

Report of the Built Environment Lead

Report to the Deputy Director of Children and Families

Date: 25th July 2018

Subject: Transfer of Swallow Hill Community College Sponsor Academies Enterprise Trust to Dixons Academies Charitable Trust Ltd



Are specific electoral Wards affected? If relevant, name(s) of Ward(s): Farnley and Wortley	<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 & Families, Legal Services and PPPU) have negotiated the transfer documentation and agreed a commercial position in preparation for the academy transfer of Swallow Hill Community College from Academies Enterprise Trust (AET) to Dixons Academies Charitable Trust Ltd on 1st October 2018. All issues have been resolved to the Project Team's satisfaction and the formalisation of the transfer is recommended in preparation for the transfer.

Recommendations

It is recommended that the Deputy Director of Children and Families:

- Notes the negotiations held with Solicitors acting on behalf of AET, DfE, Dixons Academies Charitable Trust Ltd and the PFI Consortium;
- Gives authority for the following agreements to be executed and completed to enable the Academy to transfer on the 1st October 2018:
 - Deed of Variation of the PFI Project Agreement (**PFI DoV**);
 - Deed of Novation and Variation (**DoNV**) of the academy documents, namely;
 - Commercial Transfer Agreement;
 - Principal Agreement; and

- School Agreement.

together with any other documentation required to complete the transfer; and

- Gives authority for any other necessary action to be taken to effect the transfer.

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:

- Note and approve the negotiations held with the DfE, and Solicitors acting for AET, Dixons Academies Charitable Trust Ltd and the PFI Consortium.
- Approve the signing of the key documentation required to enable Swallow Hill Community College to become part of the Dixons Academies Charitable Trust Ltd on 1st October 2018.

2 Background information

2.1 The new Swallow Hill Community College building opened in September 2009 following a full new-build construction funded through PFI credits under Phase 2 of the Building Schools for the Future programme.

2.2 Swallow Hill Community College was issued with a Notice to Improve as the outcome from their Ofsted inspection on 12th Jan 2011. The LA produced a Statement of Action to support the school in March 2011, this was approved by Ofsted. Between March and June of the same year, the Governing Body were informed by DfE that they had expectations for Swallow Hill Community College to become a sponsored academy due to their low standards being below floor targets and school under-performance.

2.3 The LA supported the school in identifying an academy sponsor in July 2011. The Governing Body of the College passed resolution to become an academy with SSAT as their sponsor. The academy order was passed by DfE, however SSAT withdrew as sponsor. The sponsor selection process was repeated in March 2012 and the Academies Enterprise Trust were selected as the sponsor. The school converted on the 1st July 2013

2.4 On the 3rd of February 2015 Ofsted carried out a full inspection and rated the academy inadequate. Three subsequent monitoring visits identified serious weaknesses. A further full inspection was carried out by Ofsted on the 8th of November 2016 and the academy was rated as requires improvement and the subsequent monitoring visit on the 21st November 2017 still found it required improvement.

2.5 As a result of the poor Ofsted results the Regional Schools Commissioner has negotiated the brokerage of Swallow Hill Community College from AET to Dixons Academies Charitable Trust Ltd on the 1st October 2018

2.6 Main issues

2.7 To enable the Swallow Hill Community College to transfer to Dixons Academies Charitable Trust Ltd on the 1st October 2018, the Secretary of State must enter into a legally binding supplementary funding agreement in respect of the Swallow Hill Community College with Dixons Academies Charitable Trust Ltd.

2.8 The PFI DoV is required because the Swallow Hill Community College is one of the Leeds PFI Schools and therefore any formal changes are required to be incorporated into the PFI contract and requires the consent of the PFI funders.

2.9 As the Regional Schools Commissioner now wishes the academy to become part of the Dixons Academies Charitable Trust Ltd, the DoNV has also been negotiated and agreed between the Secretary of State, LCC, AET and Dixons Academies Charitable Trust Ltd to allow the previously negotiated documents relating to Swallow Hill Community College to be novated and varied i.e.

- Principal Agreement;
- Commercial Transfer Agreement; and
- School Agreement;

2.10 The Long Term Lease in respect of the site of the Swallow Hill Community College will also be assigned by AET to Dixons Academies Charitable Trust Ltd;

2.11 The PFI DoV and DoNV have been subject to negotiation between the various parties and it is intended that these agreements will be sealed or signed by LCC, AET, Dixons Academies Charitable Trust Ltd, the Secretary of State and the PFI Contractor as appropriate.

