

CLOSURE OF PARNWELL PRIMARY SCHOOL, ACADEMY TRANSFER AGREEMENT AND LEASE OF PREMISES

Councillor Lynne Ayres, Cabinet Member for Education, Skills, University and Communications

June 2017

Cabinet portfolio holder:	Councillor Lynne Ayres, Cabinet Member for Education, Skills, University, and Communications
Responsible Director:	Wendi Ogle-Welbourn, Corporate Director People and Communities
Is this a Key Decision?	YES If yes has it been included on the Forward Plan : Yes Unique Key decision Reference from Forward Plan: KEY/06MAR17/03
Is this decision eligible for call-in?	YES
Does this Public report have any annex that contains exempt information?	NO

RECOMMENDATIONS

The Cabinet Member is recommended:

- 1) To approve the closure of Parnwell Primary School, and authorise the execution and completion of a Commercial Transfer Agreement (CTA) between Peterborough City Council, the Governing Body of Parnwell Primary School and The Lime Trust;
- 2) To authorise the grant of a 125 year lease of the land and buildings occupied by the School known as Parnwell Primary School at a peppercorn rent to The Lime Trust; and
- 3) To authorise entering into a Deed of Assignment with The Lime Trust to assign the benefit of the Council's contract dated 21 August 2009 with Frederick F Smith Builders Limited, to The Lime Trust, to give effect to the terms of the CTA.

1. SUMMARY OF MAIN ISSUES

- 1.1 It is the Government's policy for schools to become Academies.
- 1.2 As part of the conversion to an Academy, Department for Education guidance specifies that the land held by the Local Authority is to be leased to the academy on a 125 year lease for

a peppercorn rent. Local Authorities also enter into a Commercial Transfer Agreement (“CTA”) as part of the conversion, to set out the respective obligations of the parties in relation to the conversion (including in relation to the transfer of assets, contracts and liabilities).

1.3 The Lime Trust intends to change its company name from ‘The Lime Academy Trust’ to Lime Trust, in advance of the academy conversion, and has therefore been referred to in this report as Lime Trust (the “Trust”).

1.4 The Trust will be responsible for the operation of the Academy upon conversion and will be the employer of school staff. The Council employees in respect of the school will therefore transfer from the Council to the Trust under the Transfer of Undertakings (Protection of Employment) Regulations 2006. The prescribed consultation meetings with staff and trade unions are underway. The respective liabilities of the Council and the Trust in relation to those employees are dealt with within the CTA.

2. PURPOSE OF THIS REPORT

2.1 This decision is proposed in accordance with the delegations for Councillor Ayres, Cabinet Member for Education, Skills and University exercising delegated authority under paragraph 3.4.3 of Part 3 of the constitution in accordance with the terms of their portfolio at paragraph (i).

3. TIMESCALE

Is this a Major Policy Item/Statutory Plan?	NO	If Yes, date for relevant Cabinet Meeting	N/A
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4. DETAILS OF DECISION REQUIRED

4.1 The decision maker is asked to:

4.1.1 Approve the closure of Parnwell Primary School which is currently a community school, and authorise the execution and completion of a Commercial Transfer Agreement between Peterborough City Council, the Governing Body of the school and The Lime Trust;

4.1.2 Authorise the grant of a 125 year lease of the land and buildings occupied by the School and known as Parnwell Primary School to the Lime Trust; and

4.1.3 Authorise entering into a Deed of Assignment with The Lime Trust to assign the benefit of the Council’s contract dated 21 August 2009 with Frederick F Smith Builders Limited, to The Lime Trust, to give effect to the terms of the CTA.

5. CONSULTATION

5.1 The consultation process started on 4th November 2016. The Governing Body of the School wrote to parents and staff providing information and inviting questions and comments. Meetings have been held with parents, staff and trade unions. The prescribed consultation required under the Transfer of Undertakings (Protection of Employment) Regulations 2006 is underway.

6. ANTICIPATED OUTCOMES

6.1 The anticipated outcome is that Parnwell Primary School will close and re-open as an

Academy operated by the Trust. The land and buildings currently occupied by Parnwell Primary School will be leased to the Trust, and the staff, assets and contracts relating to the School will be transferred to the Trust to enable it to operate the Academy from the conversion date (currently anticipated to be 01 July 2017).

