

Report of: Director of Children's Services

Report to: Executive Board

Date : 5th September 2012

Subject: Transfer of Council owned land and buildings to trust schools

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" 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 checked="" type="checkbox"/> Yes	<input 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

- 1.1 In order to improve the standards of attainment and services for pupils, students and their families in the local community, Government policy is aimed at encouraging all schools to adopt a more independent status from Local Education Authorities (LEA) as either Trust, Academy or Specialist schools.
- 1.2 The Education and Inspections Act 2006 ("the Act") and The Schools Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 ("the Regulations") provide new flexibility for schools to work together under a shared Trust in partnership with external organisations (such as Universities, Business Foundations and Community Groups).
- 1.3 Under the Act and the Regulations all assets – being land and buildings – held or used for the purposes of the school by a local authority - will automatically transfer for nil consideration to the trustees of schools converting to trust status ("trust schools") on the date the school becomes a trust school ("the Implementation Date"). The requirements of the Act override a local authority's duty under section 123 of the Local Government Act 1972 to secure best consideration for the disposal of and interest in the land.
- 1.4 Under the Act and Regulations, the trustees do not have to pay for the land and the Local Authority cannot demand any consideration for the land and buildings.

- 1.5 In line with the Department for Education (“the DfE”) guidelines and following the necessary consultations, the schools listed in the attached Schedule have established Trusts and all the assets - being land and buildings - held or used by the schools for the purposes of the schools were automatically transferred for nil consideration to the trust schools. .
- 1.6 Similarly other schools within Leeds are known to be considering setting up their own Trusts, each of which would result in land and buildings used for school purposes automatically vesting for nil consideration in the Trust once the Trust is established. A local authority has no power to impose any terms or conditions on the transfer of land and buildings. The implications for such transfers of land and buildings are set out in this Report.

2 Recommendations

Executive Board is requested to:

- 2.1 Note the contents of this report
- 2.2 Authorise the Director of City Development or such other officer authorised by him to negotiate the detailed terms of the transfer of the freehold land and buildings to trust schools at less than best consideration.

1 Purpose of this report

- 1.1 In light of the statutory powers enabling the creation of school trusts - to which land and buildings must be automatically transferred for nil consideration on the creation of a Trust - approval is sought from the Executive Board to authorise the Director of City Development or such other officer authorised by him to negotiate the detailed terms of the disposal of land and buildings to schools converting or which have converted to trust status in accordance with the Act and the Regulations.

2 Background

- 2.1 Provisions contained within the Act and the Regulations have added to the opportunities for diversity in school structures and governance, particularly in relation to the establishment of foundation schools with a charitable foundation, commonly referred to as trust schools.
- 2.2 The governing bodies of the schools set out in the Schedule following a period of consultation have changed category to trust schools. Similarly other schools within Leeds are known to be considering setting up their own Trusts, each of which would result in land and buildings used for school purposes automatically vesting for nil consideration in the Trust once it is established.
- 2.3 A trust school remains a local authority maintained school that is funded on the same basis as other local authority maintained schools, and funding will be delegated to the governing body, not the Trust. There will be no additional funding from the local authority for a trust school, and there is no expectation that the Trust will provide the school with additional funding. Trusts are not required or expected to make any financial contribution to the schools they support. They could, however, bring in additional resources in terms of professional expertise, knowledge and vocational opportunities
- 2.4 Any deficit that occurs is the responsibility of the governing body but as with any maintained school in deficit a local authority will have licensed the deficit and agreed a recovery plan.
- 2.5 The governing body will set the school's own admission arrangements, but they will have to act in accordance with the School Admissions Code and will not be allowed to introduce selection by ability. Trust schools will be expected to play their full part in taking "hard to place" pupils, having fair admissions and working with other schools. School staff of a trust school including teachers and caretakers will be employed directly by the governing body.
- 2.6 The governing body of each trust school will manage its own land and buildings. The Trust will hold the land and buildings of the school on trust for the duration of the Trust.. The implications of this are covered in more detail below.
- 2.7 The schools are supported by the Trust through the appointment of governors to the schools' governing bodies. The governing body of a trust school, and not the Trust itself, will remain responsible for all aspects of the conduct of the school. The Trust and the governing body remain separate entities.

