

## **Children and Families Committee**

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<b>Date of Meeting:</b>	6 October 2021
<b>Report Title:</b>	School Organisation: Academisation of Schools: Middlewich High School
<b>Report of:</b>	Ged Rowney, Interim Director of Children's Services
<b>Report Reference No:</b>	CF/10/21-22
<b>Ward(s) Affected:</b>	Councillor Carol Bulman – Middlewich Councillor Mike Hunter - Middlewich Councillor Jonathan Parry – Middlewich

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### **1. Executive Summary**

- 1.1** At the Children and Families Committee meeting on 12 July 2021, approval was given to put in place a process by which academy conversions would be undertaken by Cheshire East Borough Council (the Council). A decision was taken to enable certain conversions to be progressed via Officer Decision Record subject to exemptions. Key to these were the arrangements relating to the land transfer, the commercial transfer agreement and the financial position of the school as the point of transfer.
- 1.2** It was resolved that the Committee:
- 1.2.1** Delegates to the Executive Director of Children's Services in consultation with Chief Finance Officer and Monitoring Officer authority to take all steps necessary to agree and execute the commercial transfer agreement, novation of third-party contracts, Shared Use Agreements/Facilities Access Agreements, staffing and information transfer.
  - 1.2.2** Delegates to the Executive Director of Place in consultation with Chief Finance Officer and Monitoring Officer to take all steps necessary to agree and execute any transactions in relation to land, facilities or shared use agreements.

**1.2.3** Notes that the Chief Finance Officer has authority to take all steps necessary to agree, transfer and adjust relevant budgets and allocate balances in accordance with Department for Education (DfE) Guidance.

**1.2.4** Notes that no delegation may be exercised to execute any agreement as per [recommendations 2.1, 2.2 or 2.3 of the report](#) where: a) the school has a deficit of £100k or there is any significant impact on the Medium Term Financial Strategy b) there are substantive third party land interests c) any public funds are to be reclaimed under section (land contributions) d) any current or proposed legal claim has been identified e) where an indemnity is sought against Cheshire East Council on any matter.

**1.3** This report relates to Middlewich High School which, due to the third-party interests in land which forms the school's site and the resulting land transactions, falls outside the officer delegations and requires a Committee decision.

## **2. Recommendations**

**2.1** That the Committee:

**2.2** Notes that Middlewich High School, King Edward Street, Middlewich CW10 9BU, will be converting to Academy status on or after 1 November 2021 as per the Department for Education (DfE) Academy Order (see Appendix 1).

**2.3** Notes that Middlewich High School will become part of the Multi Academy Trust (MAT), The Sir John Brunner Foundation.

**2.4** Authorises the completion of a Commercial Transfer Agreement to the Sir John Brunner Foundation relating to the transfer of all staff under the Transfer of Undertakings (Protection of Employment) Regulations 2006, and assets to the Foundation.

**2.5** Authorises the Executive Director of Children's Services in consultation with Chief Finance Officer and Monitoring Officer to take all steps necessary to agree and execute the Commercial Transfer Agreement.

**2.6** Authorises the grant and completion of all transactions in relation to land, facilities or shared use agreements as are necessary in order to facilitate the conversion, including (but not limited to) the grant and completion of a lease to the Sir John Brunner Foundation for 125 years substantially in the form of the model lease produced by DfE at a peppercorn rent. The school site is identifiable as shown on the accompanying redline plan (see Appendix 2).

**2.7** Authorise the Executive Director of Place and Chief Finance Officer to take the steps necessary to agree the required transactions in relation to land, facilities or shared use agreements to enable the Transfer, in line with the agreed heads of terms.

**2.8** Notes that the Chief Finance Officer has authority to take all steps necessary to agree, transfer and adjust relevant budgets and allocate balances in accordance with Department for Education Guidance.

### **3. Reasons for Recommendation**

**3.1** Middlewich High School is one of 4 secondary provisions in Cheshire East which has not already converted to an Academy. The school and Governing Board have, for some time, expressed a desire to join The Sir John Brunner Foundation and under the current Headteacher, this process has been accelerated.

