

**Report of Asset Management Service**

**Report to Corporate Governance and Audit Committee**

**Date: 19<sup>th</sup> March 2013**

**Subject: School Academy and Trust Conversions**

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 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 report sets out arrangements that are in place to ensure due diligence for the land transfers associated with the conversions of schools to academies or trusts, particularly in relation to governance, insurance and financial management.

**Recommendations**

Corporate Governance and Audit Committee is requested to note the contents of the report.

**1 Purpose of this report**

1.1 The report provides details of the due diligence processes undertaken when dealing with land issues arising from the conversions of schools to academies or trusts, particular around governance, insurance and financial management.

**2 Background information**

2.1 The Council has provided property leases on a 'less than best consideration' (actually nil consideration) basis to schools becoming academies. This is in

pursuance of legislation contained in the Academies Act 2010. An academy gains a 125 year lease of a school site from the local authority at nil consideration.

- 2.2 A report of the Chief Executive of Education Leeds to the Executive Board on 14 December 2011 set out the Council's obligations under this legislation.
- 2.3 The Education and Inspections Act 2006, the Schools Standards and Framework Act 1998 and The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 sets out the basis upon which assets are to be transferred from a Local Authority to a school seeking trust or foundation status. The Council transfers the freehold interest at nil consideration to a school becoming a trust.
- 2.4 A report of the Chief Executive of Education Leeds to the Executive Board on 5 September 2012 set out the Council's obligations under this legislation.
- 2.5 Corporate Governance and Audit Committee has requested a report setting out the arrangements that are in place when assets are transferred, particularly in relation to governance, insurance and financial management.

### **3 Main issues**

#### **3.1 Governance**

- 3.1.1 Maintained schools may be converted into academies by an Academy Order made under section 4 of the Academies Act 2010, provided that the governing body of the school has applied under section 3 or if the school is eligible for intervention under sections 60-62 of the Education and Inspections Act 2006.
- 3.1.2 Under the School Standards & Framework Act 1998 and The Schools Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 the Council is required to transfer land (other than playing fields) which is held or used by a local authority for the purposes of the school to the trustees of a school which has changed category to a voluntary aided school or a foundation school. Land includes the building structures attached to it.
- 3.1.3 The local authority is unable to challenge a transfer under the Academies Act 2010 as long as it has been applied for by a school's governing body and has been approved by the Secretary of State for Education or has been directed by the Secretary of State for Education. 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. nor can it oppose an application by a diocese.
- 3.1.4 Schools which intend to convert to trust or academy status notify Children's Services. Instructions are sent to Development Department which, in turn, instructs Legal Services.
- 3.1.5 Development Department and Legal Services check site and title issues. Legal Services incorporates within any documentation provisions to protect the rights of third parties which may be in occupation of school sites at the point of transfer. Where appropriate caretaker's houses which are located on the edges of sites are

made subjects of separate leases enabling them to revert to the Council should they become vacant. This would facilitate marketing and sale. Endeavours are made to ensure that the Council is not left with inaccessible areas of land, which could form a maintenance liability, after a transfer has taken place.

## 3.2 **Insurance**

- 3.2.1 Schools which convert to academy status are responsible for their own insurance.
- 3.2.2 Schools which convert to trust status remain insured by the Council. The Council will continue to insure the premises on behalf of a trust and recharge the cost of premiums.

## 3.3 **Financial Management**

- 3.3.1 The land to be leased to an academy or trust school will, in usual circumstances, include the land and buildings used by the school prior to the consultation period.

## 3.4 **Academies:**

- 3.4.1 Academies can take two forms – a sponsored academy or a converter academy.
- 3.4.2 ***Sponsored academies:***
- 3.4.3 In the case of a sponsored academy the DfE identifies a school it deems to be in need of improvement by way of conversion. The DfE notifies the local authority and both the DfE and the local authority inform the school, outlining the local authority support role.
- 3.4.4 Children's Services Governor Support Team updates cross-departmental electronic correspondence to show a school in process. A spreadsheet is sent to the Director of Children's Services and is included on a meeting agenda for briefing the Executive Member for Children's Services (every 2 weeks).
- 3.4.5 Governor Support Team issues notification of a school in process to: Finance; School Improvement; Built Environment; Capacity Planning and Sufficiency; Legal Services; City Development; PPPU procurement; Early Years ; Human Resources schools; Special Educational Needs.
- 3.4.6 The Governing Body identifies a sub-group for the sponsor selection process supported by the School Improvement Team. The Governing Body approves a selected sponsor.
- 3.4.7 The Secretary of State approves a sponsor, issues an Academy Order (with target date for conversion).
- 3.4.8 The local authority processes a lease of the land and assets.
- 3.4.9 The local authority gathers land ownership and registration documentation. It also conducts an initial case meeting regarding any land and asset implications. (Work is co-ordinated with PPPU on the commercial transfer agreement if required (PFI schools)).

