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29 March 2011

**Name of Cabinet Member:**

Joint Meeting of Cabinet Member (Children and Young People) – Councillor Clifford  
And Cabinet Member (Education) - Councillor Lynnette Kelly

**Director Approving Submission of the report:**

Director (Children, Learning & Young People)

**Ward(s) affected:** All

**Title:**

*Lease Agreements and Credit Union Loans for the proposed Coventry Blue Coat Academy and future converting schools*

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**Is this a key decision?**

No

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**Executive Summary:**

The Coventry Blue Coat Church of England School & Music College is proposing to convert to an academy with effect from 1<sup>st</sup> April 2011. In response to this the City Council is required under Schedule 1 of The Academies Act 2010 to grant a 125-year term lease at a peppercorn rental for the land and/or buildings in its ownership that is wholly or mainly used by the school and also to agree continuation of the school's outstanding Credit Union Loan. If other schools in the City seek to convert to become an academy, similar lease and Credit Union settlements may be necessary. This paper seeks to

- 1.1 Report on the long lease agreement with the proposed Coventry Blue Coat Academy.
- 1.2 Detail the proposed treatment for the Coventry Blue Coat School's outstanding Credit Union Loan
- 1.3 Note that any future Academy conversion proposals will also require lease agreements for land and buildings and settlement of outstanding Credit Union Loans
- 1.4 Seek approval for the recommendations set out below:

**Recommendations:**

1.5 The Cabinet Member is requested to:

- 1.5.1 Endorse the approach taken for the 125-year lease agreement at a peppercorn rental for Coventry Blue Coat and any future academy conversion proposals from Coventry Schools and delegate to the Director of Children, Learning and Young People and

Assistant Director Property Asset Management the agreement of leases and other documentation for future academy transfers.

- 1.5.2 Agree the novation of the existing Credit Union Loan across to the proposed Coventry Blue Coat School Academy and the continuation of repayments on existing terms.
- 1.5.3 Agree that the approach to lease of land/buildings and treatment of outstanding Credit Union Loans adopted for Blue Coat be taken if any schools in the future convert to academy status.

**List of Appendices included:**

Proposed Land transfer map showing the extent of the demise under the 125 year leased edged red for Coventry Blue Coat School conversion.

**Other useful background papers:**

None

**Has it been or will it be considered by Scrutiny?**

No

**Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?**

No

**Will this report go to Council?**

No

Report title: **Lease Agreements for proposed Coventry Blue Coat Academy and future converting schools**

**1. Context (or background)**

- 1.1 The stated policy of the coalition government is over time to enable any maintained school who wishes to do so to apply to become an Academy. Schools choosing this option would no longer be schools maintained by the LA. The decision maker in establishing an Academy is the Department for Education (DFE). The Local Authority has no decision making role in the process. The Academies Act 2010 has been passed by Parliament and introduced a fast track approach for schools wishing to convert to academy status. The Academy is required to liaise with the land/buildings owner (in this case the City Council as local authority) to agree the terms of a lease for land occupied by the current school. In the case of Voluntary-Aided Schools (including Coventry Blue Coat School) the buildings and land on which they sit are owned by the Diocesan authority (and as such it will be for them to agree lease arrangements with the new Academy) whilst playing fields are usually owned by the Local Authority and will require the City Council to agree lease arrangements with the academy. In the absence of agreement the Secretary of State can make an order compulsorily instating a lease between the Council and the school in a model form. The DFE have produced a set of standard form documents for use in transfer agreements and will form the basis for agreements between the City Council and any converting schools.
- 1.2 At his meeting on 14<sup>th</sup> October 2009 the then Cabinet Member (Children, Learning and Young People) agreed a Credit Union Loan to Coventry Blue Coat School to be repaid over five years. The first instalment was repaid on 30 April 2010 and final payment is due on 30 April 2014. At the intended academy conversion date part of the loan will be outstanding.
- 1.3 In relation to the treatment of outstanding Credit Union Loans the DFE 'Guide to becoming an academy' sets out expectation that the liability to repay the loan would normally transfer from the current governing body of the school to the Academy Trust. Further advice from the DFE highlights that they encourage Local Authorities to continue the loan and make agreements for continuation of repayments under existing terms and conditions.

