

Report of the Built Environment Programme Manager

Report to the Director of Children's Services

Date: 15th August 2014

Subject: Transfer of Leeds West and Leeds East Academies from E-ACT to the White Rose Academies Trust



Are specific electoral Wards affected? If relevant, name(s) of Ward(s): Bramley & Stanningley and Killingbeck & Seacroft	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

The Project Team (including Children's Services, Legal Services and PPPU/Procurement) have negotiated the Assignment documents and agreed a commercial position in preparation for the transfer of both Leeds West and Leeds East Academies on 1st July 2014. All issues have been resolved to the Project Team's satisfaction and the formalisation of the documents is recommended in preparation for both Academies to transfer from E-ACT to White Rose Academies Trust.

Recommendations

It is recommended that the Director of Children's Services:

- Notes the negotiations held with Solicitors acting on behalf of E-ACT and White Rose;
- Gives authority for the following documents and agreements to be executed and completed to enable Leeds West and Leeds East Academies to transfer from E-ACT to White Rose Academies Trust on 1st September 2014:

- Deeds of novation for both the Leeds East and Leeds West Academy Development agreements
- Deeds of novation of the design and build contracts for both the Leeds East and Leeds West academies
- Deeds of novation of the parent company guarantees relating to the design and build contracts for both the Leeds East and Leeds West academies

in each case on terms and conditions approved by the Built Environment Programme Manager.

- Gives authority to the Built Environment Programme Manager to perform or further delegate the performance of any other necessary action (including but not limited to the execution and completion of any documentation) required to be taken to effect the transfer.

1 Purpose of this report

- 1.1 The report provides a summary of negotiations to date, advises on issues and risks and requests the Director of Children's Services to:
- Note and approve the negotiations held with the Solicitors acting on behalf of E-ACT and White Rose Academies Trust (WRAT).
 - Approve the signing of the key documentation required to enable Leeds West and Leeds East Academies to transfer from E-ACT to WRAT on 1st September 2014.

2 Background information

- 2.1 Intake High School converted to Sponsored Academy status on 1st September 2009, and is subsequently known as Leeds West Academy. Parklands Girls School changed status from single-sex to Co-Education prior to converting to Sponsored Academy status on 1st September 2011 and is subsequently known as Leeds East Academy – both schools were sponsored by E-ACT.
- 2.2 Both schools were rebuilt under the Building Schools for the Future programme, with Leeds West Academy moving into their new-build premises on 1st September 2011 and Leeds East on 1st September 2013. Leeds East is in occupation under an Occupational Licence – and Leeds West under a short term lease which expires in August 2014 or an Occupational Licence until such time that the 12 month Making Good Defects Certificates can be issued for the sites, following which the standard 125-year leases will commence.
- 2.3 Following a series of poor Ofsted inspections across a number of E-ACT's academies, in February 2014, the Department for Education (DfE) instructed E-ACT to divest ten Academies from their portfolio, of which both Leeds East and West Academies were included within the list of 10 schools.

2.4 Working in conjunction with E-ACT, LCC sought a local solution to the problem and a proposal was submitted to the DfE in May 2014, whereby WRAT would take over the control and operation of both Academies.

3 Main issues

3.1 When both schools converted to Academy status, the following documents (amongst others) were executed and completed to enable the Academies to open:

- Commercial Transfer Agreement
- Short Term Lease

3.2 As both Academies occupy recently built accommodation, Leeds East is in occupation under an Occupational Licence and Leeds West is in occupation either under a short term lease which expires in August 2014 or an Occupational Licence, as the terms of the Design & Build Contract do not allow for leases to be entered into until such time that the 12-Month Making Good Defects Certificate has been issued and the Final Account agreed.

3.3 As both academies are now transferring from E-ACT to WRAT, the following documents have been negotiated and agreed between LCC, E-ACT and WRAT to allow them to be assigned / novated, as follows:

Leeds West

- Deed of Novation of the Development Agreement
- Deed of Novation of the Design and Build Contract
- Deed of Novation of the parent company guarantee in relation to the Design and Build Contract

Leeds East

- Deed of Novation of the Development Agreement
- Deed of Novation of the Design and Build Contract
- Deed of Novation of the parent company guarantee in relation to the Design and Build Contract

3.4 This is the first time that LCC has been involved with the assignment / novation of the previously agreed documentation between two separate sponsors, on sites which are still within the Defects Liability Period. Valuable lessons have been learned for the future to help streamline the process and hopefully allow future assignments/novations to take place in a shorter timeframe.

3.5 The documents have been subject to negotiations between the various parties and it is intended that all of the agreements will be sealed or signed by the City Council, E-ACT and WRAT as appropriate.