**3.2** One of the key reasons for wanting to join this Trust is that Middlewich High School does not have a 6<sup>th</sup> Form provision and therefore a high proportion of students will access their post 16 courses at Sir John Deane's 6<sup>th</sup> Form College which is already part of this Trust. This does not mean that there is any limitation on pupils on making decisions for post 16 courses.

**3.3** The conversion of Middlewich High School to an academy and transfer of title in property to the The Sir John Brunner Foundation ("the Academy") is complex because of the interests of third parties in the school and in Middlewich Leisure Centre and falls outside the Officer delegations therefore a Committee Decision is required.

### **4. Other Options Considered**

**4.1** The Council's consent is not required for the School to convert to an Academy. However, if the Council does not cooperate with the conversion process and negotiate and enter into lease arrangements and a Commercial Transfer Agreement, the Secretary of State has the power to make transfer schemes under the Academies Act 2010. This is in relation to property, land, rights and liabilities (including rights and liabilities in relation to staff) which would be binding on the Council.

**4.2** An Academy Proprietor is entitled to expect the lease of all the premises and facilities which the school uses and which premises or matter for negotiation and if agreement cannot be reached then the Council should make application to the Office of the School's Adjudicator on or before the conversion date seeking resolution of the dispute.

**4.3** It is therefore preferable for the Council to reach agreement with the Governing Body of the School and the Trust and enter into the lease arrangements and a CTA in respect of these matters, rather than be subject to transfer schemes which may be made by the Secretary of State. This agreement will be overseen and scrutinised by various specialist service teams including legal and property services.

### **5. Background Information**

**5.1** The Academies Act 2010 empowered the Secretary of State for Education to create Academies through Academy Orders.

- 5.2** Middlewich High School (MHS) is a Community school at present, and an Academy Order for the school to convert has been granted (Appendix 1). The school is due to convert on 1 November 2021.
- 5.3** The land and assets used by the school are currently owned by the Council. The Council owns the freehold of Middlewich High School (including Middlewich Leisure Centre which is occupied and run by Everybody Sport & Recreation (ESAR)). There is an option on Council land which forms part of Middlewich High School site (the Option Land – shown edged in blue in Appendix 2) in favour of a third party.
- 5.4** The specific land interests at Middlewich High School are complex. The following information sets out the actions to be taken to ensure compliance in this conversion and to protect the Council's interests.

Property position pre-conversion:

- a. The Council holds the freehold of Middlewich High School; which encompasses Middlewich Leisure Centre which is in the same building as the school.
  - b. ESAR occupies Middlewich Leisure Centre and operates the leisure centre in accordance with the Leisure Agreement dated 2nd May 2014 between the Council and ESAR (as varied); which governs the operation of leisure centres on behalf of the Council.
  - c. ESAR shares the use of Middlewich Leisure Centre with Middlewich High School, the school uses the leisure centre during school hours and ESAR uses it outside school hours.
  - d. There is an Option to Grant a Lease to a third party (the Option Land). The Option expires in 2022.
- 5.5** To accomplish the conversion and protect the Council's interests, legal documentation will be put in place as follows:
- a. The Academy lease between the Council and School including Middlewich Leisure Centre for 125 years. The Academy insures and repairs Middlewich High School including Middlewich Leisure Centre under this lease.
  - b. On completion of the Academy lease there will be a Tenancy at Will of the Option Land between the Council and the Academy so that the Council can end the Tenancy at Will immediately if the Option is exercised.
  - c. On completion of the Academy lease there will be an Agreement for Lease between the Council and the Academy for the Option Land so that if the Option is not exercised the Council will grant a lease of the Option Land to the Academy and the lease is in similar form to the Academy

Lease for a term ending on the same day as the Academy Lease, Academy repairs and insures the Option Land under the lease.

