

Report of the Built Environment Programme Manager

Report to the Deputy Director, Children's Services (Learning)

Date: 25th August 2015

Subject: Commercial Transfer Agreement – Bruntcliffe School from Bruntcliffe Co-operative Learning Trust 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 PPPU) have negotiated the Commercial Transfer Agreement ("**CTA**") between (1) LCC; (2) The Bruntcliffe Co-operative Learning Trust ("**Bruntcliffe Trust**") and (3) The Gorse Academies Trust ("**Gorse**") 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 CTA is recommended in preparation for the transfer of Bruntcliffe School to Academy status.

Recommendations

It is recommended that the Deputy Director, Children's Services (Learning):

- Notes the negotiations held with Solicitors acting on behalf of the Bruntcliffe Trust, DfE and Gorse;
- Gives authority for the Commercial Transfer Agreement to be executed and completed to enable the Academy to open on 1st September 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 Bruntcliffe Trust and Gorse.
 - Approve the signing of the Commercial Transfer Agreement required to enable the Academy to open on 1st September 2015.

2 Background information

- 2.1 Bruntcliffe school acquired Trust status on 1st March 2012, forming Bruntcliffe Trust. The freehold of the school site was subsequently vested with the Bruntcliffe Trust and all staff were transferred to the employ of the Bruntcliffe Trust.
- 2.2 Following a Grade 4 Ofsted judgement in 2013, and despite an improved Grade 3 judgment in May 2014, GCSE results significantly plummeted in August 2014, leading to a formal Warning Notice being issued by HM Inspectors in September 2014. The Headteacher resigned at the end of September 2014, and on the basis that the Governing Body were unable to respond to the Warning Notice within the specified timescales, an Interim Executive Board application was submitted and subsequently came into effect from November 2014 in order to provide some stability to the school.
- 2.3 The Bruntcliffe Trust (under the control of the Interim Executive Board) applied to the DfE to be granted Academy status and on 9th March 2015, the Director of Children's Services received the Academy Order (dated 5th March 2015) enabling Bruntcliffe School to convert to an Academy under Section 4 of the Academies Act 2010. The proposed conversion date is 1st September 2015.
- 2.4 It has since transpired that whilst the Bruntcliffe Trust was a registered body, in all other respects was not, and is not appropriately formed or operating within the strict definition of a Trust.

3 Main issues

- 3.1 Under 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 24th March 2015, the Director of Children's Services received an Academy Order enabling Bruntcliffe School to convert.
- 3.2 As part of the conversion process for publically funded schools, a Commercial Transfer Agreement is entered into between the relevant 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 Commercial Transfer Agreement provides for apportionments of payment of salaries, pension contributions, etc. and indemnities from both parties in relation to employment matters.

- 3.4 Note that LCC have modified the DfE standard form of the Commercial Transfer Agreement (which provides for extensive indemnities from the City Council to the Academy) for use by LCC 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.
- 3.5 In respect of Trust schools (such as Bruntcliffe School), all of the staff are already employed by the Trust. As such the Commercial Transfer Agreement in relation to a Trust school would normally ensure that it's clearly documented that the employment liabilities sit with the Governing Body/Trust and not LCC.
- 3.6 In respect of the Bruntcliffe School however, Gorse have requested that the Council provides staffing indemnities (on behalf of LCC and the Bruntcliffe Trust) referred to in paragraph 3.4 above to cover any future industrial tribunal claims that may arise from the period prior to the date of transfer of staff to Gorse (1st September 2015).
- 3.7 On the basis that Children's Service's' HR team has been advising and supporting the school through a Managed Staffing Reductions process that Gorse has not been involved with or did not instigate, coupled with the fact that the Bruntcliffe Trust has not been operating as a formal Trust for some time, is being disbanded and will no longer exist as an entity post conversion, it has been agreed that LCC will offer the following indemnities:
 1. LCC indemnifies Gorse against losses caused if the employee liability information is not provided (or updated) in accordance with TUPE Regs.
 2. LCC indemnifies Gorse against losses due a failure to comply with Regs 13 and 14 of the TUPE Regs (in respect of provision of information and consultation of representatives).
 3. LCC indemnifies Gorse against claims by Transferring Employees for personal injury due to negligence of LCC or the Bruntcliffe Trust (or due to breach of a statutory duty by LCC or the Bruntcliffe Trust) arising before the Transfer Date.
 4. LCC indemnifies Gorse against costs / liabilities which transfer to Gorse under TUPE which relate to the period prior to the Transfer Date (including equal pay). This is even if the Bruntcliffe Trust caused the cost / liability.
- 3.8 The potential risks involved in offering the above indemnities have been considered against the risk that Gorse would not proceed with the conversion if indemnities were not offered and the subsequent continued impact on school standards without Gorse supporting the school. It is considered crucial that the

school commences the new academic year under a new regime, to ensure that a reversal in the declining standards can commence at the earliest opportunity.

- 3.9 It is considered that Points 1 and 2 above should be low risk due to HR's involvement in the TUPE procedure. Whilst Point 3 does carry a risk, the likelihood of this arising is considered to be small. Point 4 is assessed to be the highest risk, but is mitigated to a certain extent by the fact that our HR has been involved in the Managing Staff Reduction process. It should be noted, however, that there is one potential Employment Tribunal case that the Authority is aware of and needs to be taken into account as a potential future liability. Note also that LCC does not have any insurance in place to cover such risks and should a claim arise, it would have to be paid from a Council budget.
- 3.10 Other key issues that have been agreed are:
- What assets / contracts will transfer
 - How historic liabilities will be dealt with
- 3.11 All of the contracts and SLA's that the LCC or the Bruntcliffe Trust currently have in place in respect of the school will be assigned to Gorse where third party consent is not required, or where consent has been obtained. 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 assignment or novation of that contract(s). For LCC contracts, where this has not been achieved LCC will continue with the contract as agent for Gorse.
- 3.12 As Bruntcliffe School is a Trust school, the freehold of the school site is technically held by the Bruncliffe Trust as from the date inception, although the formal specifics of the transfer and registering with the Land Registry have yet to take place. As this is the case, the formal transfer to the Bruncliffe Trust will need to take place in advance of the conversion to Academy status – this aspect of the conversion will be signed off / approved by the Director of City Development under separate report. The land will then transfer from Bruntcliffe Trust to Gorse, however LCC is not involved in this aspect and is a matter for the Bruntcliffe Trust, operating under the IEB.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 It should be noted that a 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, City Development and PPPU. The Director of Children's Services was made aware of the proposed conversion on receipt of the Academy Order on 9th March 2015, and both the Executive Member for Children and Families 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 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 has incurred costs relating to legal, finance and project management. It should be noted that there is no DfE funding support for these costs.

4.4.2 On the basis that LCC has offered a number of indemnities around staffing, there is a risk that the Council could potentially be liable for future costs arising from Employment Tribunals should any arise, however the likelihood of this is deemed to be low risk. This has been assessed against the impact of the conversion not proceeding, which is considered to be a greater risk for the Council under the circumstances. The ongoing issues with the operation of the Trust have also been taken into account in the decision to offer the indemnities.

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 (where applicable), 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 PPPU 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 the 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 (Learning):

- Notes the negotiations held with the Solicitors acting on behalf of the Bruntcliffe Trust, DfE and Gorse;
- Gives authority for the Commercial Transfer Agreement to be executed and completed to enable the Academy to open on 1st September 2015.

7 Background documents¹

7.1 None.

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.