

Report of the Sufficiency and Participation Lead

Report to the Director of Children & Families

Date: 1st June 2017

Subject: Commercial Transfer Agreement – Priesthorpe School



Are specific electoral Wards affected? If relevant, name(s) of Ward(s): Calverley & Farsley and Pudsey	<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 Governing Body of Priesthorpe School (“**Governing Body**”) and (3) The Co-operative Academies Trust (“**Co-Op Trust**”) and agreed a commercial position in preparation for the academy transfer on 1st July 2017. 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 the school to Academy status.

Recommendations

It is recommended that the Director of Children & Families:

- Notes the negotiations held with Solicitors acting on behalf of the Governing Body Priesthorpe School and the Co-op Trust;
- Gives authority for the Commercial Transfer Agreement to be executed and completed to enable the Academy to open on 1st July 2017.

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 and Families to:
- Notes the negotiations held with Solicitors acting on behalf of the Governing Body Priesthorpe School and the Co-op Trust;
 - Approve the entering into and the signing of the Commercial Transfer Agreement required to enable the Academy to open on 1st July 2017.

2 Background information

- 2.1 Priesthorpe School joined the Inspire Co-Operative Learning Trust in 1 July 2012.
- 2.2 The freehold of the school site was vested under statute with the Trust on the date the Trust was implemented and all staff were transferred to the employ of the Governing Body of the school
- 2.3 The Governing Body applied to the DfE to be granted Academy status and on 28th February 2017, the Director of Children and Families received an Academy Order enabling the school to convert to an Academy under Section 4 of the Academies Act 2010.
- 2.4 Priesthorpe School were informed on 7th February 2017 that LCC had a new policy of seeking reimbursement of legal fees incurred on facilitating 'self-conversions' indicating the anticipated costs to be a fixed rate of £2,500 reimbursement for a non-PFI school on the basis that they are a Foundation/Trust schools, therefore meaning that the land and staff have already transferred from the Council and the CTAs would be reduced scale versions.
- 2.5 The proposed conversion date is 1st July 2017 for the school.

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 28th February 2017, the Director of Children and Families received an Academy Order enabling Priesthorpe 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 and/or the Governing Body (where the school is a Foundation Trust) 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 the 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 and Families 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 the school), 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 this conversion.
- 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 that LCC or the Governing Body currently have in place in respect of the school will be assigned to the Co-op Trust 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 Co-op Trust.
- 3.8 As this is a Trust school, the freehold of the school site was statutorily vested in The Inspire Co-operative Learning Trust 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 took place at a later date. The land will now transfer from the Trust to Co-Op Trust.

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.

4.2 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.

4.3 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 Priesthorpe School will reimburse £2,500 towards the legal fees that have been incurred on the non-PFI school conversions.

4.4.2 On the basis that the staff have already transferred from LCC to the Governing Body once the school converted to a Foundation Trust, 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 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 Negotiations have progressed well and have been concluded. Therefore the Commercial Transfer Agreement is agreed and ready for sealing/signing as appropriate.

6 Recommendations

6.1 It is recommended that the Director for Children and Families:

- Notes the negotiations held with Solicitors acting on behalf of the Governing Body Priesthorpe School and the Co-op Trust;
- Gives authority for the Commercial Transfer Agreement to be executed and completed to enable the Academy to open on 1st July 2017.

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.