable resource for the wider community outside these hours. The concentration of these resources in one location enables more streamlined management than would otherwise be the case, and thus ensures that the cost of making these available to the public is minimised whilst use is maximised.
- 5.18 Agreement has now been reached between the Council and the school on the demarcation of those parts of the building which are exclusively for school use and those which are shared, and the related issue of the sharing of costs. This agreement will be reflected in the lease.
- 5.19 Agreement has also been reached on the purchase by the Academy of Local authority services.
- 5.20 In relation to the timing of handover of the new school accommodation within the Deptford Lounge, the school was not completed as agreed with the contractor for the start of the September 2011 school term. The building is not expected to be ready to be handed over until October 2011. The Local Authority will not allow occupation until it is completely satisfied that the school is ready for occupation, and consequently October half term is the most likely option.
- 5.21 The view of the Local Authority, expressed both to the governors and Head Teacher of Tidemill and to the DfE, was that, given the delay to the handover of the school beyond the September 1st date proposed by the Tidemill governing body for conversion to Academy status, there was much to be gained from a revision to that date so that the school would convert and move into its new premises on the same date.
- 5.22 However, Secretary of State approval was only received just before the end of term, and the school and DfE indicated a preference to convert to Academy status on 1 September 2011. Tidemill Primary School converted from Community to Academy status on 1st September 2011 and Officers therefore granted a Tenancy at Will to the Academy for the existing school site pending completion of the new building. The Academy will vacate the existing school site and hand it back to the Council when it moves into the new building.

6 The Leasing Arrangements

- 6.1 The Council holds the freehold of the Deptford Lounge Complex within which the new Tidemill School will be located. It is proposed to enter into a lease of the school element of the site with the Tidemill Community Academy Trust for a term of 125 years. The position is unusual because the new school is not a separate building but forms an integral part of the Deptford Lounge Complex. In particular, there are common parts within the Complex that will be used by the school in common with the Council. There are also shared areas within the Lounge space which will be required for use by the school during school hours. Detailed negotiations have been taking place with the school regarding these matters and, in particular, the basis of the service charge and sharing arrangements. Agreement in principle has been reached but the terms of the lease are still subject to detailed legal negotiation.
- 6.2 The Council is required to use the DfE model Academy lease as a start point and the key terms of the lease reflect that requirement. However, some of the key terms are required to be changed to reflect the nature of this particular building. The key terms are proposed to be:
1. Rent – a nominal rent per year.
 2. Repair – the tenant to keep the school in a state of good and substantial repair and decoration at all times. The Council will be responsible for repair and decoration of the shared areas and common parts; all the plant and conduits within the Complex and the main structural elements of the Lounge building and an appropriate share of the costs will be charged back to the Academy under a service charge.
 3. Outgoings – the tenant to be responsible for all outgoings in respect of the school, either paid directly by the tenant or charged back to the Academy under a service charge.
 4. Alterations – the tenant is not to make any internal or external structural or non structural alterations to the school without the landlord's consent. The tenant is to carry out all works permitted by the lease in a good and workmanlike manner with good quality materials in accordance with all relevant standards.
 5. Use – the property is to be used only as an Academy with specified ancillary facilities to be agreed by the landlord.
 6. Dealings – the tenant is not permitted to share possession or occupation or to assign, transfer or underlet the whole or any part of the school. The school may be charged as a whole with the landlord's consent.
 7. The school will have exclusive use of the shared areas within the Lounge space from 08:30 – 16:00 on weekdays during term time. Any additional hours required by the school outside of these hours will be booked through the booking system and the school will be charged the full chargeable rate at the time.
 8. The Council will be responsible for the provision of various facilities management services to the Deptford Lounge Complex and an appropriate share of the costs will be charged back to the Academy under a service charge.

9. Exclusion of Security of Tenure – the lease will be excluded from the security of tenure provisions contained in the Landlord and Tenant Act 1954.
 10. Determination – In the event that the Funding Agreement is determined the landlord has the option to determine the lease on not less than 2 weeks' notice. The tenant will also have a right to determine (the basis on which the tenant will be able to determine and the notice to be given will need to be agreed).
- 6.3 As stated above, the terms of the lease are still subject to detailed legal negotiation between the parties. This report therefore delegates authority to the Director of Programme Management & Property, on the advice of the Head of Law, to resolve the final terms of the lease of the new building, and to agree and conclude any other outstanding issues in connection with the land transfer arrangements and the conversion.

7 Financial implications

- 7.1 In paragraph 6.2 (points 1 to 8) the cost shares that fall to Tidemill Community Academy Trust School in respect of its occupation of the Deptford Lounge Complex all fall to be met from the formula funding allocation of the school with no burden on the general fund of the Council.
- 7.2 As a “converter” academy, Tidemill’s move to academy status will be different to that of previous schools in that any budget surplus or deficit on conversion transfers to the academy. Previously the balance on conversion accrued to the LA. This has no impact upon the Council’s general fund.
- 7.3 The conversion of Tidemill Primary School does have revenue financial consequences for the Dedicated Schools Grant (DSG). In addition to the formula funding allocation, calculated using the Lewisham funding formula, there will be a share of budgets for services funded from the centrally retained element of the DSG of £36k (for a full year). These sums are entirely within the DSG and have no implications for the General Fund of the Council.
- 7.4 In setting the formula grant allocation for 2011/12 DCLG top sliced the grant in relation to Academy conversions. This top slice was calculated on assumed academy conversion numbers nationally. This resulted in a top slice for the Council of £900k. There is not therefore any further deductions when a school converts to academy status in the current financial year. There is therefore no further impact on the general fund in this respect.
- 7.5 Currently the government is consulting on changes to the ways academies are funded. This may mean the current method continues or Academies are funded under a new nationally determined funding formula. It is currently anticipated that any change will be made from the 2013/14 financial year.

