

Decision Report

Forward Plan Reference: FP/23/10/04

Decision Date – 24/04/2024

Key Decision – Yes



Schools Converting to Academy Status June 2024

Executive Member(s): Cllr Heather Shearer- Lead Member for Children Families and Education

Local Member(s) and Division: Cllr John Bailey and Cllr Emily Pearlstone (Martock) Cllr Barry Clarke and Cllr Philip Ham (Mendip Central and East), Cllr Bente Height and Cllr Martin Lovell (Shepton Mallet).

Lead Officer: Claire Winter – Director of Children’s Services

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1. Summary / Background

1.1. The Secretary of State for Education has granted Academy Orders to the schools listed below, following a decision by the school governing bodies to convert to academy status. Stoke St Michael Primary School has also received Direct Academy Order following a double Requires Improvement Ofsted judgement.

Ash Church of England Primary School
Stoke St Michael Primary School RI
Croscombe Church of England Primary School

1.2. This is a decision to authorise officers to enter into property and land arrangements (Service Director Strategic Asset Management) and associated HR, finance and business management (Assistant Service Director Education Partnerships and Skills) to facilitate the conversion of all three schools that are the subject of this paper.

1.3. In accordance with the Council’s Constitution the Strategic Asset Management Service Director who is the Director responsible for property has delegated authority to agree the disposal of Council land, together with being able to agree granting leases and licences in relation to all academy conversions.

2. Recommendations

- 2.1. It is recommended that the Lead Member for Children Families and Education and the Strategic Asset Management Service Director:
- 2.2. a) authorise the Council to enter into a Commercial Transfer Agreement relating to the transfer of the staff, assets and contracts of the following schools to the following Trusts:

School Name/Trust Name	School Category	Proposed Conversion Date
Ash Church of England Primary School joining the Preston Primary Academy Trust	Voluntary Controlled	01/06/2024
Stoke St Michael Primary School joining the Wessex Learning Trust	Community	01/06/2024
Croscombe Church of England Primary School joining the Wessex Learning Trust	Voluntary Aided	01/06/2024

- b) Approve where relevant the grant of a 125-year leasehold interest in land owned by Somerset Council to the relevant academy trust and /or a statutory transfer of land to the relevant Diocesan Board. Leases will be granted on a peppercorn basis and statutory transfers on nil consideration (as set out in paragraph 16.8 in this report).
- c) Take on behalf of the Council all necessary actions and enter into any necessary transactions to give effect to the above and any supporting documentation that may be required to give effect to the same.

3. Reasons for recommendations

- 3.1. To meet the requirements of the Academies Act 2010.

4. Other Options Considered

- 4.1. No other options were considered since these are orders from the Secretary of State for Education in respect of all three schools.

5. Links to Council Plan and Medium-Term Financial Plan

- 5.1. The Council Plan 2023 - 2027 priorities are that children need access to good schools and education outcomes should be improved for all children.

6. Financial and Risk Implications

- 6.1. An amount pro-rata from the date of conversion to 31 March 2025 will be recouped from the Dedicated Schools Grant equivalent to the funding that these schools would have received through the funding formula as maintained schools.
- 6.2. The 125 year lease for land owned by Somerset Council will be on a peppercorn basis to the academy trust. Statutory transfers will be at nil consideration.
- 6.3. The Council is able to and will levy a charge of £10,675 for two of the conversions that are the subject of this paper and will also recover all related legal costs. The council is unable to levy a charge for schools in receipt of a Direct Academy Order.
- 6.4. On the 2 August 2023, the Council's Executive approved a new Academisation Finance Policy and Procedure. This decision brings the Council's policy in line with the Department for Education guidance including that for the treatment of any surplus or deficit balance at the date of conversion. This policy states that for schools in receipt of a direct academy order, any surplus is retained by the Council and any deficit is also retained by the Council. The academy trust will be entitled to retain committed funds where these fall into any of the categories specified in the new policy. In the case of a voluntary conversion, any deficit or surplus balance is transferred to the trust.
- 6.5. The estimated reserves at the proposed date of conversion in the following table have been taken from the most recently available forecast outturn position for 2023/24 as we do not have 2024/25 budget plans at this point.

School Name	Conversion type	Estimated revenue reserves	Estimated committed revenue funds
Ash Church of England Primary School	Voluntary	£61,636	£23,433
Stoke St Michael Primary School	Directed	£53,615	£39,634
Croscombe Church of England Primary School	Voluntary	£57,515	£42,516

- 6.6. In 2023/24, the Council received income of £105,201 for services provided to the three schools which are the subject of this paper. Similar income is unlikely to be received in 2024/25. The service will therefore prepare its budget for 2024/25 taking this into account.
- 6.7. The amount of the Local Government Pension Scheme deficit relating to the employees transferring will be provided to the Academy Trust and, at the point of conversion, any such liability will become the responsibility of the Academy Trust.

6.8. Two key risks relating to a Direct Academy Order conversions have been identified:

- For conversions subject to a direct academy order, expenditure in the period before conversion beyond that defined within schools' budget plans could reduce any surplus or increase any deficit due to be retained by the Council at the point of conversion. This would have a direct impact on the Council's own finances.
- Unforeseen legal costs may arise relating to the land and asset transfers.