3.4.10 Within the project team different issues are dealt with to facilitate a conversion as follows:

- BUILT ENVIRONMENT - in terms of land issues the Built Environment Lead will commission City Development to progress the collation of ownership and registration documentation and copy Legal Services (Property and Finance) in to forewarn them that the process has begun. (Built Environment also commissions PPPU's legal section to prepare a CTA if one is required.)
- CITY DEVELOPMENT - commissions Legal Services (Property and Finance) to carry out the drafting of the lease and any other transfer documents as required. City Development will also write to local ward members to notify them of a proposed lease or transfer. The lease or transfer will be submitted to the City Development Panel for approval.
- LEGAL SERVICES - each legal team deals with its own area. Employment and Education deals with the transfer of staff and compliance with TUPE. Property and Finance deals with all property and land related issues. PPPU deals with all contract and commercial documentation. Each team is commissioned separately.
- HR SERVICES - is involved in Academy conversions to varying degrees depending upon whether the school has purchased a service and at what level. If a school does not purchase the HR service the Head of HR will write to the school to outline its legal duties under TUPE and collate and transport any personnel files. BSC will liaise directly in relation to payroll.
- FINANCE - must calculate a school's balances at the point of transfer. It monitors the spending up to the point of conversion, recovers all LCC finance documentation and monies where necessary, calculates re-coupmnt and completes returns for EFA.
- EARLY YEARS - if there is a Children's Centre on site the Early Years team will negotiate with the sponsor to establish the degree of involvement in the future running of the Centre. This will feed into HR and land agreements.
- COMPLEX NEEDS - if a school hosts either resourced or partnership provision for students with disabilities or learning difficulties the Complex Needs Service will negotiate the continuation of the service with the sponsor. This will feed into HR and land agreements.

3.4.11 The local authority (School Improvement) signs the Academy Action Plan agreement.

3.4.12 The Secretary of State approves the funding agreement and the sponsor becomes operational. The date of this approval ties in with the date the land and property is transferred to the academy.

### 3.4.13 **Converter academies:**

- 3.4.14 In the case of a converter academy, a Governing Body makes a decision to convert and passes a resolution and informs the local authority of the intention to convert.
- 3.4.15 Children's Services Governor Support Team updates cross-departmental electronic correspondence to show a school in process. A spreadsheet is sent to the Director of Children's Services and is included on a meeting agenda for briefing the Executive Member for Children's Services (every 2 weeks).
- 3.4.16 Governor Support Team issues notification of a school in process to: Finance; School Improvement; Built Environment; Capacity Planning and Sufficiency; Legal Services; City Development; PPPU procurement; Early Years ; Human Resources schools; Special Educational Needs.
- 3.4.17 The School registers with the DfE.
- 3.4.18 The School undertakes a statutory consultation (with staff, parents, pupils, interested parties,etc.).
- 3.4.19 The school governing body passes a resolution in favour of conversion.
- 3.4.20 The Secretary of State approves the academy proposal and issues an Academy Order.
- 3.4.21 A school receives from the DfE a £25,000 grant to cover costs associated with a conversion and finalises documents based on DfE model. The local authority receives an information request from solicitors acting on behalf of a school.
- 3.4.22 The local authority processes a lease of the land and assets.
- 3.4.23 The local authority gathers land ownership and registration documentation. It also conducts an initial case meeting regarding any land and asset implications. (Work is co-ordinated with PPPU on the commercial transfer agreement if required (PFI schools).
- 3.4.24 Within the project team different issues are dealt with to facilitate a conversion as follows:
- BUILT ENVIRONMENT - in terms of land issues the Built Environment Lead will commission City Development to progress the collation of ownership and registration documentation and copy Legal Services (Property and Finance) in to forewarn them that the process has begun. (Built Environment also commissions PPPU's legal section to prepare a CTA if one is required.)
  - CITY DEVELOPMENT - commissions Legal Services (Property and Finance) to carry out the drafting of the lease and any other transfer documents as required. City Development will also write to local ward members to notify them of a proposed lease or transfer. The lease or transfer will be submitted to the City Development Panel for approval.

