

Report of the Built Environment Programme Manager

Report to the Director of Children’s Services

Date: 18th August 2016

Subject: Commercial Transfer Agreements – Brigshaw School, Allerton Bywater Primary School, Kippax Greenfield Primary, Kippax North Primary School and Swillington Primary School from the Governing Bodies of each respective school to The Brigshaw Learning Partnership



Are specific electoral Wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, name(s) of Ward(s): Kippax & Methley and Garforth & Swillington		
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?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, Access to Information Procedure Rule number: Appendix number:		

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 Governing Bodies of the five aforementioned schools (“**Governing Body**”) and (3) The Brigshaw Learning Partnership Multi Academy Trust (“**Brigshaw MAT**”) and agreed a commercial position in preparation for the academy transfers on 1st September 2016. All issues have been resolved to the Project Team’s satisfaction and the formalisation of the CTAs is recommended in preparation for the transfer of the five schools to Academy status.

A sixth school, Kippax Ash Tree Primary, is also converting to Academy status under the same Multi-Academy Trust, however due to it being a PFI school, there are additional documents that need to be agreed, which means the school will convert at a later date – a separate report will be submitted at the appropriate time.

Recommendations

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

- Notes the negotiations held with Solicitors acting on behalf of the Governing Bodies of Brigshaw School, Allerton Bywater Primary School, Kippax Greenfield Primary School, Kippax North Primary School, Swillington Primary School and The Brigshaw Learning Partnership;
- Gives authority for the Commercial Transfer Agreements to be executed and completed to enable the five Academies to open on 1st September 2016.

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 for the Governing Bodies of the Brigshaw Federation schools and The Brigshaw Learning Partnership.
- Approve the signing of the Commercial Transfer Agreement required to enable the Academy to open on 1st September 2016.

2 Background information

2.1 Brigshaw Federation, a Co-operative membership Trust, was formed on 1st April 2010 consisting of six member schools, as follows:

- Brigshaw School
- Allerton Bywater Primary School
- Kippax Ash Tree Primary School
- Kippax Greenfield Primary School
- Kippax North Primary School
- Swillington Primary School

2.2 The freehold of the six school sites were vested under statute with the Trust on the date the Trust was implemented and all staff were transferred to the employ of the Governing Bodies of the respective schools

2.3 The Governing Bodies of each of the six schools applied to the DfE to be granted Academy status and on 20th April 2016, the Director of Children's Services received six Academy Orders enabling each school to convert to an Academy under Section 4 of the Academies Act 2010.

2.4 The Brigshaw Learning Partnership was advised on 4th May 2016 that LCC had a new policy of seeking reimbursement of legal fees incurred on facilitating 'self-conversions' and on 5th May 2016, the Academy Trust agreed to the reimbursement of £1,500 per non-PFI school on the basis that they are all Foundation/Trust schools, therefore meaning that the land and staff have already transferred from the Council and the CTAs would be reduced scale versions. With regards to Kippax Ash Tree, due to the level of legal input required in drafting and facilitating the various agreements between LCC, Brigshaw MAT, the DfE and PFI SPV/Banks/Funders, there will be a capped fee for LCC legal input plus full reimbursement of actual external third party costs (PFI funder/ consortium/legal fees).

2.5 The proposed conversion date is 1st September 2016 for all schools with the exception of Kippax Ash Tree, which will convert at a later date when all of the PFI

related conversion documentation has been finalised – a separate report will be submitted in due course.

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 20th April 2016, the Director of Children's Services received six Academy Orders enabling the Brigshaw Federation schools 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, as is the case for all five schools noted in this report.
- 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 It should be noted 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 Foundation/Trust schools (as is the case at these five schools), all of the staff are already employed by the Governing Body. 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. This is the position that has been reached on these five conversions.
- 3.6 Other key issues that have been agreed are:
 - What assets / contracts will transfer
 - How historic liabilities will be dealt with
- 3.7 All of the contracts and SLA's that LCC or the Governing Bodies currently have in place in respect of each school will be assigned to the Brigshaw MAT 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 Brigshaw MAT.

- 3.8 As these are all Foundation/Trust schools, the freehold of the school sites was statutorily vested in The Brigshaw Federation as from the date the Trust was implemented, although the formal specifics of completing a land transfer document and registration at the Land Registry to record the change of legal ownership has not yet taken place. As this is the case, the land transfer will need to be a joint land transfer between the Council and the Trust to the Academy, which will need to take place in advance of the conversion to Academy status – this aspect of the conversion has been signed off / approved by the Director of City Development under separate report. The land will then transfer jointly from the Council and The Brigshaw Federation to the Brigshaw MAT.
- 3.9 There is insufficient time to assign or novate the Design and Build Warranties to Brigshaw MAT that are currently in place between LCC and Leeds D&B One Limited in respect of the capital works undertaken at Swillington Primary under the Primary Capital Programme and as such, it has been agreed that LCC will enforce the provisions of such warranties on behalf of Brigshaw MAT at their request. However, there is an agreement that Brigshaw MAT will reimburse LCC's 'reasonable costs' in doing so, and this has been documented within the CTA.

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 20th April 2016, and both the Executive Member for Children and Families and local Ward Members have been informed and are aware of the conversion via a written briefing submitted on 17th August 2016.

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 Best Council Plan

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. However, it has been agreed that Brigshaw MAT will reimburse £1,500 per school towards the legal fees that have been incurred on the non-PFI school conversions, along with a capped fee for LCC legal input plus full reimbursement of actual external third party costs for the Kippax Ash Tree conversion which will take place at a later date.

4.4.2 On the basis that the staff have already transferred from LCC to the Governing Body, LCC has not accepted any indemnities around staffing which substantially reduces the risk that the Council would be liable for future costs arising from Employment Tribunals should any arise.

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 transfers will proceed even if the City Council does not enter into the Agreements.

However, it is in the Council's interests for the Agreements 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 Agreements 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 CTAs.

5 Conclusions

5.1 Under the circumstances, negotiations have progressed well and have been concluded – furthermore the relationship with Brigshaw Learning Partnership and their advisors continues to be positive. Therefore the Commercial Transfer Agreements are 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 Governing Bodies of Brigshaw School, Allerton Bywater Primary School, Kippax Greenfield Primary School, Kippax North Primary School, Swillington Primary School and The Brigshaw Learning Partnership;
- Gives authority for the Commercial Transfer Agreements to be executed and completed to enable the five Academies to open on 1st September 2016.

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.