

Academies: bricks and mortar

Whatever the success or failure of the previous Government's academy programme, the credit crunch, the current public spending squeeze and the cancellation of the BSF programme have all dictated a change in the Department for Education's (DfE) approach to, and aspirations for, academies.

Changes

The Coalition Government's new academy scheme offers all schools (including private institutions) in England the opportunity to convert to academy status. This has an implication from a property perspective: the sheer number of potential applications means that capital for re-development is no longer a financially viable option that can be offered to each and every school wishing to convert. Instead it appears that most academies will take occupation of the existing land and buildings (perhaps with some refurbishment) on a long-term basis. Normally this will mean entering into a model 125 year lease of the current land and buildings prepared by the DfE. This can take some time while the final form of the lease is agreed with the local authority and for the property due diligence (property searches, a review of title etc) to be finalised. To expedite the conversion process, there is provision for newly-created academies to open in the existing land and buildings without the long-term lease being in place.

Occupation would, in the majority of such cases, be under a tenancy at will pending agreement of the lease. The form of tenancy at will is a DfE prescribed document. However, if it is to be used, the DfE will need an explanation as to why the lease cannot be agreed in time. Academies need to understand the different status and protection afforded by a tenancy at will rather than a full lease.

Property options

For certain schools such as foundation, trust and independent status institutions, taking a long-leasehold interest may not be an attractive option. This is because it may, depending on the nature of the school, involve transferring the freehold title in a school's existing land to the local authority or the government. One possible solution – and we have taken this approach for several academy clients – is for the Secretary of State for Education to issue a direction relating to the transfer and ownership of a school's freehold interest. This would "direct" that the current land and buildings used for the purposes of the school be subsequently used and held by the academy trust.

Ownership effectively passes from the school to the academy. There is potential for controversy and misunderstanding with this approach: subject to various requirements, and depending upon the type of school, there is an ability for an academy trust to get freehold title without a formal transfer to it. This applies in situations where the title has not been up-dated at the Land Registry to reflect previous changes to a school's status ie, the register may still state that the local authority is the freehold owner whereas it may in fact be the school. Councils, schools and others may not fully appreciate this not least a need to ensure that the local authority is aware of the actual status of the school. It is therefore important to seek further advice.

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Whatever the approach taken – be it freehold or leasehold – it seems highly probable that many academies will not be getting the new buildings they hoped for.

A trend that many of our academy clients have mentioned to us is that only those existing schools that are viewed by the DfE as being severely dilapidated and wholly unacceptable as a modern learning environment will have the opportunity to lobby and qualify for funding for new buildings. For those academies fortunate enough to secure funding for capital re-development or significant refurbishment/re-modelling, there is a DfE prescribed development route. It is therefore important that parties take legal and, if necessary, project management advice.



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