- LEGAL SERVICES - each legal team deals with its own area. Employment and Education deals with the transfer of staff and compliance with TUPE. Property and Finance deals with all property and land related issues. PPPU deals with all contract and commercial documentation. Each team is commissioned separately.
- HR SERVICES - is involved in Academy conversions to varying degrees depending upon whether the school has purchased a service and at what level. If a school does not purchase the HR service the Head of HR will write to the school to outline its legal duties under TUPE and collate and transport any personnel files. BSC will liaise directly in relation to payroll.
- FINANCE - must calculate a school's balances at the point of transfer. It monitors the spending up to the point of conversion, recovers all LCC finance documentation and monies where necessary, calculates re-coupmnt and completes returns for EFA.
- EARLY YEARS - if there is a Children's Centre on site the Early Years team will negotiate with the sponsor to establish the degree of involvement in the future running of the Centre. This will feed into HR and land agreements.
- COMPLEX NEEDS - if a school hosts either resourced or partnership provision for students with disabilities or learning difficulties the Complex Needs Service will negotiate the continuation of the service with the sponsor. This will feed into HR and land agreements.

3.4.25 A school submits its funding agreement to DfE and identifies a target opening date.

3.4.26 The Secretary of State approves the funding agreement and the sponsor becomes operational. The date of this approval ties in with the date the land and property is transferred to the academy.

3.4.27 ***Post-conversion:***

3.4.28 An academy will be responsible for insuring the school and for internal and external repair and maintenance. There is a bar on assignment of the lease unless with the consent of the Secretary of State. Any lease will limit a site to use as a non profit making academy and state that, if during the term of the lease the land ceases to be used as an academy, it will revert to the Council.

3.4.29 In the cases of PFI schools converting to academy status, the schools remain in Council ownership and are leased to the PFI company for the term of the PFI contract. Conversion can not be prevented just because they are PFI.

3.4.30 For schools that form part of a closed Private Finance Initiative (PFI) contract, becoming an academy requires additional documentation to be put in place, and amendments made to the Department's standard form funding agreement and articles of association to take account of the underlying PFI structure and the terms of the PFI project agreement.

3.4.31 An Academy will be responsible for insuring a school and for internal and external repair and maintenance of the school (in the case of a PFI school, the Academy will only be responsible for repair and maintenance on expiry of the PFI contract, but will remain liable for the cost of rectifying deliberate damage / vandalism for the duration of the PFI contract).

### 3.5 **Trusts:**

3.5.1 In the case of a trust, a Governing Body makes a decision to convert and passes a resolution and informs the local authority of the intention to convert. The statutory process is initiated. The local authority is informed through an initial consultation process of the intention to convert and Children's Services's Head of Learning Improvement meets with representatives of the school to consider the benefits of conversion.

3.5.2 Children's Services Governor Support Team updates cross-departmental electronic correspondence to show a school in process. A spreadsheet is sent to the Director of Children's Services and is included on a meeting agenda for briefing the Executive Member for Children's Services (every 2 weeks).

3.5.3 Governor Support Team issues notification of a school in process to: Finance; School Improvement; Built Environment; Capacity Planning and Sufficiency; Legal Services; City Development; PPPU procurement; Early Years ; Human Resources schools; Special Educational Needs.

3.5.4 If, following initial consultation, a school decides to proceed it must advise the DfE and the local authority.

3.5.5 No information required from the local authority at this stage (very few proposers have been appointing solicitors to pursue land or property issues).

3.5.6 The local authority processes a lease of the land and assets.

3.5.7 The local authority gathers land ownership and registration documentation. It also conducts an initial case meeting regarding any land and asset implications. (Work is co-ordinated with PPPU on the commercial transfer agreement if required (PFI schools).

3.5.8 Within the project team different issues are dealt with to facilitate a conversion as follows:

- BUILT ENVIRONMENT - in terms of land issues the Built Environment Lead will commission City Development to progress the collation of ownership and registration documentation and copy Legal Services (Property and Finance) in to forewarn them that the process has begun. (Built Environment also commissions PPPU's legal section to prepare a CTA if one is required.)
- CITY DEVELOPMENT - commissions Legal Services (Property and Finance) to carry out the drafting of the lease and any other transfer documents as required. City Development will also write to local ward members to notify them of a proposed

lease or transfer. The lease or transfer will be submitted to the City Development Panel for approval.

