

Public Document Pack

Executive Board

Thursday, 13 June 2019

Time: 6.00 pm

Venue: Meeting Room A

Address: Blackburn Town Hall

AGENDA

Information may be provided by each Executive Member relating to their area of responsibility

- 8.1 **Update report re Statutory Site Transfer of Blackburn
Central High School with Crosshill
Update report re Statutory Site Transfer BCHS with 1 - 12
Crosshill
Appendix 1
Appendix 2**

Date Published: Wednesday, 12th June 2019
Denise Park, Chief Executive

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EXECUTIVE BOARD DECISION



REPORT OF: Executive Member of Children's Services Young People & Education

LEAD OFFICERS: Director of Children's Services & Education

DATE: 13 June 2019

PORTFOLIO/S AFFECTED: Children's Services, Young People & Education

WARD/S AFFECTED: Blackburn Central

KEY DECISION: YES ☒ NO ☐

SUBJECT: Update report re Statutory Site Transfer of Blackburn Central High School with Crosshill

1. EXECUTIVE SUMMARY

At Executive Board on 11th April, members requested further assurances regarding representations made at that meeting and an update on the negotiations and agreements relating to this matter. Further enquiries have been made regarding the Academy Order issued by the Secretary of State in September 2018 giving permission for Blackburn Central High School with Crosshill to become an academy sponsored by Champion Education Trust (CET). The Department for Education (DfE) have confirmed that *"on the evidence provided [they are] satisfied that the governing body was legally constituted at the point the school applied to become an academy. Therefore, the application and academy order is valid"*. Given that the Academy order is still in effect and has not been revoked or withdrawn, officers from Schools and Education have been working with school colleagues and CET to ensure that the conversion to academy is completed as required. This report is the follow-up report on this matter which is required for authorisation to be given to formalise the necessary documentation (see original report and decision of 11 April 2019).

2. RECOMMENDATIONS

That the Executive Board authorises:

2.1 The transfer of the Council's freehold interest in the site, which includes the Buildings, associated hard play areas and playing fields to the CET on the commencement date in accordance with Schedule 6 para 2 of The School Organisation (Prescribed Alterations to Maintained Schools) Regulations 2007. This relates to the area of land shown, edged red on the attached plan in Appendix 1.

2.2 Officers to enter into the Commercial Transfer Agreement (CTA) between the Council, the Governing Body and the CET.

2.3 Officers to execute all necessary documents and Private Finance Initiative (PFI) agreements in respect of the conversion to an Academy Trust to deal with the PFI status of the school.

3. BACKGROUND

Full details of the history of this matter are set out in the previous report on this matter presented to Exec Board on 11th April (see attached background papers).

4. KEY ISSUES & RISKS

Full details of the history of this matter are set out in the previous report on this matter presented to Exec Board on 11th April (see attached background papers). Current matters to note are as follows:

- 4.1 As noted in that report, the beneficial interest in the land has already automatically vested in the Trust, but the legal interest has not been formally transferred yet; this must now be done. This land would then have to transfer from the foundation trust to CET and the Secretary of State could make mandatory directions in relation to land transfers if necessary to achieve this. In order to complete all the necessary transfers as quickly and efficiently as possible, all parties have agreed that the Council can transfer the land direct to CET, with the Foundation Trust as a party to that transfer. The date for this transfer will be aligned with the conversion date to remove complications that could otherwise arise.
- 4.2 The parties have negotiated and agreed the terms of the proposed Commercial Transfer Agreement (CTA) to deal with existing commercial arrangements which need to transfer to the new school. The date for execution of the CTA will also be aligned with the conversion date.
- 4.3 BCHS with Crosshill is a PFI school and the PFI contract still has 19 years to run. Officers have negotiated with the PFI lender and appropriate revised agreements (including the Deed of variation and Principal Agreement) have been drafted to deal with the conversion of BCHS with Crosshill to an Academy Trust. The PFI lender's legal advisor now require sight of the signed Executive Board decision in order to execute these documents
- 4.4 The Local Authority has now received written confirmation from the DfE that they are satisfied *"that the governing body was legally constituted at the point the school applied to become an academy. Therefore, the application and academy order is valid"*. As the Academy Order is valid, the Local Authority must now take the necessary steps in order to complete the conversion process.

5. POLICY IMPLICATIONS

5.1 Officers will continue to liaise with other Departments to ensure relevant policies on community use, retention of assets and disposal are adhered to.

6. FINANCIAL IMPLICATIONS

6.1 The Academies Act 2010 does not place any obligation on the Local Authority to cover any legal and other professional costs incurred by the Academy Trust in completing the transfer. The Academy Trust will be eligible for a £25k payment from the Department of Education to assist with their costs and there is an additional grant of up to £12k for PFI schools.