2.8 The following extracts of the transfer guidelines have been reproduced below for information:

2.9 (For your information the “transferor” is the local authority; the “transferee is the Trust” and “implementation date” is the date a Trust is established)

“11. When a school’s proposals to change category have been approved, all land held and used by the transferor immediately before the implementation date for the purposes of the school and agreed to be transferred will, on the implementation date, transfer to and vest in the transferee to be held for the purposes of the new school. Normally this will include the school’s buildings, hard and soft play areas, all-weather sports areas, games courts, playing fields, habitat areas, roads, paths and car parks. There is a presumption that all land held by the school immediately before it publishes proposals to change category will transfer: it is exceptions to this that will be agreed between transferor and transferee, or failing agreement, determined by the Adjudicator”

“32. The overarching assumption is that except where there is good cause, all the land being used by a school before it proposes to change category should transfer to its governing body or to the trustees of its foundation when its change of category is implemented.”

NB – The key point here is that all land held before a school “proposes” or “publishes proposals” to change category – the Council may not or more likely will probably not be aware of any schools proposals to change category until it is too late for the Council to declare any land surplus should it wish to do so

“41. An 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, for instance to locate another school or for the delivery of another educational or children’s service which can be suitably sited next to the school and for which it does not have an alternative site.

42. An authority cannot seek to retain a surplus part of a site purely on the grounds of potential value on disposal, unless there is evidence of a planned use of the disposal value for the strategic delivery of its educational or children’s services which it cannot otherwise reasonably meet.”

2.10 The following extracts of the same document provide guidance in the event the Trust decides to dispose of non-playing field assets at some point in the future:

“8. The governing body, foundation body or trustees of a foundation, voluntary or foundation special school shall notify the local authority in writing of their intention to dispose of publicly funded non-playing field land which has been acquired or enhanced in value by public funding. This includes disposal by trustees of publicly funded land following discontinuance of a school.

In the event that the local authority objects to the disposal, the proposed use of the proceeds or wishes to claim a share of the proceeds in as much as they result from public funding, it should inform the school and both parties should discuss

the matter with the aim of reaching agreement... [where] it is not possible for the school and the authority to agree an amount of the proceeds of disposal that should be paid to the authority, either party may refer the matter to the Adjudicator”

- 2.11 The decision as to whether a school wishes to establish a Trust lies with the school’s governing body and the parents. . A local authority cannot challenge the decision of a school which wants to establish a Trust.
- 2.12 In the cases of PFI schools wishing to establish a Trust the following applies:
 - 2.12.1 the freehold of the land and buildings still passes to the trustees of the trust school. The maintenance of a PFI trust school continues to be the responsibility of the PFI contractor for the term of the PFI contract (usually 25 years); When the PFI contract no longer subsists - responsibility for maintenance then reverts back to the trust school. The local authority’s responsibility for payments to the contractor remains. Although the local authority remains responsible for payment of the unitary charge under the project agreement, it can recover such amounts or contributions from the governing body via the governors’ agreement
 - 2.12.2 In respect of PFI trust schools, during the subsistence of the Project Agreement SPV is responsible for insurance (except the contents of the school which the Council insures) and once the Project Agreement expires the Council then insures.
- 2.13 In default of agreement between the Council and the trustees of the trust school as to the extent of the land to be transferred and the terms of the transfer document the matter would be referred a Schools Adjudicator.
- 2.14 A trust school will be responsible for internal and external repair and maintenance of the school.
- 2.15 The assets will no longer form part of the Council’s asset portfolio.
- 2.16 A trust school can dispose of the land and buildings and the following will apply:
 - 2.16.1 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;
 - 2.16.2 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 school itself will not be able to profit from any such disposal;
 - 2.16.3 A trust school must inform the local authority of their plans to dispose of any non-playing field land;

