

Dealing with land on academy conversion

As Caraline highlighted in the previous article, one of the drivers in education at the moment is the government-led pressure on schools and colleges to merge or convert to academy status.



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Here **Mark Traynor** looks at the real estate issues for schools considering the conversion to academy status.

Conversion

For any school considering converting to academy status there are a number of factors that have to be taken into account and that require careful planning. Real estate issues are a key priority for schools. After all, without the school buildings and land a school cannot operate. By thinking about all of the real estate issues early on any problems can, hopefully, be resolved or avoided altogether.

The Department of Education (“DfE”) states that it will always seek to ensure that a school will be no worse off as an academy in terms of the land given to it than if the school had not changed status. The Academies Act 2010 introduced a procedure to make the process as straightforward as possible.

The exact procedure to follow will depend largely on how the land is currently held and the type of school that is converting, but what follows is a broad overview of the issues to consider.

Agreeing the land transfer

It is important early on get a thorough understanding of the school land. The academy trust should open up a dialogue with the local authority as soon as possible. The DfE recommends that schools should ask their local authority to gather ownership and registration information at the same time that the academy trust makes its application to convert. Working out who owns the land is key to agreeing the land transfer. This may be the local authority, the governing body, a foundation, trustees, the local diocese or another third party. Depending on the history of the school, ascertaining land ownership can be very complicated, especially if there are a number of parties involved and if the land is privately held.

The method of land transfer will depend on the type of school converting, but in most cases the transfer will involve either a long lease granted by the local authority, or a legal transfer of the land to the

academy trust from the land owner, or a combination of the two.

If legal title to the land is to be transferred to the academy trust then a transfer deed will be used. The DfE does not have a model transfer deed and the terms of the transfer will be negotiated between the parties.

The long-term lease option is the usual method for transferring land where the land is publicly held, and therefore is the usual method where a community school is converting. The local authority will grant a lease of the land to the academy trust using the DfE’s model lease, which is designed to ensure a fair balance between the rights and obligations of the local authority as landlord and the academy trust as tenant.

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The land questionnaire

Before the DfE can approve the conversion it needs to be provided with certain details of the proposed transfer arrangements, for which it has produced dedicated land questionnaires. The answers to the questionnaires will form the basis for all decisions on how the land will be treated, and what leases, directions, and other land agreements are needed.

Landowners have limited obligations to provide information about the land, so the academy trust’s lawyers will have to undertake some investigations to complete the questionnaire. While this information can usually be ascertained by checking the title documentation, the academy trust should consider whether it wants its lawyers to conduct more detailed investigations into any issues that could affect the use of the land following conversion. This can cost time and money, so the academy trust needs to balance the costs against its level of comfort with the information it already has about the land and the potential risks of further issues it is unaware of.



Possible complications

Due to the complicated nature of land, and in particular school land, it is unfortunately quite unusual for a conversion to be completely issue-free. Some of the common points that can crop up are:

Third-party funding

A variety of bodies may have an interest in the land as a result of providing grants or funding to the school – a good example is Sport England, who may have provided funding for sports facilities.

The academy trust should provide any relevant paperwork to their lawyers as soon as possible so that they can liaise with the funder and arrange for the funding agreement to be transferred to the academy trust.

The academy trust will need to understand the obligations attached to the funding, including if the school is required to provide facilities to the public.

Third-party rights

There may also be other third-party rights over the school site, for example, on-site caretakers and telecoms apparatus.

Hopefully there will be formal agreements in place governing those types of arrangements and, if they are to continue, the lawyers can deal with their transfer to the academy trust.

If there is no formal agreement in place, then the arrangements will need to be formalised as soon as possible; the lawyers can help with that.

Construction works

Lastly, as well as the academy trust needing to ensure that it is happy with the general state and condition of the school, it is important to understand what works have recently been carried out, or whether there are any ongoing works.

It is key that the benefit of any building contract or warranties in relation to the works are transferred to the academy trust, otherwise it may find itself without any contractual remedy in the event that there are problems with the works.

Find out more

Our Education team can provide information and support for any college considering a merger or conversion to an academy trust: <https://www.bwbllp.com/sectors/education/schools-and-academies>

You can download a copy of our document Academy conversion: Issues to consider from <https://www.bwbllp.com/file/academyconversionissues-to-consider-000900020-v1-pdf-3>