**2. Options considered and recommended proposal**

- 2.1 Under Schedule 1 of The Academies Act 2010, the Authority is required to grant to the Academy a 125 year lease at a peppercorn rental for land wholly or mainly used by the school in the preceding 8 years. For Voluntary-Aided schools, both the Authority and Diocesan Trustees will need to agree such leases for transfer of their appropriate land/buildings to the Academy Company. This will be the approach taken with Coventry Blue Coat.
- 2.2 In relation to Trust Schools converting to academy status, the land transfer will have already taken place between the Authority and Trust School Trustees. On converting to academy the Trust School Trustees may choose to either directly transfer the land to the Academy Company or alternatively return the land to the Authority for us to then agree a long lease as set out above. DFE recommend the former approach and it is for the Trustees of the Trust School to determine.
- 2.3 In regard to the Credit Union Loan, the DFE expect that the liability to repay a loan made by the local authority would normally be transferred to the academy, which would continue repayments on the previously agreed schedule. The transfer of responsibility for the loan should be reflected in a legal agreement between the LA and the academy trust. The school needs to seek permission from the Secretary of State for the loan repayments to be continued before the academy's funding agreement was signed.
- 2.4 Where continuation of a loan cannot be agreed, then the Authority could insist on immediate repayment of the loan. This is not the DFE's preferred approach and where such an approach is necessary they would discuss the loan with the LA and the school on an individual basis in determining what action should be taken to safeguard both parties' interests.

### **3. Results of consultation undertaken**

- 3.1 In October 2010, the Cabinet Member (Education) agreed a report setting out principles for working with academies and free schools. Following this schools, the trade unions and other partners have been made aware about our principles for working with academies and free schools.
- 3.2 In relation to consultation in regard to lease of land/buildings to academies then there is no requirement on local authorities to do so, however, converting schools are required to undertake wide-ranging consultation with stakeholders as part of the conversion process.
- 3.3 Headteacher groups, service providers and other stakeholders have been kept informed regarding the proposal for academy conversion for Coventry Blue Coat. This practice would continue as necessary in the future.

### **4. Timetable for implementing this decision**

- 4.1 The agreed approach and principles for agreeing lease agreements and credit union loans will be applied with immediate effect in relation to the proposed Blue Coat Academy conversion.
- 4.2 The principles of the approach and agreement will be applied to any future academy conversion processes and Director of Children and Young People and/or Assistant Director delegated to agree the necessary leases, loan agreements and other documentation.

### **5. Comments from Director of Finance and Legal Services**

#### **5.1 Financial implications**

- 5.1.1 Academies receive their funding directly from the DFE, which includes a share of the central funding currently received by Local Authorities for maintained schools. Before conversion a commercial transfer agreement should be in place, which is designed to ensure that a number of agreements are in place including details of any assets or contracts that will transfer to the Academy Trust and of those that will not.
- 5.1.2 The Academy inherits the closing financial balance of the predecessor maintained school at the date the school ceases to be maintained by the local authority. This applies whether the balance is a surplus or a deficit. The Local Authority will need to be involved in calculating this, and paying to the Academy (where in surplus) within 4 months. If an academy has a deficit at the point of conversion the Local Authority will be required to notify the Secretary of State. Once the amount is validated and agreed, the LA will be paid a sum equivalent to this by the Secretary of State. In the event that the Local Authority makes an underpayment or overpayment in relation to any historic liabilities (including, without limitation, any payments relating to the School's accounts), the commercial transfer agreement should state that the Local Authority and the Company agree to repay any such sums to the other (as appropriate).
- 5.1.3 In regard to specific financial implications on the land/buildings lease the Authority will only retain reversionary freehold risk. The Academies will acquire leaseholder and occupier risk. We have had clarification from the DfE Capital Review team that there will be no priority for capital given to schools that become Academies under the new system.
- 5.1.4 The novation of the Credit Union Loan across to the Academy Company will make them liable for repayment of the loan until its final instalment due on 30 April 2014.

#### **5.2 Legal implications**

- 5.2.1 The Academies Act 2010 ("the 2010 Act") introduces a fast track procedure for outstanding schools wishing to convert to Academy status. The Academy is required to liaise with the land owner (in this case the Council as Local Authority) to agree the terms of a land transfer for land they have wholly or mainly occupied as a maintained school at any time in the previous 8 years. In the event of agreement not being reached the Secretary of State has a discretionary power under Schedule 1 of the 2010 Act to step in and make a transfer scheme.

