

**Report of the Built Environment Lead**

**Report to the Deputy Director, Children and Families (Learning)**

**Date:** [3<sup>rd</sup> January 2020]

**Subject: Commercial Transfer Agreement – Hunslet St Mary’s C of E Primary School from Leeds City Council to the Collaborative Learning Trust**



Are specific electoral wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If yes, name(s) of ward(s): Hunslet and Riverside		
Has consultation been carried out?	<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
Will the decision be open for call-in?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, access to information procedure rule number:		
Appendix number:		

**Summary**

**1. Main issues**

- 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 Hunslet St Mary’s C of E Primary School (“Governing Body”) and (3) The Collaborative Learning Trust and agreed a commercial position in preparation for the academy transfer on 1st February 2020. 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 Hunslet St Mary’s C of E Primary School to academy status.

**2. Best Council Plan Implications** (click [here](#) for the latest version of the Best Council Plan)

- This is a statutory duty

**3. Resource Implications**

- 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.

## **Recommendations**

The Deputy Director, Learning is recommended to:

- a) Note the negotiations held with Solicitors acting on behalf of the Governing Body of Hunslet St Mary's C of E Primary School and The Collaborative Learning Trust;
- b) Give authority for the Commercial Transfer Agreement between Leeds City Council, the Governing Body of Hunslet St Mary's C of E Primary School and The Collaborative Learning Trust to be executed and completed to enable Hunslet St Mary's C of E Primary to open as an academy on 1<sup>st</sup> February or such later date advised by the DfE.

### **1. Purpose of this report**

- 1.1. The report provides a summary of negotiations to date, advises on issues and risks and requests the Deputy Director, Children and Families (Learning) to:
  - Note and approve the negotiations held with the Solicitors for the Governing Body of Hunslet St Mary's C of E Primary School and The Collaborative Learning Trust.
  - Approve the entering into and signing of the Commercial Transfer Agreement required to enable Hunslet St Mary's C of E Primary School to open as an academy on 1st February 2020 or such later date advised by the DfE.

### **2. Background information**

- 2.1. The Director of Children and Families received the Academy Order on the 31st July 2019 enabling Hunslet St Mary's C of E Primary School to convert to an Academy under Section 4 of the Academies Act 2010. The proposed conversion date is 1st February 2020.

### **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 31st July 2019, the Director of Children and Families received the academy order enabling Hunslet St Mary's C of E Primary School to convert to academy. The proposed conversion date is 1st February 2020.
- 3.2. As part of the conversion process for publically funded schools, a Commercial Transfer Agreement (CTA) has to be 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, as is the case at Hunslet St Mary's C of E Primary School. Note that the governing body of Hunslet St Mary's C of E Primary School has an interim executive board in place.
- 3.3. The Commercial Transfer Agreement deals with the transfer of the assets, staff and contracts from the Council to the academy trust as applicable. When a community school converts to academy status, the CTA provides for apportionments of payment of salaries, pension contributions, etc. and indemnities from both parties in relation to employment matters.
- 3.4. The standard form (which provides for extensive indemnities from the Council 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.