2.12 Below is an outline of the main issues that have been concluded on each of the above Agreements.

2.13 Deed of Variation and Novation of the Academy Documents

2.13.1 The DoNV transfers all the obligations and liabilities of AET under the academy documents to Dixons Academies Charitable Trust Ltd. It also varies the academy documents to recognise such transfer as appropriate. The academy documents that LCC are party to and which are novated and varied are:

2.13.2 *Principal Agreement*

- The parties to the Principal Agreement will be LCC, DfE and AET. The Principal Agreement governs the relationship between the DfE, AET and the LCC, and in particular the risk of failure of AET to make payments to the LCC (including those supporting the Project Agreement Unitary Charge) under the School Agreement. The DfE also offer an indemnity to LCC where such payments are not made by AET.
- Note that a new Principal Agreement has not been negotiated. The Principal Agreement had already been agreed when the school converted to Swallow Hill Community College as part of AET in 2013 and this document will now be novated to Dixons Academies Charitable Trust Ltd through the DoNV.

2.13.3 *Commercial Transfer Agreement (CTA)*

- The purpose of the Commercial Transfer Agreement is to provide for risks and information obligations for the parties relating to staff, assets and contracts. It provides for apportionments of payment of salaries, pension contributions, etc. and indemnities from both parties in relation to employment matters.

- The existing Commercial Transfer Agreement previously negotiated in 2013 will continue to be in place for this transfer and will be novated to Dixons Academies Charitable Trust Ltd through the DoNV.

2.13.1 *Schools Agreement*

- Community Schools subject to PFI arrangements are maintained schools subject to LA influence under education legislation. Once an academy is established the LA will have no control of the funding or otherwise. In light of the fact that the academy will have limited assets beyond the school and equipment, if liabilities arise under the PFI contract due to the acts or omissions of the academy, these will fall to the City Council, since it remains a counterparty to the PFI Agreement. The DfE model has been developed to balance the Authorities' concerns over their substantial financial risk in a PFI scheme, whilst at the same time preserving an academy trust's independence and ability to run a high performing school.
- The School Agreement sets out in much clearer terms the relationship between an academy and LA, and replaces the Governing Body Agreement. It provides for a continuing academy financial contribution towards the PFI Unitary Charge (similar to when it was a maintained school) and practical interface processes between the academy and the City Council.
- The existing Schools Agreement previously negotiated in 2013 will continue to be in place for this transfer and will be novated through the DoNV.

2.7 Deed of Variation to the PFI Contract

2.7.1 The PFI DoV is between LCC and Investors in the Community (Leeds Schools) Ltd (the **PFI Contractor**).

2.7.2 The purpose of the Deed is to ensure that the PFI contract covers the Dixons Academies Charitable Trust Ltd as an insured party under the Required Insurances under the PFI contract, but also adds Dixons Academies Charitable Trust Ltd as a City Council Related Party whose actions are the responsibility of LCC.

2.7.3 To ensure that the Deed accommodates any future academisation, transfer to foundation status or transfers from one academy trust to another in respect of any of the schools under the CSSP PFI project, further amendments have been made so that any relevant academy trust or foundation will all be an insured party and City Council Related Party as set out above.

2.8 Long Term Lease

2.8.1 The Swallow Hill Community College's existing 125 year lease from LCC previously negotiated in 2013 and assigned to AET will be assigned to the Dixons Academies Charitable Trust Ltd on the transfer date.

3 Consultation and Engagement

3.1 Any required consultation will have been carried out by the Regional Schools Commissioner.

4 Equality and Diversity / Cohesion and Integration

- 4.1 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.
- 4.2 This report does not pertain to a Key or Major decision and the documents being negotiated are only for granting permission for the Academy to assign existing documents, therefore a further screening for this transfer is not considered to be required.

5 Council policies and City Priorities

- 5.1 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.
- 5.2 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.

6 Resources and value for money

- 6.1 LCC incurred extensive costs relating to legal, finance and project management for the original school to academy transfer.
- 6.2 Children & Families has again incurred costs in relation to the work stream associated with the assignment and novation of the existing documentation, the main cost being incurred from the PFI Contractor and their advisors for approving the Deed of Variation of the PFI Contract.
- 6.3 It should be noted that this assignment / Novation does not change the City Council’s obligation to manage the PFI contract. Due to Swallow Hill Community College being an earlier conversion, we do not have the opportunity to recover any of our costs for this ongoing management.

7 Legal Implications, Access to Information and Call In

- 7.1 Legal implications are outlined above in 2.0 Main Issues.
- 7.2 This is an Administrative Decision on the basis that this report relates only to the novation or assignment of existing documentation.
- 7.3 This report does not contain exempt information under Access to Information.

8 Risk Management

- 8.1 Negotiations around the transfer documents have been handled by 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.

9 Conclusions

9.1 The key documents are now agreed and ready for sealing/signing as appropriate.

10 Recommendations

It is recommended that the Deputy Director of Children and Families:

- Notes the negotiations held with Solicitors acting on behalf of AET, DfE, Dixons Academies Charitable Trust Ltd and PFI Consortium;
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11 Background documents

11.1 None.