Through monitoring of the school budget from the date of the direct academy order every effort will be taken to avoid costs to the Council including those resulting from historical liabilities.

7. Legal Implications

7.1. The Academies Act 2010 enables all maintained schools to convert to Academy status. The Council has a duty under section 5B of the Act to take all reasonable steps to facilitate the conversion of the school into an Academy.

7.2. For a maintained school to convert to an Academy the Council, the governing body of the school and the Academy Trust must enter into a Commercial Transfer Agreement (CTA) based on the model form published by the Department for Education. The CTA records the assets, contracts and staff transferring from the maintained school to the Academy. Under the CTA, the Council retains liability for employment costs arising before the transfer date in respect of school staff who were employed by the Council or governing body and provides an indemnity to the Academy Trust in respect of these costs. At the date of this report, no such costs have been identified.

7.3. The legal work to progress the transfer of the statutory and leasehold interests together with any ancillary property documentation or matters related to the same and the CTAs for the relevant site will be carried out by the Council's in-house Legal Services.

8. HR Implications

8.1. The necessary Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) consultations are being undertaken during the Spring/Summer term. The relevant trade unions have been consulted via the Somerset Schools CYP JCC. The Council is the employer of staff in Community and Voluntary Controlled schools and is responsible for consulting with staff and their unions. The Governing Body is the employer for Voluntary Aided Schools and will be supported by the Council to carry out the necessary consultation.

- 8.2. Teaching and support staff unions will be seeking assurance that all employer responsibilities in respect of staff transfers, and more general staff consultation requirements are met.

9. Equalities Implications

- 9.1. The Council has a statutory duty to consider and promote equality of opportunity through the Public Sector Equality Duty (PSED) which includes requirements to remove/minimise disadvantage, meet specific needs and promote participation. Core advice and support will therefore continue to be provided to academies free of charge, but additional support will be traded. Academies, in common with other schools, are also required to consider and promote equality of opportunity through the Public Sector Equality Duty for example through monitoring attainment, progress, exclusions and attendance, and taking action to address disadvantage.

- 9.2. There may be equalities implications associated with the proposed transfer of Council assets but the Council has no control over these.

10. Community Safety Implications

- 10.1. None

11. Climate Change and Sustainability Implications

- 11.1. None

12. Health and Safety Implications

- 12.1. On transfer to an Academy the Council no longer has any Health & Safety (H&S) legal duties for the staff, visitors, and public within the school. On transfer these duties all fall under the responsibilities and accountability of the Academy Trust/School Governing Body. However, the Council does retain a duty of care for the children attending the Academy. The Council currently carries out monitoring of maintained schools under its control including, H&S arrangements and undertakes a H&S compliance audit on a maintained school on a 3-yearly cycle. On transfer to Academy status this will no longer occur.

- 12.2. On transfer all accidents, near misses, recording of acts of violence and aggression cease to be recorded on a Management System which is monitored within the Council. The Academy Trust is wholly responsible for reporting accidents/incidents to the Health and Safety Executive (HSE) in a timely and accurate way. The Academy should appoint or have access to a H&S professional.

12.3. On conversion the current Fire Risk Assessment for the site and premises is transferred to the Academy Trust and the Trust takes sole responsibility for Fire Risk Assessment.

13. Health and Wellbeing Implications

13.1. None

14. Social Value

14.1. None

15. Scrutiny comments / recommendations:

15.1. The proposed decision has not been considered by a Scrutiny Committee.

16. Background

16.1. The Academies Act received Royal Assent on 27 July 2010. The purpose of the Academies Act is to enable more schools to become academies. It includes provisions to:

- Enable all maintained schools to apply to become academies.
- Give the Secretary of State the power to issue an Academy Order requiring the local authority to cease to maintain the school.
- Require governing bodies of maintained schools to consult before converting to an academy.
- Ensure that foundation or voluntary schools, obtain consent from that school's foundation before the school can apply to become an academy.
- Prohibit the religious character of schools changing as a result of the conversion process.
- Allow maintained schools that currently select to continue to do so as an academy.
- Deem academy trusts to be exempt charities.
- Ensure that a converting school will continue to occupy the land/buildings it had as a maintained school, and that the school's other assets may also transfer to the new academy;

16.2. As of the 1 March 2024 there are 143 Academies in Somerset. There are two types of academies. Sponsored Academies will generally replace underperforming schools where standards need to be raised. Sponsors are held accountable to the Department for Education for their academies and in particular improving performance. Converter academies are schools that are performing well, and the governing body has taken a formal decision to join a multi academy trust.