3.6 Below is an outline of the main issues that have been concluded on each of the above agreements.

3.7 Deed of Novation – Development Agreement

3.7.1 The signatories to the Deeds of Novation of the Development Agreement are LCC, E-ACT and WRAT. The Deeds of Novation of the Development Agreement put WRAT in the position of E-ACT, commits the council to providing deeds of novation of the design and build contracts and the associated guarantees and, on the Leeds East Academy, commits the council to certain actions in relation to the excluded caretakers property. These actions have all been approved by asset management and relate to access rights for the benefit of WRAT to lay and maintain utilities, a council commitment to provide fencing and arrangements for vehicle and pedestrian access to the caretaker's property.

3.8 Deed of Novation – Building Contract

3.8.1 The signatories to the deeds of novation of the building contracts and the parent company guarantees to the building contracts are LCC, Leeds D&B One Ltd, Interserve PLC (for the parent company guarantees only) and WRAT. These put WRAT in the position of client under each of these agreements in place of the council.

4 Corporate Considerations

4.1 Consultation and Engagement

4.1.1 CSLT have been in regular contact with all parties regarding the assignment and novation of both academies. Briefings have also taken place with the Executive Member for Education.

4.1.2 A statutory consultation process is not required on the basis that both schools are already Academies. Both the DfE and EFA have been involved in negotiations regarding the transfers.

4.2 Equality and Diversity / Cohesion and Integration

4.2.1 The DfE have undertaken an Equality Impact Assessment in relation to the Academies Bill and have also completed a Race Impact Assessment in relation to the Academies Programme – both of these are publicly available on the DfE's website.

4.2.2 We are unsure if EDCI screening form was completed and submitted to the Equality Team prior to the original school transfers to academy status in September 2009 and September 2011 respectively. However, this report does not pertain to a Key Decision and the documents being negotiated are only for granting permission to assign existing documents, therefore a full Equality Impact Assessment is not deemed to be required – a completed EDCI screening form is attached at Appendix 1 for reference.

4.3 Council policies and City Priorities

- 4.3.1 The 'Leeds for Learning' policy is an ambitious city-wide commitment to achieving a child friendly city that drives school improvement and reflects the new relationship with schools, the integrated children's services and the changes to national policy and funding.
- 4.3.2 The transfer of both academies from E-ACT to WRAG is in response to poor Ofsted inspections across a number of E-ACT academies and is therefore considered to be a positive move to help improve attainment, which in turn will contribute to the targets to meet key priorities within the Children and Young People's Plan and the work on the Local Area Agreement.

4.4 Resources and value for money

- 4.4.1 The City Council has incurred costs relating to legal, finance and project management. It should be noted that there is no DfE funding support currently identified for these costs. However, in light of Ofsted's findings, it is considered that the transfer from E-ACT to WRAG should be a priority for the Council, and further discussions will take place with the DfE around reimbursement of costs.

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 Legal implications are outlined above in 3.0 Main Issues.
- 4.5.2 This is an Administrative decision on the basis that the various agreements are purely novating or assigning existing documents already agreed and executed/ signed.
- 4.5.3 This report does not contain exempt information under Access to Information.

4.6 Risk Management

- 4.6.1 Negotiations around the documents and agreements have been handled by procurement and contract specialists in Legal Services and the PPPU / Procurement Unit who have given appropriate due diligence and advice. No risks have been identified which have not been raised within the body of the report. No future risks have been identified which are not mitigated through any of the formal documents.

5 Conclusions

- 5.1 Under the circumstances, despite the short timescale and relative lack of experience of this type of scenario, negotiations have progressed well and have been concluded. Furthermore the relationship with E-ACT, White Rose Academies Trust and their advisors continues to be positive. Therefore the key documents are now agreed and ready for sealing/signing as appropriate.

6 Recommendations

6.1 It is recommended that the Director of Children's Services:

- Notes the negotiations held with Solicitors acting on behalf of E-ACT and White Rose;
 - Gives authority for the following documents and agreements to be executed and completed to enable Leeds West and Leeds East Academies to transfer from E-ACT to White Rose Academies Trust on 1st September 2014:
 - § Deeds of novation for both the Leeds East and Leeds West Academy Development agreements
 - § Deeds of novation of the design and build contracts for both the Leeds East and Leeds West academies
 - § Deeds of novation of the parent company guarantees relating to the design and build contracts for both the Leeds East and Leeds West academies
- in each case on terms and conditions approved by the Built Environment Programme Manager.
- Gives authority to the Built Environment Programme Manager to perform or further delegate the performance of any other necessary action (including but not limited to the execution and completion of any documentation) required to be taken to effect the transfer.

7 Background documents

7.1 Appendix 1 – EDCI Screening Form.