



## NOT FOR PUBLICATION

Appendix 1, 2 and 3 of this report are Exempt/Confidential under Access to Information Procedure Rules 10.4 ( 3 )

### Joint Report of the Chief Asset Management Officer and Assistant Chief Executive (Corporate Governance)

#### Executive Board

Date: 13 February 2009

Subject: School Partnership Trust, Garforth

#### Electoral Wards Affected:

Garforth and Swillington

Ward Members consulted  
(referred to in report)

#### Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Eligible for Call In  Yes

Not Eligible for Call In   
(Details contained in the report)

### EXECUTIVE SUMMARY

Following the establishment of a trust, the Council is legally obliged to transfer relevant Council assets at Garforth to the School Partnership Trust having regard to the Model Transfer Agreement and Guidance issued by the Secretary of State.

Under the Regulations, disagreements over the terms of transfer are resolved by reference to the Schools Adjudicator.

It has not been possible to agree the transfer terms in a form approved by Executive Board on 23 January 2008, which sufficiently protects the Council's interests. A compromise solution is available in this particular case by way of a Side Letter, but because this transfer is a Pathfinder and the first of its kind in Leeds, it will create a precedent for any following trusts, with which the Council may still not be entirely comfortable. Legal advice and options for the Council are attached at Confidential Appendices 2 and 3. Therefore further negotiations are recommended and, in the event that they fail to produce sufficient protection

for the Council, the Chief Officer (Legal Licensing and Registration) be authorised to refer the matter to the Schools Adjudicator for determination.

The priorities and action being taken to protect the Council's non-school assets are set out in Confidential Appendix 2.

## **Purpose of This Report**

1.1 The purpose of this report is to advise Members of the current position in respect of the terms which were approved by Executive Board on 23 January 2008 for transfer of land and buildings to the School Partnership Trust.

1.2 To recommend a way forward.

## **2.0 Background Information**

2.1 The creation of the School Partnership Trust preceded the development and approval of the City Council's recently approved policy position on Trust Schools and its Memorandum of Understanding in relation to the establishment of an Academy in Leeds.

2.2 Because it is the first asset transfer to a School Trust in Leeds and one of the first in England, legal advice has been provided by the Chief Officer (Legal Licensing and Registration) and is attached at Confidential Appendices 2 and 3.

## **3.0 Main Issues**

3.1 The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 ("the Regulations") sets out the basis upon which assets are to be transferred from the authority to a Trust and the Transfer Agreement documentation must have regard to the Model Transfer Agreement and Guidance issued by the Secretary of State – "The Transfer and Disposal of School Land in England - A General Guide For Schools, Local Authorities and the Adjudicator" – Department for Children Schools and Families May 2007 ("the Guidance"). The principal elements are as follows in relation to trust schools (which are local authority funded and maintained schools):-

3.1.1 all land and buildings held or used by schools are transferred to the foundation schools for nil consideration and these assets are then held in trust by the newly formed trust for the duration of its existence. Holding land on trust means the Trust will have legal title to the land but the Trust holds it on trust for the purposes or benefits of the school (or whatever is defined as the area of benefit in the Trust's Memorandum and Articles) and subject to the provisions of the Trust's governing documents. If its role ends then publicly funded land will normally revert to each of the school governing bodies involved;

3.1.2 there is a requirement that all land held or used by a school immediately before it publishes proposals will transfer to the Trust;

3.1.3 in the event of disagreement between the Council and the Trust as to:-

(i) the extent of school land to be transferred or

- (ii) the terms of such transfer as are necessary or expedient to identify and define the rights and liabilities transferring to the Trust or retained by the Council.

The matter shall be referred to the Schools Adjudicator for determination;

- 3.1.4 the assets will no longer be part of the Council's Asset portfolio;
- 3.1.5 the local authority may wish to retain ownership of land surplus to the school's needs where it has a strong strategic need for part of the site;
- 3.1.6 although the trust holds such resources on trust, the day to day use and operation of these assets is under the control of the governing body;
- 3.1.7 schools will continue to receive devolved formula capital administered by the Authority and would be eligible for investment through Capital Modernisation funding or future waves of BSF or Primary Capital;
- 3.1.8 the Trust can dispose of the land and buildings;
- 3.1.9 the trust must inform the local authority of their plans to dispose of any non-playing field land;
- 3.1.10 the local authority can object to proposals if they feel that they are not in the interests of the school in the long term or would disadvantage the wider community. The local authority will also be able to object to re-investment proposals and to claim a share of the proceeds attributable to public investment in the land;
- 3.1.11 trust schools will be able to benefit directly from the disposal of land but all proceeds must be used for capital investment in educational assets in either the school itself or the maintained sector including schools outside the local authority area according to the Trust's Memorandum and Articles and the Trust itself will not be able to profit from any such disposal;
- 3.1.12 if a Trust's Memorandum and Articles are focused on wider educational objectives (eg to support education in an area rather than a specific school, including an area outside the local authority) then the Trust would be able to use the proceeds of disposal to support education at another school. However the trustees would need to consult the governors at the original school. The local authority would also be able to object if they felt the disposal would damage standards at the school;
- 3.1.13 a local authority will also be able to propose the placing of a new or re-sited school on surplus foundation or Trust land and also for other educational purposes and the provision of children's services where it cannot otherwise reasonably meet a local need and which are suitable to be next to a Trust school;

3.1.14 where local agreement cannot be reached on any of the above issues they are referred to the Schools Adjudicator for determination in accordance with the Regulations and Guidance;

3.1.15 a local authority will not be able to force a Trust to sell any surplus land to raise money.