6.2 There are additional costs relating to PFI schemes. PFI Contractor legal fees and drafting of the deed of variation is estimated at £12k. It has been agreed that the Authority will pass these costs over to the school.

6.3 The Council receives no additional income to meet the costs of the conversion. Due to the complexity of a PFI school converting to an Academy it has been agreed that the Authority will levy a cost recovery contribution from the school for Page 2 of £7,500.00.

7. LEGAL IMPLICATIONS

7.1 The current contractual arrangements between the Local Authority and the Special Purpose Vehicle (SPV) are set out in a PFI Project Agreement. There is also a Governing Body Agreement between the Local Authority and the School within which the school is legally committed to pay a contribution to the Unitary Charge payable to the SPV.

7.2 The Academy conversion will involve the signing of a suite of legal documents which are the responsibility of the Local Authority, School and / or DfE.

These include:

- The Funding Agreement between the Secretary of State and the Academy
- The Freehold land transfer between the Local Authority, the Governing Body and the CET
- The CTA
- The School Agreement
- The Principal Agreement
- The Deed of Variation to the Project Agreement

7.3 Upon conversion to an Academy the school will cease to be funded by the Local Authority. The Governing Body will be dissolved and the Academy Trust will be directly funded from the Department for Education and enter into a "Funding Agreement". The Authority will enter into a new agreement with the school known as the "School Agreement" which will include detailed provisions where risks and obligations are transferred from the Authority to the Academy.

7.4 Under Schedule 6 para 2 of The School Organisation (Prescribed Alterations to Maintained Schools) Regulations 2007, the local authority is obliged to transfer its interest in the whole school site to the Trust for nil consideration.

7.5 The CTA will deal with assets, contracts and certain liabilities to be transferred to the CET.

7.6 Under the current PFI arrangement the Local Authority entered into a contract with the PFI SPV for the design, construction and ongoing maintenance of the school. This contract is known as the PFI Project Agreement. Both parties assume a number of detailed contractual obligations designed to reflect the long-term nature of the PFI relationship. The Local Authority has mitigated some of the risks and obligations they assume under the Project Agreement by entering into a Governing Body Agreement with the school. The School's Agreement places an obligation on the Academy to pay the Authority a sum in return for the PFI services which is a contribution to the Local Authority's funding of the unitary charge. It also places obligations on the Academy not to act so as to place the Authority in breach of the Project Agreement. The School Agreement is to be entered into between the Local Authority and the Academy and replaces the current Governing Body Agreement between the Local Authority and the School.

7.7 The Principal Agreement will provide the Authority with comfort in the event that the Academy Trust fails to perform its obligations under the School Agreement. A tripartite agreement will be entered into between the DfE, the Local Authority and the Academy. This agreement acknowledges that the Authority continues to be liable to the PFI SPV under the Project Agreement in the same way it was liable prior to conversion, but allows the Authority to approach the DfE where the Academy is in breach of its obligations under the School Agreement.

7.8 The Project Agreement will be amended by way of a deed of variation which will include:

- Amending the school name and the "related party" provisions in the Project Agreement to recognise the change in status of the school to an Academy.
- Adding the Academy and its officers onto the project insurances as named insured parties.

8. RESOURCE IMPLICATIONS

8.1 Resource implications will be met from within the Schools and Education portfolio. There will be a requirement for support from Legal and Procurement the provisional costs of which are indicated at 6 above.

9. EQUALITY AND HEALTH IMPLICATIONS

Please select one of the options below. Where appropriate please include the hyperlink to the EIA.

Option 1 ☒ Equality Impact Assessment (EIA) not required – the EIA checklist has been completed.

Option 2 ☐ In determining this matter the Executive Member needs to consider the EIA associated with this item in advance of making the decision. *(insert EIA link here)*

Option 3 ☐ In determining this matter the Executive Board Members need to consider the EIA associated with this item in advance of making the decision. *(insert EIA attachment)*

10. CONSULTATIONS

Consultations to support the Academy conversion are the responsibility of the school's Governing Body.

11. STATEMENT OF COMPLIANCE

The recommendations are made further to advice from the Monitoring Officer and the Section 151 Officer has confirmed that they do not incur unlawful expenditure. They are also compliant with equality legislation and an equality analysis and impact assessment has been considered. The recommendations reflect the core principles of good governance set out in the Council's Code of Corporate Governance.

12. DECLARATION OF INTEREST

All Declarations of Interest of any Executive Member consulted and note of any dispensation granted by the Chief Executive will be recorded in the Summary of Decisions published on the day following the meeting.

