

Commercial Transfer Agreement – Strawberry Fields Primary School to Selby Education Trust

Date: 04 March 2024

Report of: The Sufficiency and Participation Team Lead

Report to: The Director of Children and Families

Will the decision be open for call in? Yes No

Does the report contain confidential or exempt information? Yes No

Brief summary

The Project Team (including Children and Families, Legal Services and Procurement and Commercial Services) have negotiated the Commercial Transfer Agreement (“CTA”) between (1) Leeds City Council; (2) The Governing Body of Strawberry Fields Primary School (“Governing Body”) and (3) Selby Education Trust (the “Academy Trust”) and agreed a commercial position in preparation for the academy transfer on 1st April 2024. 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 St Matthew’s C of E Primary School to academy status.

Recommendations

It is recommended that the Director of Children and Families:

- a) Notes the negotiations held with Solicitors acting on behalf of the governing body of Strawberry Fields Primary School and Selby Education Trust;
- b) Gives authority for the CTA between Leeds City Council (LCC), the governing body of Strawberry Fields Primary School, and Selby Education Trust to be executed and completed to enable Strawberry Fields Primary School to open as an academy on 1st April 2024 or such later date advised by the DfE; and
- c) Gives authority for any other necessary action to be taken to effect the transfer.

What is this report about?

- 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 19 September 2023 the Director of Children and Families received the academy order enabling Strawberry Fields Primary School to convert to an academy. The proposed conversion date is 1st April 2024 or such later date as advised by the DfE.

What impact will this proposal have?

- 2 Whilst it is not legally necessary for the CTA to be entered into for the transfer to take place, it is in the LCC's interests for the agreement to be entered into to set out the formal transfer of the assets, contracts, and staff (as applicable). This includes any staffing liabilities. Once the CTA is executed and completed, Strawberry Fields Primary School will open as an academy on 1st April 2024 or such later date as advised by the DfE.

How does this proposal impact the three pillars of the Best City Ambition?

Health and Wellbeing Inclusive Growth Zero Carbon

- 3 The recommendation is to give authority for the CTA to be executed and completed, which in turn will enable Strawberry Fields Primary School to open as an academy on 1st April 2024. The Local Authority has a duty to promote high standards and champion educational excellence. The relationship between the authority and its schools must influence city-wide agendas such as contributing towards the achievement of the Best City Ambition that people are 'supported to thrive from early years to later life' with a focus on ensuring children in all areas of the city have the best start in life and enjoy a happy and friendly childhood. Our focus is also on the obsession to 'improve achievement, attainment and attendance at school' with a focus on 'enabling all children and young people - particularly those learners who are vulnerable to poor outcomes to realise their potential.' We will continue to apply the cycle of monitor, evaluate, challenge and support with all schools in the city in order that they become strong and capable of contributing to the key priorities of the city.

What consultation and engagement has taken place?

Wards affected: Garforth & Swillington

Have ward members been consulted? Yes No

- 4 It should be noted that the statutory consultation process is no longer required, as the Academies Act 2010 streamlined the process and 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.
- 5 All consultations regarding the proposed academy conversion 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. Although, there is no set guidance on how to quantify what appropriate consultation means in terms of duration and consultees all interested parties should be provided with opportunity to respond and ask questions.
- 6 Whilst LCC has no ability or rights to prevent the conversion from taking place, several stakeholders within LCC have been consulted as part of the conversion process including Finance, HR and Assets and Access teams within Children and Families, Legal Services, City Development and Procurement and Commercial Services. The Director of Children and Families was made aware of the proposed conversion on receipt of the Academy Order on 19 September

2023, and both the Executive Member for Children and Families and local Ward Members have been informed via a written briefing.

What are the resource implications?

- 7 LCC 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 Selby Education Trust will pay £4,625 towards the legal fees that have been incurred on this non-PFI school conversion.
- 8 On the basis that the staff are currently employed by 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.

What are the key risks and how are they being managed?

- 9 This is a Significant Operational Decision on the basis that there is little risk and that the transfer will proceed even if LCC does not enter into the Agreement. However, it is in LCC'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.
- 10 Negotiations around the transfer documents have been handled by Ward Hadaway and legal and contract specialists in Legal Services and Procurement and Commercial Services 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.

What are the legal implications?

- 11 As part of the conversion process for publicly funded schools, a CTA is entered into between the relevant academy trust and LCC. If the CTA is signed prior to the conversion then the governing body of the outgoing school also joins into the CTA, as is the case at Strawberry Fields Primary School.
- 12 Where the school is a Foundation Trust, as is the case with Strawberry Fields Primary School, the CTA deals with the transfer of the assets, staff, and contracts from the Council and/or the governing body to the new Academy Trust.
- 13 The standard form (which provides for extensive indemnities from a local authority to the academy trust) was modified 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.
- 14 In respect of Foundation/Trust schools (as is the case at Strawberry Fields), all the staff are already employed by the governing body. As such the CTA 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 which has been reached on this conversion.
- 15 It should be noted that it is not legally necessary for the CTA to be entered into for the transfer to take place; however, it is in LCC's interests for the agreement to be entered into to set out the formal transfer of the assets, contracts, and staff (as applicable).
- 16 Key issues that have been agreed are:
 - a) What assets / contracts will transfer.
 - b) How historic liabilities will be dealt with.

17 All the contracts that the governing body or LCC currently has in place in respect of the school will be assigned to Selby Education 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 novation of that contract(s). For LCC contracts, where this has not been achieved, LCC will continue with the contract as agent for Selby Education Trust.

18 This is a foundation school, and the freehold of the school site has been statutorily vested with the foundation trust since July 2009.

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

Options, timescales and measuring success

What other options were considered?

20 The transfer will proceed even if the Council does not enter into the CTA. There are no alternative options to be considered.

How will success be measured?

21 The school will convert to academy status on 1st April 2024.

What is the timetable and who will be responsible for implementation?

22 The academy conversion will take place on 1st April 2024. LCC will arrange for the signing/sealing of the CTA to take place prior to the conversion date.

Appendices

- None

Background papers

- None