

Commercial Transfer Agreement – Barwick in Elmet Church of England Voluntary Controlled Primary School to The Leeds Diocesan Learning Trust

Date: February 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 Barwick in Elmet Church of England (C of E) Voluntary Controlled (VC) Primary School (“Governing Body”) and (3) The Leeds Diocesan Learning Trust (the “Academy Trust”) and agreed a commercial position in preparation for the academy transfer on 1st March 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 Barwick in Elmet C of E (VC) 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 Leeds Diocesan Learning Trust;
- b) Gives authority for the CTA between Leeds City Council, the governing body of Barwick in Elmet C of E (VC) Primary School, and The Leeds Diocesan Learning Trust to be executed and completed to enable Barwick in Elmet C of E (VC) Primary School to open as an academy on 1st March 2024 or such later date advised by the DfE; and
- c) Gives authority for any other necessary action to be taken to affect 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 4 July 2023 the Director of Children and Families received the academy order enabling Barwick in Elmet C of E (VC) Primary School to convert to an academy. The proposed conversion date is 1st March 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 City Council'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, Barwick in Elmet C of E (VC) Primary School will open as an academy on 1st March 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 proposal is to give authority for the CTA to be executed and completed, which in turn will help enable Barwick in Elmet C of E (VC) Primary School to open as an academy on 1st March 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: Harewood

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. There is no set guidance on how to quantify what appropriate consultation means in terms of duration and consultees. All interested parties should, however, be provided with opportunity to respond and ask questions.
- 6 Whilst the City Council has no ability or rights to prevent the conversion from taking place, several stakeholders within the City Council 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 4 July 2023, 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 8 September 2023.

What are the resource implications?

- 7 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. However, it has been agreed that The Leeds Diocesan Learning Trust will pay £5,775 towards the legal fees that have been incurred on this non-PFI school conversion.

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

- 8 This is a Significant Operational Decision on the basis that there is little risk and that the transfers will proceed even if the City Council does not enter into the Agreement. 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 (where applicable), and to give the Council some protection against future claims.
- 9 Negotiations around the transfer documents have been handled by external legal and contract specialists via 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?

- 10 As part of the conversion process for publicly funded schools, a CTA is entered into between the relevant academy trust and the City Council. 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 Barwick in Elmet C of E (VC) Primary School.
- 11 The CTA deals with the transfer of the assets, staff, and contracts from the Council and/or the governing body (where the school is in a Foundation Trust or is a Voluntary Aided (VA) school) to the new Academy Trust (where applicable). When a community school converts to Academy status, the CTA provides for apportionments of payment of salaries, pension contributions, etc. and indemnities from the parties in relation to employment matters.
- 12 The standard form of CTA (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.
- 13 As noted above, whilst it is not legally necessary for the CTA to be entered into for the transfer to take place, it is in the City Council's interests for the agreement to be entered into to set out the formal transfer of the assets, contracts, and staff (as applicable).
- 14 Key issues that have been agreed are:
 - a) What assets / contracts will transfer.
 - b) How historic liabilities will be dealt with.

- 15 All the contracts that the governing body or the City Council currently has in place in respect of the school will be assigned to The Leeds Diocesan 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). For City Council contracts, where this has not been achieved, the City Council will continue with the contract as agent for The Leeds Diocesan Learning Trust.
- 16 This is a voluntary controlled school for which the school site and playing fields are owned by Leeds City Council. The legal transfer of the school site will be via a transfer deed to the Leeds Diocesan Board of Finance. The playing fields will be leased to The Leeds Diocesan Learning Trust via a 125-year lease. These will be approved and signed off by the Director of City Development under separate report.
- 17 This report does not contain exempt information under Access to Information.
- 18 An Equality, Diversity, Cohesion and Integration Screening is not necessary as the City Council is not the decision maker for the academisation taking place.

Options, timescales and measuring success

What other options were considered?

- 19 The transfer will proceed even if the Council does not enter into the CTA. There are no alternative options.

How will success be measured?

- 20 The academy transfer/conversion will take place on 1st March 2024.

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

- 21 The academy transfer/conversion will take place on 1st March 2024. The City Council will arrange for the signing/sealing of the CTA to take place prior to the conversion date.

Appendices

- None

Background papers

- None