

**Report of the Built Environment Programme Manager**

**Report to the Deputy Director, Children’s Services**

**Date: 26<sup>th</sup> February 2015**

**Subject: Commercial Transfer Agreement – Morley Newlands Primary School from Leeds City Council to The Gorse Academies Trust**



Are specific electoral Wards affected? If relevant, name(s) of Ward(s): Morley	<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 Procurement) have negotiated the Commercial Transfer Agreement and agreed a commercial position in preparation for the academy transfer on 1<sup>st</sup> March 2015. All issues have been resolved to the Project Team’s satisfaction and the formalisation of the CTA is recommended in preparation for the transfer of Morley Newlands Primary School to Academy status.

**Recommendations**

It is recommended that the Deputy Director, Children’s Services:

- Notes the negotiations held with Solicitors acting on behalf of the school, DfE and the Academy Trust;
- Gives authority for the Commercial Transfer Agreement to be executed and completed to enable the Academy to open on 1<sup>st</sup> March 2015.

## **1 Purpose of this report**

1.1 The report provides a summary of negotiations to date, advises on issues and risks and requests the Deputy Director, Children's Services (Learning) to:

- Note and approve the negotiations held with the Solicitors for the Governing Body of Morley Newlands Primary School and the Gorse Academies Trust.
- Approve the signing of the Commercial Transfer Agreement required to enable the Academy to open on 1<sup>st</sup> March 2015.

## **2 Background information**

2.1 The school applied to the DfE to be granted Academy status and on 17<sup>th</sup> November 2014, the Director of Children's Services received the Academy Order (dated 14<sup>th</sup> November 2014) enabling the Morley Newlands Primary School to convert to an Academy under Section 4 of the Academies Act 2010. The proposed conversion date is 1<sup>st</sup> March 2015.

## **3 Main issues**

3.1 By the Academies Act 2010, publicly funded schools in England may become Academies. Schools may be converted into academies by an Academy Order made under s4 of the Act, and on 17<sup>th</sup> November 2014, the Director of Children's Services received an Academy Order enabling the school to convert.

3.2 As part of the conversion process, a Commercial Transfer Agreement (CTA) has to be entered into between the Academy Trust and Leeds City Council (if the Commercial Transfer Agreement is signed prior to the conversion then the Governing Body of the outgoing school also joins into the Agreement).

3.3 The Commercial Transfer Agreement deals with the transfer of the assets, staff and contracts from the Council to the new Academy Trust (where applicable). When a community school converts to Academy status, the CTA provides for apportionments of payment of salaries, pension contributions, etc. and indemnities from both parties in relation to employment matters.

3.4 The standard form (which provides for extensive indemnities from the City Council to the Academy) was modified in line with Children's Services policy to accept only the minimum obligations required under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (known as TUPE) to pay staff up to the date of transfer and for any personal injuries prior to transfer. Although both Gorse and the DfE do not accept this position, the drafting has been retained within the final version of the CTA that has been agreed between LCC and Gorse.

3.5 The Council therefore has the obligation to indemnify the Academy in respect of all costs and liabilities which transfer to the company under the TUPE Regulations relating to the period prior to conversion. However, it should be noted that this is still a 'watered down' position to that required under the DfE model drafting, which means that the Council is not liable for claims for unfair/wrongful dismissal,

discrimination etc that arise post conversion relating to the period prior to conversion, which it would have been under the model drafting.

3.6 It should be noted that it is not necessary for the Commercial Transfer Agreement to be entered into in order for the transfer to take place; however, it is in the Council's interests for the Agreement to be entered into to set out the formal transfer of the assets, contracts and staff.

3.7 Key issues that have been agreed are:

- What assets / contracts will transfer
- How historic liabilities will be dealt with

3.8 All of the contracts and SLA's that the LA or Governing Body currently has in place will be assigned to the Academy Trust where third party consent is not required, or where consent has been sought. Where consent is required but has not been granted prior to the conversion date, all parties should use their 'reasonable endeavours' to obtain the consent of other parties to the assignment and then assign or procure the Novation of that contract(s).

3.9 The 125-year lease of the building and grounds has been agreed and will be signed off / approved by the Director of City Development under separate report. It should be noted that as the school has recently been rebuilt and was completed in September 2014, LCC will still need to manage the resolution of defects over the 12-Month Defects Liability period. Once the Certificate of Making Good Defects has been issued at the end of the Defects Liability Period, the building contract and associated warranties will be assigned to the Academy Trust from LCC to the Academy Trust as part of the lease arrangements – this will enable the Trust to liaise direct with the Main Contractor, rather than through the Council as an intermediary

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

4.1.1 It should be noted that the statutory consultation process is no longer required, as the Academies Act 2010 streamlined the process so that when there is a conversion from a single school into a single academy (rather than a merger), there is no longer the requirement to issue a closure notice, as the school converts to academy status rather than closing and re-opening as an academy.

4.1.2 All consultations regarding the proposed academy are undertaken by the Governing Body and it is for the Governing Body to decide upon a level of consultation which is deemed appropriate under the circumstances. However, it should be highlighted that there is no set guidance on how to quantify what appropriate consultation actually means in terms of duration and consultees. All interested parties should however, be provided with opportunity to respond and ask questions.

4.1.3 Whilst the Authority has no ability or rights to prevent the conversion from taking place, a number of stakeholders within the LA have been consulted as part of the conversion process including Finance, HR and Built Environment teams within Children's Services and also Legal Services and PPP&PU. The Director of Children's Services was made aware of the proposed conversion on receipt of the Academy Order on 17<sup>th</sup> November 2014, and both the Executive Member for Education and local Ward Members have been informed and are aware of the conversion.

## **4.2 Equality and Diversity / Cohesion and Integration**

4.2.1 An Equality, Diversity, Cohesion and Integration Screening form has been completed and submitted to the Equality Team. The Screening process has determined that although the conversion to Academy status could potentially have an impact on a number of groups, it is not necessary to undertake an EIA in relation to either this report or the entering into the Commercial Transfer Agreement between LCC and the Academy, due to the decision to convert not being a decision the Council has made, and that the Council has limited control over the process.

4.2.2 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.

## **4.3 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 conversion of a school to academy status will impact on the "Narrowing the Gap" and "Going up a League" agendas and may be an outcome from the Local Education Challenge. Academies in Leeds have the potential to 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 for these 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 there is little risk and that the transfer will proceed even if the City Council does not enter into the Agreement. However, it is in the Council's interests for the Agreement to be entered into to set

out the formal transfer of the assets, contracts and staff, and to give LCC some protection against future claims

4.5.3 This report does not contain exempt information under Access to Information.

## **4.6 Risk Management**

4.6.1 Negotiations around the Commercial Transfer Agreement have been handled by procurement and contract specialists in Legal Services and PPP&PU 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 the CTA.

## **5 Conclusions**

5.1 Under the circumstances, negotiations have progressed well and have been concluded – furthermore the relationship with Gorse and their advisors continues to be positive. Therefore the Commercial Transfer Agreement is agreed and ready for sealing/signing as appropriate.

## **6 Recommendations**

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

- Notes the negotiations held with the Solicitors acting on behalf of the School, DfE and Academy Trust;
- Gives authority for the Commercial Transfer Agreement to be executed and completed to enable the Academy to open on 1<sup>st</sup> March 2015.

## **7 Background documents<sup>1</sup>**

7.1 None.

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<sup>1</sup> The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.