7. REASONS FOR RECOMMENDATIONS & ANY RELEVANT BACKGROUND INFORMATION

- 7.1 The Council is obliged under the Academies Act 2010 to cease maintaining a school on the date it opens as an Academy. The DfE expect Local Authorities to co-operate with the Academy conversion process, once approved by the Secretary of State for Education.
- 7.2 The Council's consent is not required for a school to convert to an Academy and if the Council does not cooperate with the conversion process and negotiate and enter into lease arrangements and a CTA, the Secretary of State has the power to make transfer schemes under the Academies Act 2010 in relation to property, land, rights and liabilities (including rights and liabilities in relation to staff) which would be binding on the Council. It is therefore preferable for the Council to reach agreement with the Governing Body of the School and Trust and enter into the lease arrangements and CTA in respect of these matters, rather than be subject to transfer schemes made by the Secretary of State.
- 7.3 The proposed lease to the Trust includes the land currently occupied and used for the purposes of the School. The separate Children's Centre will not be included in the lease to the Trust, and will be retained by the Council.
- 7.4 The CTA sets out the respective obligations of the Governing Body of the School, the Council and the Trust arising from the academy conversion in relation to employees, contracts and assets (other than land), and the liabilities of each of the parties in that regard.
- 7.5 As part of the CTA, the Council will transfer the sum of £42,500 to the Trust shortly after conversion. The reasoning for this is explained in paragraphs 9.2.3 and 9.2.4 below.
- 7.6 Under the proposed terms of the CTA, the Council is obliged to assign the benefit of contracts entered into by the Council for the purpose of operating the School, to the academy trust, and recommendation 3 therefore requests authority to enter into a Deed of Assignment with the Trust to give effect to the terms of the CTA.
- 7.7 The Trust have asked the Council to consider the possibility of expanding the School and the Council have agreed to consider a potential expansion, however this will be subject to the Council's usual processes regarding school expansions, and will not be part of the conversion process.

8. ALTERNATIVE OPTIONS CONSIDERED

- 8.1 Refuse the closure of Parnwell Primary School and the transfer to academy status: Once the school has been accepted for academy status by the Secretary of State, the Council is required to support the decision. Failure to cooperate could result in the Secretary of State making transfer schemes which would be binding on the Council.
- 8.2 Not to transfer the premises: This option was rejected because the Department for Education guidance specifies that the land held by the Local Authority is to be leased to the academy on a 125 year lease for a peppercorn rent and failure to follow the guidance and cooperate could result in the Secretary of State making a transfer scheme in relation to the land.
- 8.3 Sell the site to the Trust: This option was rejected because there is no requirement for the Trust to buy land (for which no funding has been made available) and the Council would prefer to retain ownership.

- 8.4 Not to assign the benefit of the Council's Frederick F Smith Builders Limited contract to the Trust: This option was rejected because if the Council retained the benefit of the contract, if any claim in relation to those works in respect of the school were to arise, it is likely that the Council would then have to become involved or take action on behalf of the Trust. Assigning the benefit of the contract allows the Trust to deal with any such claims directly.

9. IMPLICATIONS

9.1 Property

The land and buildings will remain under the ownership of the Council but the Trust will have full control of them, as tenant, for a 125 year period, unless the lease is terminated early for any reason.

9.2 Finance

9.2.1 The Trust will receive its funding direct from the Department for Education. Government funding for Peterborough schools will be reduced proportionately.

9.2.2 As explained in paragraph 7.5 of this report, above, the sum of £42,500 will be transferred to the Trust shortly after conversion.

9.2.3 The Council has reviewed the school's 2017-18 budget and acknowledges that there will be an in-year deficit. Where maintained schools face a budget deficit, they are expected to take action to balance the budget. Because the majority of schools' expenditure is on staffing costs, this inevitably means a reduction in staffing. The Council holds an ESG budget to support this and it is the policy to underwrite 70% of the agreed costs in relation to maintained schools.

9.2.4 This has been calculated to amount to £42,500. However, there is insufficient time to complete this process in advance of the conversion date. Therefore, in this case, an agreement has been reached for the Council to fund this, notwithstanding that it will no longer be a maintained school. This sum will be paid to the Trust on conversion.

9.3 Admissions

The Trust will be its own admissions authority and will determine its own admissions arrangements. Places will continue to be allocated via the co-ordinated admissions scheme.

9.4 Legal

9.4.1 As detailed within paragraph 7.1 of this report, the Council is obliged under the Academies Act 2010 to cease maintaining a school on the date it opens as an Academy. Paragraph 7.2 of this report sets out the implications if the Council fails to cooperate.

9.4.2 The Council has previously entered into a contract in relation to building/construction works carried out at the School, and entering into Deed of Assignment with the Trust in relation to that contract (as detailed within recommendation 3), will enable the Trust to have the benefit of the contract and any claims arising out of the building/construction works, instead of the Council. The assignment does not involve a change of contractor, and therefore, the reference in the Council's Contract Rules for a credit check to be carried out and for reference to have been made to the assignment in the tender documents, do not arise.

9.5 Equalities

There are no equalities implications arising from this decision.

10. DECLARATIONS / CONFLICTS OF INTEREST & DISPENSATIONS GRANTED

10.1 None.

11. BACKGROUND DOCUMENTS

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985) and The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

11.1 None.