- 2.16.4 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;
- 2.17 Given the above and the number of schools that are now proposing to or have already converted to trust status it is requested that the Executive Board delegates approval to the Director of City Development or such other officer authorised by him to negotiate the detailed terms of the transfer of the freehold land and buildings to trust schools at less-than-best consideration on the following basis and in line with guidance from the DfE):
- 2.17.1 that the land being disposed of is required by the Trust and is held by the Trust for the purposes of the school in accordance with the Act and the Regulations;
- 2.17.2 that the trust school will obtain the freehold of the school site for nil consideration;
- 2.17.3 that the school will continue to be insured by the Council and recharge the cost of premiums.

3 Main Issues

- 3.1 Because there are many circumstances for sound reasons where dual use or non-use for school and other purposes have developed of both school properties and non school properties, clarity is required in understanding what assets are required to be transferred. The land or property to be transferred is defined above as 'all land *held and used* by the transferor immediately before the implementation date *for the purposes of the school*'. Taking 'land' to mean all land and buildings, this means that not only must the land have been acquired, appropriated or leased for education purposes, but also that it must have been in use by the relevant school when the governing body proposed to change category. Therefore land declared surplus before this date and land held for non-education purposes should be excluded from a transfer. However existing use arrangements in school or non-school land / property are expected to be honoured where there is dual use and should be formalised by a lease, licence or other contractual agreement.
- 3.2 Where land or buildings are not used or is underused, its capital value becomes very important and following transfer to a Trust, the Council's ability to recover all or part of it to support even educational priorities through the capital programme is very limited or non-existent. Except in the very specific circumstances mentioned above, the proceeds from disposal of surplus land which has been transferred will be restricted to the remaining school assets of the Trust. .

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 All consultations regarding the proposed Trust are undertaken by the governing body of the proposed trust school and it is for the governing body to decide upon a level of consultation which is deemed appropriate under the circumstances.

- 4.1.2 The governing body should inform the Council when it proposes to establish a Trust in order to commence the transfer process. When the Council is made aware it will inform the following:
- (a) the appropriate Ward Members for the area in which the trust school is situated:
 - (b) the Director of Children's Services and:
 - (c) the Executive Member for Children's Services
- 4.1.3 It is also proposed that a report be submitted by the Director of Children's Services to the Executive Board every six months identifying those schools where the Council has disposed of land as set out in this Report.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 From an Asset Management perspective the proposal has no specific implications for equality, diversity, cohesion and integration.
- 4.2.2 As the trust programme progress any equality issues which may arise will be addressed by Children's Services or the individual foundation trust concerned.

4.3 Council Policies and City Priorities

- 4.3.1 The conversion of a school to trust status will impact on the "Narrowing the Gap" and "Going up a League" agendas. Trust schools in Leeds have the potential to contribute to the targets to meet key priorities within the Children and young People's Plan and the work on the Local area Agreement.

4.4 Resources and Value for Money

- 4.4.1 Disposals at nil consideration are consistent with the Council's contribution to the delivery of the foundation trust scheme which is consistent with the educational policies and objectives of the Council.
- 4.4.2 Trust schools, as other mainstream schools, are dependent on funding from the local authority. Schools converting to trust status continue to form part of the educational provision across the city. One of the key changes when schools become trusts is the change in governance arrangements.
- 4.4.3 Trusts will have the ability to dispose of surplus assets on the condition that the funds are retained and reinvested in educational assets by the Trust. A Trust can have schools from across England and invest money raised by selling a school building in the Leeds area in a school within another city. Where the local authority objects to any disposal the matter may have to be referred to the Schools Adjudicator for resolution.
- 4.4.4 The Council will continue to insure the premises on behalf of a Trust and recharge the cost of premiums.

