

OPEN

Children and Families Committee

11 November 2024

Academisation of Gainsborough Primary and Nursery School, Belgrave Road, Crewe - Identification of Remedial Works

Report of: Theresa Leavy, Executive Director of Childrens Services

Report Reference No: CF/43/24-25

Ward(s) Affected: Crewe South

For Decision or Scrutiny: Decision

Purpose of Report

- 1 To seek authority for an amendment to the proposed Commercial Transfer Agreement (CTA) as part of the academy conversion process for Gainsborough Primary School, to allow for the funding of the required remedial works post conversion This follows the identification of a failure to the floor screed at the school in areas that were extended in 2007,

Executive Summary

- 2 At the meeting on 3 June 2024, the Children and Families Committee resolved the following in relation to the proposed academy conversion of Gainsborough Primary School. (This school is part of the Sercombe Federation with Cledford Primary School and both schools are intending to convert simultaneously).

1. Authorise the Executive Director of Children's Services in consultation with the Chief Finance Officer and the Monitoring Officer to take all steps necessary to agree and execute the Commercial Transfer Agreement (Appendix 1) to the Alexandra Academy Trust relating to the transfer of all staff under the Transfer of Undertakings (Protection of Employment) Regulations 2006, and assets

2. 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 as are necessary in order to facilitate the conversion, including (but not limited to) the grant and completion of a lease (see Appendix 2) to the Alexandra Academy Trust for 125 years substantially in the form of the model lease produced by DfE at a peppercorn rent.

- 5 Following initial concerns raised by the school, an inspection of the floor screed was undertaken in July 2023 by David Trowler Associates on behalf of the Council. The subsequent report noted that the issues with the screed in the 2007 extension have the potential to be significant, possibly requiring the screed to be replaced for the full extent of the extension, and also possibly involve the replacement of the underfloor heating. Further investigation was recommended and commissioned to determine the exact cause of the defects, and their full extent, with Manchester Building and Testing Laboratories Ltd. The outcome, which was only received in September 2024 is to “recommend removal and replacement of the flooring providing adequate replacement criteria/conditions can be met.”
- 6 Based on the above, the conversion of Gainsborough Primary has been postponed from 1 September 2024 with a potential revised conversion date of 1 February 2025. A Commercial Transfer Agreement is required to transfer the responsibility of all the administration, including employment of personnel and pension obligations, maintenance of the school and insurance to the Academy Trust.
- 7 As the remedial works would be best carried out during the summer holiday period, conversion prior to this date would require a provision within the Commercial Transfer Agreement to allow for the future undertaking of the required remedial works post conversion. Cheshire East Council does not routinely include such provision in to a Commercial Transfer Agreement for a school wishing to convert to academy status. However, this has been requested by the Trust in this case.
- 8 The cost of the remedial work, including replacement of the heating system within the affected areas would be funded from the School Condition Allocation capital grant from the DfE to support essential maintenance on maintained local authority schools.
- 9 The school is still able to be used on a daily basis and any interim safety measures will be undertaken, as required.

RECOMMENDATIONS

The Children and Families Committee is recommended to:

1. Approve the capital expenditure required to carry out the remedial works at Gainsborough Primary School. The details of this are referred to in appendix 1.
2. Give authority for an amendment to the proposed Commercial Transfer Agreement to allow for the funding of the required remedial works post conversion and to avoid further delay to the conversion date.
3. Agree that the funding for these works be provided through a formal grant agreement process, in accordance with existing arrangements for funding of Academy projects.

Background

- 10 Some initial concerns were raised by Gainsborough Primary School over the condition of their floor screed in early 2023, prior to their application to convert to academy status. The school subsequently applied to the Department for Education (DfE) to become an academy and the Academy Order was granted on 19 December 2023. This conversion has now been delayed.
- 11 It was agreed that a consultant surveyor be appointed to undertake an inspection of the floor screed areas affected which appeared to be in areas extended in 2007 and 2013. This survey was undertaken in July 2023. The report concluded that, whilst the floor defects to the small 2013 extension are minor and can be repaired for a relatively low cost, the problems with the 2007 extension areas were more significant.
- 12 The defects noted are potentially significant and could require the complete replacement of the screed for the full extent of the 2013 extension. If a replacement screed is required, this would need to be laid at a thicker depth than the existing screed which could mean the insulation and underfloor heating would need to be removed and replaced with a traditional heating system.
- 13 Further investigation was required to determine the exact cause of the defects, and their full extent. This comprised of:
 1. Review of specifications / drawings from original construction.
 2. Laboratory testing of screed samples.
 3. On site screed testing using BRE Screed Tester - typically 6 no. tests per classroom.