VERSION:	1
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CONTACT OFFICER:	Carol Grimshaw
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DATE:	12 June 2019
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BACKGROUND PAPER:	Executive Board Decision paper (dated 14 March 2019), considered at Executive Board on 11 April 2019
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EXECUTIVE BOARD DECISION

REPORT OF:	Executive Member for Children's Services Young People & Education
LEAD OFFICERS:	Director of Children's Services (Please Select)
DATE:	14 March 2019

PORTFOLIO/S AFFECTED:	Children's Services, Young People & Education	
WARD/S AFFECTED:	Blackburn Central	(Please Select...)
KEY DECISION:	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	

SUBJECT: Statutory Site Transfer of Blackburn Central High School with Crosshill

1. EXECUTIVE SUMMARY

On the 20th September 2018 Blackburn with Darwen Borough Council received formal notification from the Secretary of State for Education giving permission for Blackburn Central High School with Crosshill to become an academy sponsored by Champion Education Trust (CET). The sponsorship by CET has the full support of the Department for Education (DfE). Officers from Schools and Education are working with school colleagues and CET to ensure the proposed date for conversion of 1st May 2019 is met.

2. RECOMMENDATIONS

That the Executive Board approves:

2.1 The transfer of the Council's freehold interest in the site, which includes the Buildings, associated hard play areas and playing fields to the Trust on its commencement date (1st May 2019), in accordance with Schedule 6 para 2 of The School Organisation (Prescribed Alterations to Maintained Schools) Regulations 2007. This relates to the area of land shown, edged red on the attached plan in Appendix 1.

2.2 Officers to negotiate and enter into the Commercial Transfer Agreement (CTA) between the Council, the Governing Body and the CET.

2.3 Officers to negotiate and enter into revised Private Finance Initiative agreements in respect of the conversion to an Academy Trust to deal with the PFI status of the school.

3. BACKGROUND

Blakewater College secured foundation status in the summer of 2009. During this time the school was part of the reorganisation proposals under the Councils BSF Programme with the proposal for relocation to a new site, which would be developed under PFI arrangements. The new site was a Council owned site which was previously used as a golf driving range on Haslingden Road, Blackburn. At the time of establishing foundation status the Council and trustees agreed to delay the transfer of the then school site to the trustees in light of the impending move to the new site. This

agreement intended to negate the requirement for another subsequent transfer once the new PFI school was constructed. In 2012 Blakewater College and Crosshill special co-located to the new PFI site and became known as Blackburn Central High School with Crosshill (BCHS). Whilst the beneficial interest in the land automatically vested in the trust at the date it established a foundation, due to an oversight the legal interest was not formally transferred once the school moved to the PFI site. It is the Councils intention to complete this transfer to align with the schools conversion to academy status.

Blackburn Central High School with Crosshill is proposing to convert to academy status on the 1st May 2019 under the sponsorship of Champion Education Trust. The Board of Directors will be responsible for the key strategic decisions relating to Blackburn Central High School with Crosshill. The school will have a local governing body that reports into the multi academy trust.

3.2 Under the Academies Act 2010, the Council is required to transfer any land and building related assets wholly or mainly used for the purposes of a maintained school to the academy trust subject to the approval of the Executive Board.

3.3 Blackburn Central High School with Crosshill is a PFI school and therefore subject to a Private Finance Initiative contract with a private sector contractor. Appropriate legal documents have been developed by the Department for Education to help address the additional complexities which can arise when a PFI school converts to an academy. The DfE have stated that converting to an academy is not an opportunity for a school to extricate itself from a PFI agreement. Following the conversion the Local Authority will still be required to manage the PFI contract for the remaining concession. In the case of Blackburn Central High School with Crosshill this is 19 years.

4. KEY ISSUES & RISKS

4.1 Schedule 1 to the Academies Act 2010 enables the Trustees and their appointed consultants to request the areas they feel suitable for school purposes. This schedule also enables the Secretary of State to make a scheme in relation to land (i.e. to make mandatory directions in relation to the transfer of land to the Academy Trust) in line with the Trustees' requirements. The Council is not able to retain any part of the site area outlined in Appendix 1, and therefore must transfer those areas requested. The prescribed form of transfer required by the DfE for such transfers does provide some protection to the Council in that the land and or buildings cannot be disposed of or used for non-educational purposes without the Council's consent.

4.2 The contractual arrangements between the Authority and the Academy Trust will need to be formalised by a School Agreement, which will replace the existing Governing Body Agreement between the Authority and the School. To ensure for the benefit of the Local Authority that its liabilities to the Project Company will not be increased by virtue of the PFI School becoming an academy, the Secretary of State enters into a separate contract called (a Principle Agreement) with the Authority and the Academy Trust. The Authority will also need to enter into a deed of variation with the Project Company to vary the terms of the PFI Project Agreement. This is to recognise the interests of the Academy Trust in place of the Governing Body and also address any other consequences arising from the conversion.

