

Report of the Built Environment Programme Manager

Report to the Director of Children's Services

Date: 5th August 2015

Subject: Transfer of South Leeds Academy to The School Partnership Trust (SPT) Multi-Academy Trust



Are specific electoral Wards affected? If relevant, name(s) of Ward(s): Middleton Park	<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) have negotiated the transfer documentation and agreed a commercial position in preparation for the academy transfer on 1st September 2015. All issues have been resolved to the Project Team's satisfaction and the formalisation of the transfer is recommended in preparation for South Leeds Academy to become part of the SPT multi-academy framework.

Recommendations

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

- Notes the negotiations held with Solicitors acting on behalf of the Academy, DfE, Academy Trust and PFI Consortium;
- Gives authority for the following Agreements to be executed and completed to enable the Academy to transfer on the 1st September 2015:
 - Deed of Variation;
 - LCC Licence to Assign;

- Deed of Novation;
 - Commercial Transfer Agreement;
 - Principal Agreement; and
 - Schools Agreement.
- Together with any other documentation required to complete the transfer; and
- Gives authority for any other necessary action 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 DfE, and Solicitors acting for South Leeds Academy, School Partnership Trust and the PFI Consortium.
 - Approve the signing of the key documentation required to enable the Academy to become part of the SPT multi-academy framework on 1st September 2015.

2 Background information

- 2.1 South Leeds High School opened in 2006 following a full new-build construction funded through PFI credits under the Leeds Combined Secondary School Project (CSSP).
- 2.2 At the meeting held on the 4th March 2009, the Executive Board approved the publication of a statutory notice to close South Leeds High School on the 31st August 2009 and for South Leeds Academy to be situated on the South Leeds Site from the 1st September 2009.
- 2.3 It was originally proposed that on 1st October 2013, the Academy would transfer all of its rights and obligations to the SPT, such that South Leeds Academy would become part of the SPT Multi Academy framework. However, due to issues between the Academy, SPT and DfE (which LCC were not party to), the transfer was put on hold until such time that the issues were resolved.
- 2.4 The aforementioned issues have now been resolved and it is proposed that on 1st September 2015, South Leeds Academy will become part of the SPT Multi Academy framework as originally intended.

3 Main issues

- 3.1 To enable the Academy to open as part of the SPT Multi Academy framework on the 1st September 2015, the Secretary of State must enter into a legally binding Funding Agreement to establish the Academy as a multi-academy (the Funding Agreement is between the Academy and the SPT).
- 3.2 The Deed of Variation is required because the Academy is one of the Leeds Combined Secondary PFI Schools and therefore any formal changes are required to be incorporated into the PFI contract and requires the consent of the PFI funders.
- 3.3 The school converted to Academy status in September 2009 and the following documents were executed and completed to enable the Academy to open:
- School Agreement
 - Principle Agreement
 - Long Term Lease
 - Primary School User Agreement
 - Commercial Transfer Agreement and
 - Deed of Variation to the PFI Contract
- 3.4 As the Academy now wishes to become part of a wider Academy organisation, the following documents have been negotiated and agreed between LCC and SPT to allow the previously negotiated documents (listed under Item 3.3) to be novated or assigned, as follows:
- Deed of Novation (which novates the following documents):
 - Principal Agreement;
 - Commercial Transfer Agreement; and
 - Schools Agreement;
 - Deed of Variation;
 - Licence to Assign the Academy's Long Term Lease to the SPT;
- 3.5 This is the first time that LCC has been involved with the assignment / novation of the previously agreed documents from a Single Academy to a multi-academy framework and valuable lessons have been learned for the future to help streamline the process and hopefully allow conversions to take place in a shorter timeframe.
- 3.6 The Agreements have been subject to negotiation between the various parties and it is intended that all of the Agreements will be sealed or signed by the City Council, the Academy and the SPT as appropriate.
- 3.7 Below is an outline of the main issues that have been concluded on each of the above Agreements.

3.8 Principal Agreement

- 3.8.1 The signatories to the Principal Agreement are the City Council, DfE and the Academy. The Principal Agreement governs the relationship between the DfE, the Academy and the City Council, and in particular the risk of failure of the Academy to make payments to the City Council (including those supporting the Project Agreement Unitary Charge) under the School Agreement. The DfE also offer an indemnity to the City Council where such payments are not made by the Academy.
- 3.8.2 A new Principal Agreement has not been negotiated. The Principal Agreement had already been agreed when the school converted to South Leeds Academy in 2009 and this document will now be novated to SPT through the Deed of Novation.

3.9 Commercial Transfer Agreement (CTA)

- 3.9.1 The purpose of the Commercial Transfer Agreement is to provide for risks and information obligations for the parties relating to staff, assets and contracts. It provides for apportionments of payment of salaries, pension contributions, etc. and indemnities from both parties in relation to employment matters.
- 3.9.2 The existing Commercial Transfer Agreement previously negotiated in 2009 will continue to be in place for this transfer and will be novated through the Deed of Novation.