- d. If the Option is not exercised then the Council will complete the Lease of the Option Land with the Academy.
- e. On completion of the Academy lease there will be an Underlease of Middlewich Leisure Centre between the Academy and the Council for a term of 5 years. The Council can break the lease on 6 months' notice after 18 months. The Academy repairs and insures Middlewich Leisure Centre in the Underlease (like in the Academy Lease). The Underlease refers to the Academy Lease as the superior lease.
- f. On completion of the Academy lease there will be a Subunderlease of Middlewich Leisure Centre between the Council and ESAR for a term of 5 years and the Council can break the lease on 6 months' notice after 18 months. ESAR covenants to perform the tenant's covenants in the superior lease (the Underlease of Middlewich Leisure Centre between the Academy and the Council). The leisure provider, ESAR, has been fully involved in the ongoing discussions and agreements relating to the leasing arrangements.

**5.6** The Council's standard Commercial Transfer Agreement (CTA) is being entered into by the Council, Governing Body and Academy Trust. As per guidance given by the Department for Education (DfE) the standard is closely based on the DfE template.

**5.7** A Facilities Access Agreement (FAA) is being entered into between the Council, the Academy Trust and ESAR. This sets out the day-to-day arrangements for the sharing of the leisure centre, including utility bills, as the leisure centre will be within the academy lease.

## **6. Consultation and Engagement**

**6.1** Appropriate consultation and engagement has taken place as required to support the conversion. Specific HR engagement is set out in section 7.5.

## **7. Implications of the Recommendations**

### **7.1 Legal**

**7.1.1.** The Council is obliged under the Academies Act 2010 to cease maintaining a school on the date it opens as an Academy. This report sets out the implications if the Council fails to cooperate and enter into a lease and CTA.

**7.1.2.** The CTA is negotiated and drafted by Legal Services and the Council's CTA is closely aligned to the DfE standard template. It transfers the

Council's non-land assets, including contracts, IT, and staff, to the Academy.

- 7.1.3.** There is shared use on the school site, therefore a Facilities Access Agreement has been drafted using the Council's standard agreement. It sets out the arrangements for the Academy sharing the leisure centre with ESAR.
- 7.1.4.** There is a pre-conversion capital expenditure which has been approved between the Local Authority and School to address SEN provisions. A standard Council grant agreement will be entered into to ensure the funds are used for their intended purpose and this grant agreement will be monitored by the Local Authority.
- 7.1.5.** The following documents will be put in place in order to protect the interests of the Council, create legal relationships with the Academy and ESAR in Middlewich High School:
  - 7.1.5.1.** An Academy Lease of Middlewich High School (including Middlewich Leisure Centre) between the Council and the Academy for a term of 125 years.
  - 7.1.5.2.** A Tenancy at Will between the Council and the Academy of the Option Land which can be terminated by either party at any time.
  - 7.1.5.3.** A conditional agreement for lease of the Option Land between the Council and the Academy for a lease of the Option Land for a term ending on the same date as the Academy Lease and the condition is that the Option itself is not exercised by the third party who has the benefit of the Option. If the Option is exercised, then the Agreement for Lease is terminated.
  - 7.1.5.4.** An Underlease of Middlewich Leisure Centre between the Academy and the Council for a term of five years with a break clause in favour of the Council.
  - 7.1.5.5.** A Subunderlease of Middlewich Leisure Centre between the Council and ESAR for a term of five years with a break clause in favour of the Council.
- 7.1.6** The interests of the Council are protected under the property documentation as:
  - 7.1.6.1** it is the Landlord under the Academy lease and has the benefits of the covenants given by the Academy,
  - 7.1.6.2** it is the Landlord under the Tenancy at Will and of the Lease of the Option Land and has the benefits of the covenants of the Academy.

**7.1.6.3** The Council is the tenant of the Underlease of Middlewich Leisure Centre. There could not be a lease between the Academy and ESAR because then the Council would lose control of the occupation of Middlewich Leisure Centre by ESAR. The underlease regularises ESAR's occupation of the site and steps will need to be taken to reflect this in the Operating Agreement between the Council and ESAR.

**7.1.6.4** The Council has the benefit of the covenants of ESAR in the Subunderlease of Middlewich Leisure Centre including covenants by ESAR to perform the covenants in the superior lease (the Underlease between the Academy and the Council).

## **7.2. Finance**

**7.2.1** The Academy will be responsible for all outgoings related to the land to include public liability and premises insurances or participation in the DfE Risk Protection Arrangement, and repairs / maintenance.