- 5.2.2 Schedule 1 of the 2010 Act requires the Academy and the Council execute legal documentation in the form of a grant of a long lease for a term of 125 years. The freehold of the adjoining site (forming the Blue Coat School buildings) was transferred by the Council to the school trustees in May 1967 and are therefore the ownership of such is already vested in the School. In accordance with Schedule 1 of the 2010 Act the Council is obliged to grant to the Academy a 125 year lease at a peppercorn rental of the land shown edged red on the plan attached hereto currently forming the site of the school's existing playing fields. Guidance on land transfer from the Department of Education suggests that if land is held by a local authority then a long leasehold interest should be granted rather than a transfer of the freehold.
- 5.2.3 The Director of Finance and Legal Services will prepare and complete the long lease to the Academy. The form of lease will be based upon the "model long term lease" produced by the Department for Education.
- 5.2.4 The Director of Finance and Legal Services will also prepare a Novation Agreement in transferring responsibility for repayment of the Credit Union Loan across from Coventry Blue Coat School to the Academy. The requirement to meet the repayment schedule will be contained

## **6. Other implications**

*Any other specific implications*

### **6.1 How will this contribute to achievement of the Council's key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint / Local Area Agreement (or Coventry Sustainable Community Strategy)?**

The creation of Academies, if they are not part of a positive partnership of schools, has the potential to significantly reduce the City Council's ability to pursue its corporate objectives that all children and young people are safe, achieve and make a positive contribution to the City. However, to date, in relation to the Coventry Blue Coat Academy conversion process good relationships have been maintained and the school has expressed a commitment to continue to work with the City Council and other schools. This will require Coventry Blue Coat and any future academies to use some of their funding to support partnership working.

Any growth in the number of Academies will also impact on strategic planning of school places by the City Council. Academies are responsible for setting their own Admission Number and Net Capacity and whilst they will have to follow established consultation processes prior to making any such changes, it will be for the Secretary of State to agree any such changes. The City Council will therefore need to work with Academies and seek their cooperation in managing pupil places across the City including any decisions to change admission numbers or increase or decrease school size.

Academies will have the ability to change the length of the school day and also set their own Term and holiday dates. Should academies set different dates from those agreed by other schools in the city then this will impact on parents particularly those with children at other schools.

### **6.2 How is risk being managed?**

An academy is no longer maintained by the LA and the land and buildings transfer to the academy, so Health & Safety will no longer be the LA's responsibility. It will be the same for business continuity. If there were significant Health and Safety or Business Continuity issues in an Academy this could result in numbers of children and young people not being in school. This is likely to have an impact on the LA. This needs to be discussed and agreed with headteachers as we consider with them the protocols for working with Academies.

### **6.3 What is the impact on the organisation?**

Academies are independent bodies from the City Council. As such they will have freedom to decide where they obtain services and support from. Where academies decide to procure services elsewhere than the City Council then this may impact on the services involved.

For many Council services this means no change as under Fair Funding legislation and Budget Delegation requirements, schools have held such budgets and service delivery decision-making powers for several years. However, where services have been provided as part of a corporate statutory service then Academies will need to purchase such services from the City Council to seek an alternative provider. When bidding for Academy business, all Local Authority services will have to base bids on commercial rates that achieve full recovery of Authority costs.

As Academies are the employers of the school's staff, the converting schools will be required to follow TUPE legislation and also agree appropriate admission arrangements to teacher and other pension bodies prior to conversion. In the case of Coventry Blue Coat, the transfer of staff will be between the existing school trustee body and the academy as school staff at VA schools are employees of the school trustees and not the local authority.

The lease of land and buildings to academies for 125 years will make them wholly responsible for repair, maintenance and upkeep of the site.

### **6.4 Equalities / EIA**

There are no specific EIA issues directly related to the land transfer or continuation of the Credit Union Loans. However, we are still awaiting guidance from DFE on the wider general issues of EIA. The main concerns currently are about the impact on vulnerable groups. The rate of exclusions from academies has tended to be high. If academies were not part of the school partnership this could have an impact. Academies do have to be part of the co-ordinated admissions processes but they could for instance consult on changing a catchment area. The effect on partnership working around things like the social inclusion placements panel could be affected

### **6.5 Implications for (or impact on) the environment**

Academies, as an independent organisation from the City Council, will be responsible for working towards its own agenda for environmental improvements. The Carbon Reduction Commitment (CRC) Energy Efficiency Scheme as amended is a mandatory carbon emissions tax covering non-energy intensive users in both public and private sectors, and is a central part of the UK's strategy to deliver the emission reduction targets set in the Climate Change Act 2008. Emissions from academies are to be included in the total reported carbon emissions for their participating local authority. As such Academies will be responsible for providing appropriate information to the City Council to enable us to procure Carbon Credits on their behalf.