- 4.4.5 Trust status will enable the local authority to make savings from national non-domestic business rates paid for school premises. This is a ringfenced saving within the Dedicated Schools grant funding arrangements. As such this saving will be reallocated to schools through the formula funding arrangements.
- 4.4.6 A local authority cannot force a Trust to sell any surplus land or buildings to raise money

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 Section 123 of the Local Government Act 1972 provides that, except with the consent of the Secretary of State, the Council shall not dispose of land, other than by way of a lease for seven years or less, for a consideration less than the best that can reasonably be obtained. Whilst that provision is overridden by the provisions of the Act it remains the case that disposals to schools converting to trust status will be disposals at less-than-best consideration for the purposes of the Council's policy on such disposals and will require Executive Board approval.

4.6 Risk Management

- 4.6.1 Whilst there is a risk that a trust school may fail at some point in the future, trust schools are supported by the local authority which cannot cease to fund them. If a trust school ceases to operate, the land and buildings will transfer to the governing body.
- 4.6.2 If a trust school is discontinued Schedule 22 to the School Standards and Framework Act 1998 empowers the Secretary of State to determine what happens to publicly funded land. In most cases, the land is returned to the local authority (or the proceeds from disposal), but there may be occasions where the Secretary of State might wish to direct its use by a particular school, including an Academy.
- 4.6.3 The ongoing financial arrangements and allocations between the local authority and a trust school will not change. The trust schools will continue to receive devolved formula capital administered by the local authority, and would be eligible for future phases of capital investment.
- 4.6.4 There is a concern that development of trust schools may make it more difficult for the Council as LEA to plan and implement the most effective education service from the available capital resources due to fragmentation of control of the assets.
- 4.6.5 If trust schools are able to generate more funding, the leverage of additional capital to address high levels of backlog maintenance would be welcome, but it is too early to say whether this is possible.
- 4.6.6 Where a trust school is part of a PFI contract the Council will endeavour to obtain an indemnity from the Trust in the transfer document in respect of the matters contained in the Project Agreement – but the Trust is not obliged to agree to this in line with the DfE guidelines. There is a risk therefore that if the Trust puts the Council in default of the Project Agreement the Trust will not be legally obliged to reimburse the Council for any compensation events etc.

5 Conclusions

- 5.1 The proposals set out in this report should be supported to enable the Council to meet its obligations under the Act

6 Recommendations

Executive Board is requested to:

- 6.1 Note the contents of this report
- 6.2 Authorise the Director of City Development or such other officer authorised by him to negotiate the detailed terms of the transfer of the freehold land and buildings to trust schools at less than best consideration

7 Background documents¹

- 7.1 There are no background documents to this report.

¹ The background documents listed in this section are available for inspection on request for a period of four years following the date of the relevant meeting. Accordingly this list does not include documents containing exempt or confidential information, or any published works. Requests to inspect any background documents should be submitted to the report author.

Trusts - Schools already converted

Name of School	Date of Conversion
East Garforth PS	2007
Micklefield C of E PS	2007
Ninelands PS	2007
St Benedict's Cath PS	2007
Strawberry Fields PS	2007
Boston Spa School	01/01/2010
Wetherby High School	01/02/2010
Allerton Bywater PS	01/04/2010
Brigshaw High School and Language College	01/04/2010
Kippax Ash Tree PS	01/04/2010
Kippax Greenfield PS	01/04/2010
Kippax North J and IS	01/04/2010
Swillington PS	01/04/2010
Austhorpe PS	01/07/2010
Colton PS	01/07/2010
Corpus Christi Cath PS	01/07/2010
Corpus Christi Catholic College	01/07/2010
Meadowfield PS	01/07/2010
Temple Moor High School Science College	01/07/2010
Templenewsam Halton PS	01/07/2010
Whitkirk PS	01/07/2010
Pudsey Grangefield School	01/03/2011
Cockburn College of Arts	01/07/2011
Hugh Gaitskell PS	01/07/2011
Middleton PS	01/07/2011
Westwood PS	01/07/2011
Bruntcliffe High School	01/03/2012
Priesthorpe Specialist Science College	01/07/2012