- LEGAL SERVICES - each legal team deals with its own area. Employment and Education deals with the transfer of staff and compliance with TUPE. Property and Finance deals with all property and land related issues. PPPU deals with all contract and commercial documentation. Each team is commissioned separately.
- HR SERVICES - the transfer of staff is not covered by TUPE but instead the School Organisation Regulations. Only BSC is involved for payroll.
- FINANCE - not necessary as a trust continues to be maintained by a local authority.
- EARLY YEARS - if there is a Children's Centre on site the Early Years team will negotiate with the sponsor to establish the degree of involvement in the future running of the Centre. This will feed into HR and land agreements but depends upon any land claim from the trustees.
- COMPLEX NEEDS - if a school hosts either resourced or partnership provision for students with disabilities or learning difficulties the Complex Needs Service will negotiate the continuation of the service with the sponsor. This will feed into HR and land agreements but depends upon any land claim from the trustees.

3.5.9 Once the period for representation has passed the governing body will decide whether to proceed to trust status with a right to refer to the School Adjudicator if there are objections.

3.5.10 A Governing Body informs a local authority and the Secretary of State (to include whether there are any land and asset claims). It is expected that formal transfer agreements will be completed within six months of the effective date of transfer.

**3.5.11 *Post conversion:***

3.5.12 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.

3.5.13 In the cases of PFI schools wishing to establish a trust, 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 exists - 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.



## 3.6 **Other protections**

- 3.6.1 A trust school can dispose of the land and buildings subject to strict provisions. The disposal of land by a trust is governed by legislation and DfE guidelines. A trust has to notify the council of a disposal under the School Standards and Framework Act and the procedure for how that is dealt with is contained in the guidelines as follows: “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”.
- 3.6.2 The local authority can object to proposals if it feels 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.
- 3.6.3 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.
- 3.6.4 A trust school must inform the local authority of its plans to dispose of any non-playing field land.
- 3.6.5 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.

## 4 **Corporate Considerations**

### 4.1 **Consultation and Engagement**

- 4.1.1 All consultations regarding a proposed academy or trust conversion are undertaken by the governing body of the proposed academy or 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 informs the Council when it proposes to establish an academy or trust in order to commence the transfer process. When the Council is made aware it will inform the following:

- a) the Ward Members for the ward in which the trust school is situated.
- b) the Director of Children's Services
- c) the Executive Member for Children's Services.

## **4.2 Equality and Diversity / Cohesion and Integration**

4.2.1 There are no specific implications for equality and diversity / cohesion and integration.

## **4.3 Council policies and City Priorities**

4.3.1 The report relates directly to Transfer of Council owned land and buildings to trust schools approved at Executive Board in September 2012 and the Transfer of Council owned land and buildings to academies approved at Executive Board in December 2011.

## **4.4 Resources and value for money**

4.4.1 A local authority must transfer properties either by way of 125 year leases (academies) or freehold (trusts) to schools wishing to convert.

4.5 Leeds City Council's asset register values for the schools which have already converted are shown in the appendix.

4.6 An academy becomes autonomous of local authority finances (see 3.4.31 above), though can purchase services from a local authority.

4.7 A trust remains a local authority maintained school (see 3.5.12 above).

## **4.8 Legal Implications, Access to Information and Call In**

4.8.1 This report is not eligible for Call In.

## **4.9 Risk Management**

4.9.1 There are no risk management issues in this report.

## **5 Conclusions**

5.1 A thorough appraisal system is in place for all school site transfer projects, consultations are conducted throughout the conversion process. Safeguards are built in to the legislation to protect education (including operational) interests. Ultimately a local authority cannot prevent a school converting to trust or academy status, nor a faith school from claiming land at a faith school, if correct procedures have been followed.

## **6 Recommendations**

6.1 Corporate Governance and Audit Committee is requested to note the contents of the report.

## **7 Background documents<sup>1</sup>**

- 7.1 Report of the Chief Executive of Education Leeds to the Executive Board on 14 December 2011 and report of the Chief Executive of Education Leeds to the Executive Board on 5 September 2012.

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<sup>1</sup> The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.