- 3.5. On the basis that Hunslet St Mary's C of E Primary School is Voluntary Aided School, all of the staff are employed by the Governing Body, therefore this particular CTA does not deal with the transfer of staff from the Council. It does, however, ensure that it is clearly documented that these liabilities sit with the Governing Bodies and not the Council and such liability should not fall on the Council on dissolution of the Governing Bodies on conversion.
- 3.6. It should be noted that it is not legally necessary for the Commercial Transfer Agreement to be entered into in order for the transfer to take place; 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 (as applicable).
- 3.7. Key issues that have been agreed are:
  - 3.7.1. What assets / contracts will transfer; and
  - 3.7.2. How historic liabilities will be dealt with.
- 3.8. All of the contracts that the Governing Body or the Council currently has in place in respect of the school will be assigned to The Collaborative Learning 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). Novation of that contract(s). For Council contracts, where this has not been achieved LCC will continue with the contract as agent for The Collaborative Learning Trust.
- 3.9. As Hunslet St Mary's C of E Primary School is a Voluntary Aided schools, the freehold of the school site (other than the playing field) is held by the Leeds Diocesan Board of Finance (the "Diocese"). On the conversion date the Diocese will enter into a church supplemental agreement with The Collaborative Learning Trust in relation to the school site. The freehold of the playing field is owned by the Council. On the conversion date the Council will grant a 125 year lease to The Collaborative Learning Trust in line with legislation.
- 3.10. There is a Children's Centre nursery is on the school land owned by the Diocese which is currently occupied by the Council. On the conversion date, The Collaborative Learning Trust shall enter into a lease with the Council in relation to the Children's Centre nursery. [It is understood that the Children's Centre nursery benefitted from Sure Start funding which would be subject to clawback should Children's Centre nursery close. It is considered that sufficient comfort is provided as the Council will have a lease for the remainder of the clawback period.]
- 3.11. It is understood that LBS carried out building works at the School in 2018. The Collaborative Learning Trust have been pushing a position whereby the Council would be responsible for rectifying any defects in respect of the building works for a period of 10 years following completion at the Council's cost and indemnify The Collaborative Learning Trust if it fails to do so. The team have taken instructions and have rejected this position. If the issue continues to be asserted by The Collaborative Learning Trust, the team will take further instructions and report the outcome.

## **4. Corporate considerations**

### **4.1. Consultation and engagement**

- 4.1.1. It should be noted that the 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.

4.1.3. Whilst the Council has no ability or rights to prevent the conversion from taking place, a number of stakeholders within the Council have been consulted as part of the conversion process including Finance, HR and Built Environment teams within Children and Families and also 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 31st July 2019, and both the Executive Member for Children and Families and local Ward Members have been informed and are aware of the conversion via a written briefing submitted on 20th of August 2019.

## **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 the 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 and Families and the changes to national policy and funding.

4.3.2. The Council has a duty to promote high standards and champion educational excellence. The relationship between the Council 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.

## **5. Climate Emergency**

5.1.1. This is a statutory duty

## **6. Resources, procurement and value for money**

6.1.1. The 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.

## **7. Legal implications, access to information, and call-in**

7.1.1. Legal implications are outlined above in 3.0 Main Issues.

7.1.2. This is an administrative decision. On the basis that the Council is not offering indemnities around staffing, there is only a very small risk that the Council could potentially be liable for future costs arising from Employment Tribunals should any arise. However this has been assessed against the impact of the conversion not proceeding or it proceeding without the Council entering into the Commercial Transfer Agreement, which is considered to be a

greater risk for the Council under the circumstances. It is in the Council's interests for the Commercial Transfer Agreement to be entered into to set out the formal transfer of the assets, contracts and staff (where applicable), and to give the Council some protection against future claims.

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

## **7.2. Risk management**

7.2.1. Negotiations around the Commercial Transfer Agreement have been handled by procurement 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 CTA.

## **8. Conclusions**

8.1. Under the circumstances, negotiations have progressed well and have been concluded – furthermore the relationship with The Collaborative Learning Trust and their advisors continues to be positive. Therefore the Commercial Transfer Agreement is agreed and ready for sealing/signing as appropriate.

## **9. Recommendations**

9.1. The Deputy Director, Learning is recommended to:

- Note the negotiations held with the Solicitors acting on behalf of the Governing Body of Hunslet St Mary's C of E Primary School and The Collaborative Learning Trust;
- Give authority for the Commercial Transfer Agreement between Leeds City Council, the Governing Body of Hunslet St Mary's C of E Primary School and The Collaborative Learning Trust to be executed and completed to enable Hunslet St Mary's C of E Primary School to open as an academy on 1st February 2020 or such later date advised by the DfE.

## **10. Background documents**

10.1. None.