- 7.6 The TUPE transfer of the staff will require a discrete arrangement within the Council Pension fund with implications for the contribution levels for the Tidemill Community Academy Trust School and its employees. There should be no additional burden on the pension fund as a result of the conversion.
- 7.7 There are no capital finance implications associated with this proposed lease to Tidemill Community Academy Trust School.
- 7.8 Officers have been negotiating with the Trust the detailed arrangements for the apportionment of costs across the complex particularly for shared space. These include the full costs of the new complex including insurance.

8. Legal Implications

- 8.1 The Human Rights Act 1998 safeguards the rights of children in the borough to educational provision which the Council is empowered to provide in compliance with its duties under domestic legislation.
- 8.2 Section 14(1) of the Education Act 1996 obliges each local authority to secure that there are sufficient schools for providing primary education, and secondary education available for their area i.e. the London Borough of Lewisham although there is no requirement that those places should be exclusively in their area. The local authority is not itself obliged to provide all the schools required, but to secure that they are available.
- 8.3 Section 14(3A) of the Education Act 1996 provides that a local authority shall exercise their functions under section 14 “with a view to (a) securing diversity in the provision of schools; and (b) increasing opportunities for parental choice.”
- 8.4 Statutory proposals are not required for the establishment of an Academy. The legal basis for Academies is now contained in the Academies Act 2010. Section 1 of which provides for the Secretary of State to enter into funding agreements with persons, to undertake to establish and maintain and to carry on or to provide for the carrying on of an independent school with certain characteristics.
- 8.5 The consent of the Secretary of State to the grant of the lease of the new school building is not required under paragraph 2 of Schedule 35A of the Education Act 1996, as the lease is being granted for the purposes of an Academy for no consideration. The Department for Education has also confirmed that consent is not required under Section 123 of the Local Government Act 1972 (disposals of land by principal councils) and Section 77(1) of the School Standards and Framework Act 1998 (restrictions on disposal of school playing fields) to the grant of the lease.
- 8.6 The terms of the lease to the Academy will provide that the property may only be used for the provision of educational services by the Academy. In

the event that the property ceased to be used for this purpose, the Council would be entitled to forfeit the lease. The lease will also provide for automatic termination in the event that the Funding Agreement is terminated in circumstances where there is no other Funding Agreement in existence.

TUPE/Commercial Transfer Agreement

- 8.7 Staff at Tidemill School are covered by the Transfer of Undertakings (Protection of Employment) (TUPE) Regulations 2006 and transferred to the employment of the Tidemill Governing Body on the date of conversion to Academy status.
- 8.8 A formal meeting was held on the 7th July 2011 with the teacher trade unions. The support staff unions were unable to attend on this date. Directly after this meeting staff were invited to attend a briefing where TUPE was explained to them and the process to be followed.
- 8.9 On 22nd July 2011 a formal letter was sent to all unions outlining the issues discussed at the meeting on 7th July and identifying any 'measures' the transferor or the transferee intended to take that would affect staff. There are no measures envisaged by the transferor to be taken in connection with the transfer. In terms of measures to be taken by the transferee, the change of location was identified. However, it was confirmed that this change would not cause additional travel time or costs to staff due to the proximity of the new building. It was also confirmed that Tidemill wishes to continue using the payroll services of the London Borough of Lewisham and that therefore no change should be anticipated. Initial technical issues around providing a bespoke payroll service for Tidemill have been resolved.
- 8.10 Tidemill Governing Body has agreed to continue to consult and negotiate with the recognised trade unions and has confirmed its wish to do so through a model process similar to that currently used by the Council. The practicalities of this are still to be discussed.

9 Crime & disorder implications

- 9.1 There are no crime and disorder implications

10 Equalities implications

- 10.1 The admissions policy of the Tidemill Community Academy Trust will remain the same as that of Tidemill as a Community school, and it will continue to serve the same community. There are therefore no equalities issues.

11 Environmental implications

- 11.1 There are no environmental implications

12 Conclusions

- 12.1 This report sets out the actions Officers have taken over the Summer in order to facilitate the conversion of Tidemill School to Academy status and the actions now proposed to manage the transfer to their building.
- 12.2 The report sets out the proposed arrangements with Tidemill Community Academy Trust and seeks to put in place arrangements that the new Deptford Lounge complex can be a valuable long term resource for the people of Deptford. It is proposed that the Council enter into a long term lease with the Trust for the new school and that authority to conclude the arrangements is delegated to Officers.

Background documents

For further information on this report, please contact Chris Threlfall,
Head of Education Development, on 0208 3149971