- 16.3. The Governing Bodies of the schools that are the subject of this paper have taken a formal decision to join a Multi Academy Trust as set out in paragraph 2.2 of this report.
- 16.4. The Secretary of State for Education has granted Academy Orders under section 4 of the Academies Act 2010. This requires the Schools and the Local Authority to commence formal TUPE consultations and to gather land ownership and land registration documentation to enable the land and buildings occupied by the school to be transferred to relevant Academy Trusts.
- 16.5. Governing bodies of maintained schools are required to consult before converting to an Academy and must submit a consultation report to the Department for Education. Who must be consulted is not specified but parents and the local community are suggested.
- 16.6. Trade unions representing staff working in Somerset schools have been consulted about the proposals. They will be seeking assurance that all employer responsibilities in respect of staff transfers, and more general staff consultation requirements are met.
- 16.7. Academies will receive the equivalent level of funding per pupil to that which they would receive from the Local Authority as a maintained school. Funding will be in the form of a grant from the Education and Skills Funding Agency (ESFA). The ESFA will recoup from the schools budget an amount of money to go towards funding the Academy. Schools/Sponsors receive a minimum of £25,000 towards the costs of conversion from the DfE but no additional funding is available for Councils to cover their costs.
- 16.8. Leases granted to Academy Trusts are on a full repairing and on a peppercorn basis. The terms of the lease are set out within the model Academy Lease of the Department for Education. Land transferred to the relevant Diocese under Statutory Transfer is at nil consideration.

Ash Church of England Primary School is a Voluntary Controlled School

The Council will enter into a 125-year lease of its freehold interest in the playing field. There will be a Statutory transfer of part of the site to the Bath & Wells Diocesan Board of Finance.

Stoke St Michael Primary School is a Community School

The Council will grant a 125-year lease to the Academy Trust for the whole of the site.

Croscombe Church of England Primary School is a Voluntary Aided School

The Council will enter into a 125-year lease of its freehold interest in the playing field. The school buildings are Trustee owned.

16.9. Legal Services and Strategic Asset Management will structure the land transaction for these schools to protect the Council's interests while complying with any DfE stipulations.

16.10. The relevant legal issues relating to this conversion are set out in the legal implications section of this report.

16.11. School Organisation

When a community school or voluntary controlled school becomes an Academy, the Academy Trust becomes the admissions authority, i.e., it will need to manage its own admissions arrangements and ensure that its admission arrangements comply with the School Admissions Code. Schools converting to Academy status will retain the current admissions arrangements on conversion and Governing Bodies would need to consult widely before changing these.

16.12. Special Educational Needs and Disability

Academies also have a continuing duty to meet the needs of children with special educational needs and /or a disability and must follow the SEND Code of Practice.

16.13. Human Resources

An Academy is a separate legal entity to which existing staff are transferred under Transfer of Undertakings (TUPE). This means that staff are entitled to transfer under their current terms and conditions of employment. The Council or the Governing Body in the case of Voluntary Aided schools is responsible for consulting with staff and their recognised trade union representatives. Trade Unions representing staff working in Somerset schools have been consulted about the proposals via Somerset Schools CYP JCC. The Trade Unions will be seeking assurance that all employer responsibilities in respect of staff transfers are met. Consultation with staff is being carried out during the Spring term.

16.14. Staff are also entitled under TUPE to be provided with certain written information in relation to the transfer of their employment by the Council. Once the Academy is open, the Academy Trust may consult with staff and trade unions on changes to those terms and conditions.

16.15. The Council must carry out a due diligence exercise for all transferring staff to verify information on contracts, terms and conditions, pension deficits etc before passing this information to the Academy Trust.

16.16. In the Commercial Transfer Agreements entered into with the Academy Trusts where, prior to the transfer, the Council was the employer of school staff, the Council indemnifies each Academy Trust in respect of all costs and liabilities which transfer to the Academy Trust under TUPE and which relate to the period prior to the date when the Academy opens. Any costs incurred will need to be met from the Council's contingency budget.

17. Background Papers

17.1. Academies Act 2010:

<http://www.legislation.gov.uk/ukpga/2010/32/contents>

17.2. Academisation Finance Policy and Procedure August 2023

<https://democracy.somerset.gov.uk/documents/s11543/Item%205%20-%20Academisation%20Finance%20Policy%20and%20Procedure.pdf>

18. Appendices

18.1. None

Report Sign-Off

	Officer Name	Date Completed
Legal & Governance Implications	David Clark	21.03.2024
Communications	Peter Elliott	21.03.2024
Finance & Procurement	Nicola Hix	03.04.2024
Workforce	Alyn Jones	21.03.2024
Asset Management	Oliver Woodhams	26.03.2024
Executive Director / Senior Manager	Claire Winter	21.03.2024
Strategy & Performance	Alyn Jones	21.03.2024
	Cllr Heather Shearer- Lead Member for Children Families & Education	10.04.24
Consulted:	Councillor Name	
Local Division Members	Cllr John Bailey and Cllr Emily Pearlstone (Martock) Cllr Barry Clarke and Cllr Philip Ham (Mendip Central and East), Cllr	B Clark- 03.04.24 E Pearlstone 10.04.24 J Bailey 11.04.24 P Ham 12.04.24 B Height 12.04.24

	Bente Height and Cllr Martin Lovell (Shepton Mallet	M Lovell-sent 03.04.24
Opposition Spokesperson	Cllr Frances Nicholson, Opposition Spokesperson for Children, Families, and Education	15.04.24
Scrutiny Chair	Cllr Leigh Redman, Scrutiny for Children Families and Education	11.04.24