4.3 Transfer of staff to the Academy Trust will be subject to a Transfer of Undertakings Protection of Employment (TUPE) process. As the staff are not Council employees the Authority has very little involvement.

5. POLICY IMPLICATIONS

5.1 Officers will continue to liaise with other Departments to ensure relevant policies on community use, retention of assets and disposal are adhered to

6. FINANCIAL IMPLICATIONS

6.1 The Academies Act 2010 does not place any obligation on the Local Authority to cover any legal and other professional costs incurred by the Academy Trust in completing the transfer. The Academy Trust will be eligible for a £25k payment from the Department of Education to assist with their costs and there is an additional grant of up to £12k for PFI schools.

6.2 There are additional costs relating to PFI schemes. PFI Contractor legal fees and drafting of the deed of variation is estimated at £12k. It is the intention of the Authority to pass these costs over to the school.

6.3 The Council receives no additional income to meet the costs of the conversion. Due to the complexity of a PFI school converting to an Academy it is proposed the Authority levy a cost recovery contribution from the school for the sum of £7,500.00.

7. LEGAL IMPLICATIONS

7.1 The current contractual arrangements between the Local Authority and the Special Purpose Vehicle (SPV) are set out in a PFI Project Agreement. There is also a Governing Body Agreement between the Local Authority and the School within which the school is legally committed to pay a contribution to the Unitary Charge payable to the SPV.

7.2 The Academy conversion will involve the signing of a suite of legal documents which are the responsibility of the Local Authority, School and / or DfE.

These include:

- The Funding Agreement between the Secretary of State and the Academy
- The Lease between the Local Authority and the Academy
- The Asset Transfer Agreement
- The School Agreement
- The Principal Agreement
- The Deed of Variation to the Project Agreement

7.3 Upon conversion to an Academy the school will cease to be funded by the Local Authority. The Governing Body will be dissolved and the Academy Trust will be directly funded from the Department for Education and enter into a "Funding Agreement". The Authority will enter into a new agreement with the school known as the "School Agreement" which will include detailed provisions where risks and obligations are transferred from the Authority to the Academy.

7.4 Schedule 6 para 2 of The School Organisation (Prescribed Alterations to Maintained Schools) Regulations 2007, the local authority is obliged to transfer its interest in the whole school site to the Trust for nil consideration.

7.5 The Asset Transfer Agreement will deal with assets, contracts and certain liabilities to be transferred to the Academy.

7.6 Under the current PFI arrangement the Local Authority entered into a contract with the PFI SPV for the design, construction and ongoing maintenance of the school. . This contract is known as the PFI Project Agreement. Both parties assume a number of detailed contractual obligations designed to reflect the long-term nature of the PFI relationship. The Local Authority has mitigated some of the risks and obligations they assume under the Project Agreement by entering into a Governing Body Agreement with the school. The School's Agreement places an obligation on the Academy to pay the Authority a sum in return for the PFI services which is a contribution to the Local Authority's funding of the unitary charge. It also places obligations on the Academy not to act so as to place the Authority in breach of the Project Agreement. The School Agreement is to be entered into between the Local Authority and the Academy and replaces the current Governing Body Agreement between the Local Authority and the School.

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- 7.8 The Project Agreement will be amended by way of a deed of variation which will include:
- Amending the school name and the "related party" provisions in the Project Agreement to recognise the change in status of the school to an Academy.
 - Adding the Academy and its officers onto the project insurances as named insured parties.

There may be the need for other provisions in the deed of variation which will become apparent as we progress through the conversion process.

7.9 The Academy conversion will constitute a transfer to which the Safeguarding of Employees Directive (2001/23/EC) and the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) applies and the Council officers will need to ensure that all of the requirements under the legislation are met accordingly.

8. RESOURCE IMPLICATIONS

8.1 Resource implications will be met from within the Schools and Education portfolio. There will be a requirement for support from Legal and Procurement the provisional costs of which are indicated at 6 above.

9. EQUALITY AND HEALTH IMPLICATIONS

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10. CONSULTATIONS

Consultations to support the Academy conversion are the responsibility of the schools Governing Body.

11. STATEMENT OF COMPLIANCE

The recommendations are made further to advice from the Monitoring Officer and the Section 151 Officer has confirmed that they do not incur unlawful expenditure. They are also compliant with equality legislation and an equality analysis and impact assessment has been considered. The recommendations reflect the core principles of good governance set out in the Council's Code of Corporate Governance.

12. DECLARATION OF INTEREST

All Declarations of Interest of any Executive Member consulted and note of any dispensation granted by the Chief Executive will be recorded in the Summary of Decisions published on the day following the meeting.

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CONTACT OFFICER:	Carol Grimshaw
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DATE:	13 February 2019
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BACKGROUND PAPER:	
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