### **6.6 Implications for partner organisations?**

None that have not already been addressed

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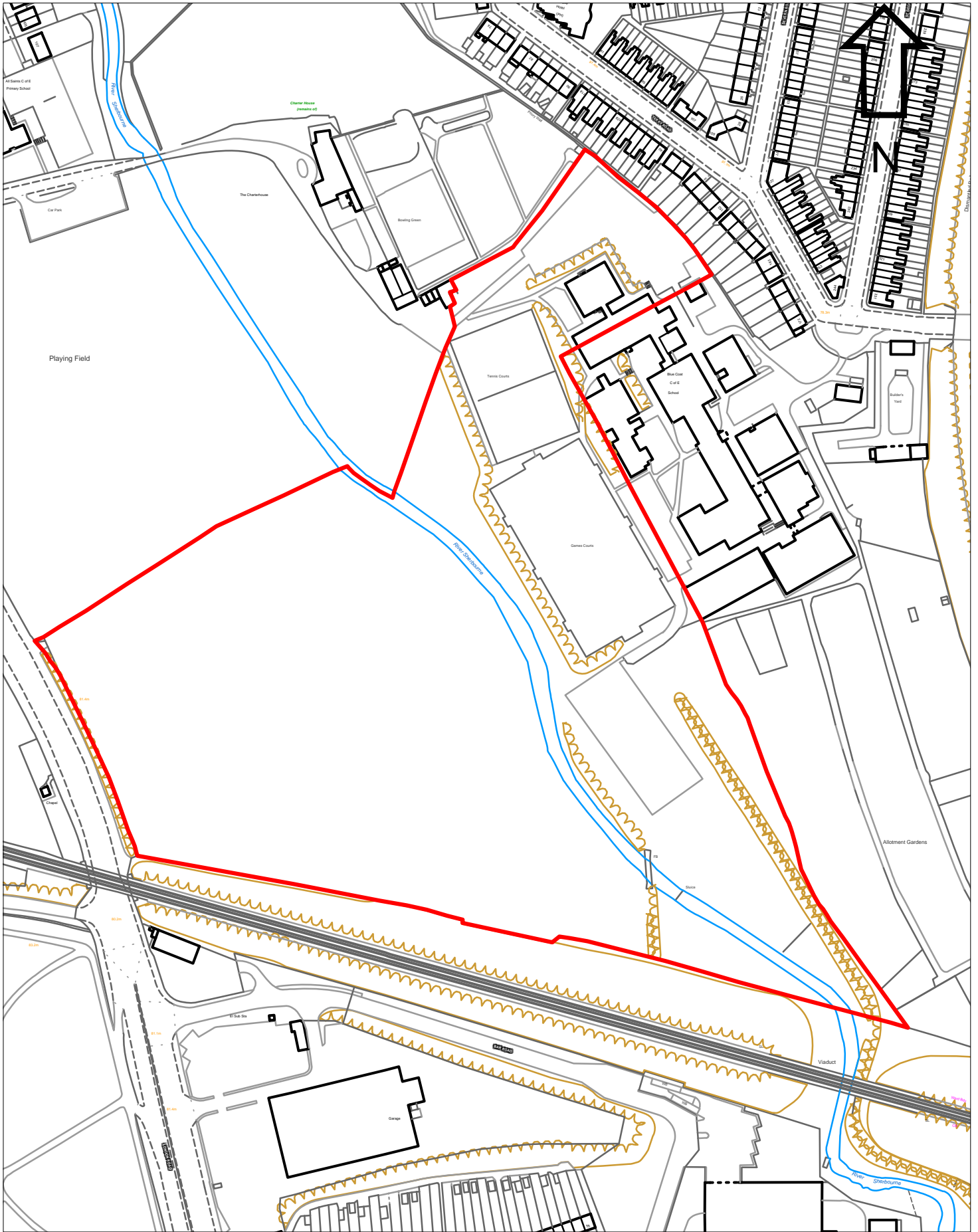
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**Appendices**

Proposed Land transfer map showing the extent of the demise under the 125 year leased edged red for Coventry Blue Coat School conversion.



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**BLUE COAT C of E SCHOOL, COVENTRY**

FOR IDENTIFICATION PURPOSES ONLY

**Drawn by ACB** **Date 25/01/11**  
**Scale: 1:2500**

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