**7.2.2** The Council will retain a landlord role, but the leases will contain provisions for recovering costs for approvals required under the terms of the leases e.g., for alterations.

**7.2.3** The Trust will receive its funding direct from the DfE. Government funding for Cheshire East maintained schools will be reduced proportionately.

**7.2.4** The CTA includes standardised text that confirms the Council remains liable for any pre conversion costs and the academy is responsible for post conversion costs. It must be noted that any cash balance or local bank account balance remains the property of the Council (excluding any local school funds).

**7.2.5** The Finance Service has to complete a "final balance" calculation for each conversion to ensure all costs and funding are correctly allocated. This can be complex and it must be agreed with the school within four months of conversion.

**7.2.6** Based on the three-year financial plan submitted by Middlewich High School in June 2021 the school is forecasting a surplus carry forward of c.£0.5m for 2021/22. It is forecast to stay at that level for the next two financial years to March 2024.

**7.2.7** The schools have six printer / copiers on a lease that will need to be transferred.

**7.2.8** A grant of up to £182,000 has been approved by the Council for agreed capital works relating to the school's SEN Resource provisions. This grant was awarded to the school as a maintained school prior to conversion and



these works will not be completed by the date of conversion. Therefore, a standard Council grant agreement will be entered into to ensure the funds are used for their intended purpose and this grant agreement will be monitored by the Local Authority.

### **7.3 Policy**

**7.3.1** The implementation of academy conversion is undertaken in accordance with national legislation as per the various Education Acts as referred to earlier in this report.

### **7.4 Equality**

**7.4.1** The Academies Conversion programme is a Central Government Policy. The school will become their own admissions authority but will continue to work with the local authority to ensure they are code compliant. Strong relationships will remain with the school and Headteacher on a wide variety of educational themes post conversion.

### **7.5 Human Resources**

**7.5.1** The Council employees in respect of the School will transfer from the Council to the Academy under TUPE regulations. The school uses the dedicated Local Authority HR service for Schools who will advise on human resource implications with the Council keeping a watching brief to ensure all statutory requirements are met and often responds where Union concerns are raised.

**7.5.2** In addition, members of staff at the school that are currently employed by the Council are to transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006 to the Trust as well as the assets of the school under a Commercial Transfer Agreement (CTA).

**7.5.3** The statutory TUPE consultation has been completed being managed and co-ordinated by the HR Team. There was on-going consultation for MHS which took place with staff and formal TUPE consultation meetings with the unions on 3 February 2021, 24 February 2021, 2 July 2021, and 11 July 2021.

### **7.6 Risk Management**

**7.6.1** The management of risk is governed by the structured legislative process which is followed; this ensures due diligence is undertaken at all stages. The Council is required to take all reasonable steps to facilitate the conversion and then “Cease to Maintain” the school.

**7.6.2** All parties are kept regularly informed of progress to ensure any concerns are picked up and resolved at the earliest opportunity to keep the conversation on track (which has remained in spite of Covid restrictions) and given the complex land transactions additional meetings have been put in place with the school and its advisors to work through the complexities.



## 7.7 Rural Communities

7.7.1 There are no direct implications for rural communities.

## 7.8 Children and Young People/Cared for Children

7.8.1 There are no direct implications for children and young people.

## 7.9 Public Health

7.9.1. There are no direct implications for public health.

## 7.10 Climate Change

7.10.1 There are no direct implications for climate change.

<b>Access &amp; Authorisation of Information</b>	
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Legal Approvals	Julie Gregory: Acting Legal Team Manager
Finance Approvals	Steve Reading: Schools Finance lead
Place Approvals	Paul Bayley: Director of Environment and Neighbourhood Services
HR Approvals	Nuala Hadden: Schools HR.
Appendices:	Appendix 1: Academy Order for Middlewich High School Appendix 2: Middlewich Leisure Centre Lease Plan
Background Papers:	<a href="https://www.gov.uk/government/collections/convert-to-an-academy-documents-for-schools">https://www.gov.uk/government/collections/convert-to-an-academy-documents-for-schools</a>

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