3.10 Schools Agreement

- 3.10.1 Community Schools subject to PFI arrangements are maintained schools subject to LEA influence under education legislation. Once the Academy is established the LEA will have no control of the funding or otherwise. In light of the fact that the Academy will have limited assets beyond the school and equipment, if liabilities arise under the PFI contract due to the acts or omissions of the Academy, these will fall to the City Council, since it remains a counterparty to the PFI Agreement. The DfE model has been developed to balance the Authorities' concerns over their substantial financial risk in a PFI scheme, whilst at the same time preserving the Academy Trust's independence and ability to run a high performing school.
- 3.10.2 The School Agreement sets out in much clearer terms the relationship between the Academy and LEA, and replaces the Governing Body Agreement currently in place. It provides for a continuing Academy financial contribution towards the PFI Unitary Charge (similar to when it was a maintained school) and practical interface processes between the Academy and the City Council.
- 3.10.3 This document was negotiated before CSLT agreed the corporate position to charge PFI Academies an annual fee for ongoing management of PFI contracts and therefore no costs can be recovered from South Leeds Academy (or the multi-Academy trust).

3.10.4 The existing Schools Agreement previously negotiated in 2009 will continue to be in place for this transfer and will be novated through the Deed of Novation.

3.11 Deed of Variation to the PFI Contract

3.11.1 The Deed of Variation (DoV) to the PFI Contract is between the City Council and Investors in the Community (Leeds Schools) Ltd.

3.11.2 The purpose of the Deed is to ensure that the PFI contract covers the Academy / foundation trust as an insured party under the PFI contract, but also adds the Multi Academy as a City Council Related Party whose actions are the responsibility of the City Council (this is why the Principal Agreement is required, to back off obligations to the Academy and DfE).

3.11.3 We experienced significant delays in obtaining approval as a result of the funders being uncomfortable with further changes to the Academy structure and both the DfE and Academy making amendments to the DoV document. However, on 25th July 2013, we received confirmation that the Deed of Variation had finally been signed off by the funders. Due to the time elapsed, funders will be required to re-sign the document prior to the transfer date.

3.12 Long Term Lease

3.12.1 The Academy's existing 125 year lease from the Council previously negotiated in 2009 will be assigned to the SPT on the transfer date.

3.12.2 Prior to the transfer date, the Council will enter into a 'Licence to Assign', which gives the Academy the necessary consent to assign the lease from South Lease Academy to the SPT Multi-Academy framework. The Licence to Assign has already been agreed between LCC and the Academy's advisors.

4 Corporate Considerations

4.1 Consultation and Engagement

4.1.1 CSLT and Councillor Blake were contacted on a number of occasions by the Academy and their advisors regarding progress on this workstream during the first attempt to transfer. Councillor Briefing Summary papers were submitted to Councillor Blake on 23/11/12, 28/01/13 and 23/06/13, providing updates on progress at the time.

4.1.2 A further update briefing was provided to Councillor's Blake, Yeadon and Dowson on 05/08/15.

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 an Equality, Diversity, Cohesion and Integration Screening form was completed and submitted to the Equality Team prior to the School transfer to academy status in September 2009. However, this report does not pertain to a Key or Major decision and the documents being negotiated are only for granting permission for the Academy to assign existing documents, therefore a further screening for this transfer is not considered to be required.

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 Local Authority has a duty to promote high standards and champion educational excellence. The relationship between the authority and its schools must influence the city wide agendas such as 'improve attainment and close the achievement gap', 'improve attendance and develop positive behaviour' and to 'create a life ready for learning'; all of which are aspirations from the Children and Young People's Plan. We will continue to apply the cycle of monitor, evaluate, challenge and support with schools in order that they become strong and capable of contributing to the key priorities of the city.

4.4 Resources and value for money

4.4.1 The City Council incurred extensive costs relating to legal, finance and project management for the original school to academy transfer and discussions are ongoing with the DfE around contributions towards the costs associated with future conversions.

4.4.2 Children's Services has again incurred costs in relation to the workstream associated with the assignment and novation of the existing documentation, the main cost being incurred from the PFI Contractor and their advisors for approving the Deed of Variation. However, SPT have agreed to cover up to £15,000 worth of costs towards the transfer and have paid £6,000 plus VAT to date.

4.4.3 It should be noted that this assignment / Novation does not change the City Council's obligation to manage the PFI contract. Due to South Leeds being an earlier conversion, we do not have the opportunity to recover any of our costs for this ongoing management.

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 this report relates only to the novation or assignment of existing documentation.

4.5.3 The policy and governance arrangements for the City Council for PFI / PPP projects are set out in the Constitution. Under the Director of Children's Services scheme of delegation, the Deputy Director (Learning) is responsible for all decision making in relation to Public Private Partnership / Private Finance

Initiative and other major property infrastructure related projects under Executive Functions, General Delegations, Procurement, Function 4.

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

4.6 Risk Management

4.6.1 Negotiations around the transfer documents have been handled by legal and contract specialists in Legal Services and PP&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 transfer documents.

5 Conclusions

5.1 Under the circumstances, other than the delay in the Academy Trust and DfE resolving their own internal issues (which was outside the control of the Council), negotiations progressed well once the full scope of works had been identified and have now been concluded – furthermore the relationship with all parties 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 the Academy, DfE, Academy Trust and PFI Consortium;
- Gives authority for the following Agreements to be executed and completed to enable the Academy to transfer on the 1st September 2015:
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 - Schools Agreement.
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- Gives authority for any other necessary action to be taken to effect the transfer.

7 Background documents¹

¹ 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.

7.1 None.