3.2 Legal advice on the Regulations and Guidance gave cause for concern that the Council's interests as owner of the school assets, may not be fully protected in terms of the future disposal of surplus land or buildings transferred to the Trust or use of the proceeds of sale of such a disposal. The specific concerns arise because the Regulations and Guidance only permit the Council to object to the sale of transferred land or use of the proceeds under limited circumstances, such that proceeds could be spent on other trust assets outside the Leeds district.

3.3 The Report to Executive Board of 23 January 2008 therefore recommended that additional provisions should be included in the Transfer Agreement to protect the Council's interests – in particular that the use of any capital receipt from any future land / building sale be directed through existing Council approval processes in consultation with Asset Management Group to ensure as far as possible that backlog maintenance and other corporate priorities are addressed. It was also noted that such proposed amendments could only be included in the Transfer Agreement with the agreement of the Trust.

3.4 Whilst this recommendation was approved by Executive Board, the Trust will not agree to these or other additional provisions being included in the Transfer Agreement.

3.5 As mentioned in 3.1.14 above, in the absence of agreement, the issue must be referred to the Schools Adjudicator for a binding determination. Negotiations have however taken place to establish whether the option of a Side Letter could provide a compromise solution. On this basis the letter attached at Confidential Appendix 1 has been prepared by the Trust's solicitor and approved by the Trust.

#### **4 Implications For Council Policy And Governance**

4.1 The transfer conforms with Leeds Education Policy.

#### **5 Legal And Resource Implications**

5.1 Legal advice on the Regulations and Guidance, Model Agreement and the Side Letter have been sought from the Chief Officer (Legal Licensing and Registration) to ensure that the Council's interests are protected as well as possible and this legal advice is set out in Confidential Appendices 2 and 3.

5.2 The development of Trust schools and Academies has implications for the capital assets of the City Council and the City Council's Asset Management Board is aware of these implications. Action is being taken to develop and apply appropriate mechanisms that minimise the risks involved based on the Legal advice set out in Confidential Appendix 2.

5.3 The information contained in the Appendices attached to this Report relates to the financial or business affairs of a particular person, and of the Council. This information is not publicly available from the statutory registers of information kept in respect of certain companies and charities. It is considered that since this information was obtained through one to one negotiations for the transfer of assets then it is not in the public interest to disclose this information at this point in time as it could undermine this method of negotiation and affect the integrity of transfer of assets by this process. Also it is considered that the release of such information would or would be likely to prejudice the Council's commercial interests in relation to other similar asset transfers in that prospective transferees of other similar assets about the nature and level of consideration which may prove acceptable to the Council. It is considered that whilst there may be a public interest in disclosure, much of this information will be publicly available from the Land Registry following completion of this transaction and consequently the public interest in maintaining the exemption outweighs the public interest in disclosing this information at this point in time. It is therefore considered that this element of the report should be treated as exempt under Rule 10.4.3 of the Access to Information Procedure Rules.

## **6 Conclusions**

- 6.1 The School Partnership Trust is in compliance with the City Council's recently approved policy position on the schools diversity agenda.
- 6.2 It has not been possible to agree the transfer terms in a form approved by Executive Board on 23 January 2008, which sufficiently protects the Council's interests.
- 6.3 Legal advice and options for the Council are attached at Confidential Appendices 2 and 3.
- 6.4 A compromise solution is available by way of the Side Letter, attached in Confidential Appendix 1, which would commit the Trust to consideration of local issues beyond the requirements of the Regulations, in that the Trust would have regard to the Council's education and schools agenda when applying any proceeds of sale from the sale of its land assets and the proceeds would be applied to schools who are full members of the School Partnership Trust.
- 6.5 The priorities and action being taken to protect the Council's non-school assets are set out in Confidential Appendix 2.

## **7 Recommendations**

The Executive Board is recommended to:

- 7.1 note the contents of this report;
- 7.2 approve the terms of the Side Letter;
- 7.3 authorise the Chief Officer (Legal Licensing and Registration) :-
- 7.3.1 to negotiate terms in the Transfer Agreement – sufficient to protect the Council's position on any future disposal of assets by the Trust, and

7.3.2 if this cannot be achieved, to refer the matter to the Schools Adjudicator for determination.

7.4 Note the risks around school asset transfer outlined in Confidential Appendix 2 and the action being taken.

### **Background papers**

Report to Executive Board 23 January 2008, Garforth Schools' Trust