- 14 Due to the specialist nature of the sampling, the identification and appointment of the suitable consultant took a considerable amount of time, with the specialist being commissioned in May 2024.
- 15 A company was appointed to carry out the sampling, their subsequent report refers to a lack of cohesive strength within the floor screed mix and a too-dry mix. The recommendation was to remove and replace the flooring providing adequate replacement criteria/conditions can be met. This would also necessitate the replacement of the existing underfloor heating system.

Consultation and Engagement

- 16 Specific meetings in respect of the flooring issues with representatives from the Sercombe Federation, Alexandra Academy Trust and officer representatives from Cheshire East have taken place on 24 September 2024 and 17 October 2024.

Reasons for Recommendations

- 17 The DfE granted an academy order in December 2023 and therefore the Council is under a statutory duty to facilitate the academisation of the school and is expected to work constructively so that the conversion takes place within a specified time period.
- 18 The circumstances in this case are exceptional, with the extent of works required only recently having been identified and being after the issuing of the Academy conversion order.

Other Options Considered

- 19 The Council's consent is not required for the school to convert to an academy, but it is required for the commercial and land transaction. The land and commercial transactions follow standard documentation which the Council and school can vary to achieve the best outcome dependant on the individual circumstance of each school.
- 20 The Secretary of State (SoS) retains a default power under the Academies Act 2010 where there is an inability to reach agreement and negotiate the lease arrangements and a Commercial Transfer Agreement.
- 21 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 Commercial Transfer Agreement 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.

Option	Impact	Risk
Do nothing	Academy Trust will be reluctant to take on the liability.	Conversion will be delayed
Amend Commercial Transfer Agreement to include a commitment to undertake remedial works.	Academy Transfer is not subject to further delay.	Works can be undertaken in summer 2025. Full timescale for the works has not yet been confirmed and may not be completed over the summer holiday period. Therefore, contingency arrangements may be required for term time works.

Implications and Comments

Monitoring Officer/Legal

- 21 Under section **5B (1)** of the **Academies Act 2010** [as amended]
Where an Academy order under section 4(A1) or (1)(b) has effect in respect of a school, the governing body of the school and the local authority must take all reasonable steps to facilitate the conversion of the school into an Academy.

The Academy Order was issued for Gainsborough School on 19.12.2023 by the Secretary of State for Education.

On 03.06.2024 the Children and Families Committee authorised the relevant Directors of the Council to take all necessary steps to agree and execute the Commercial Transfer Agreement [CTA] in relation to transfer of assets and staff and completion of 125 years lease for transfer of the land to the Academy Trust on the agreed documentation at that point.

As noted in this report issues then came to light regarding disrepair at the school and the potential health and safety concerns this raised, with a request made for an amendment to the CTA to facilitate the repair by the Council post transfer.

The Department for Education's guidance on Academy conversion expects that their standard model CTA and 125-year lease are used in the conversion process and that they do not expect any changes to the model CTA except in exceptional circumstances and that Council should also confirm to Department for Education project lead that the final agreement does not transfer any additional liabilities to the academy trust.

The Department for Education expect that a school is transferred with no outstanding health and safety concerns. That further a date for conversion could not be agreed by the Department for Education until the flooring issue had been satisfactorily resolved.

The Council is therefore required to transfer the school in safe condition

- 22 A decision has been made by the Council to fund and deal with the necessary repairs as highlighted in the report and therefore it will be necessary to make an amendment to the CTA to provide for this work to be carried out post transfer is required and needs to be authorised.

Under section 6 of the **Academies Act 2010** [as amended]

Effect of Academy order

(1) This section applies if an Academy order has effect in respect of a school.

(2) The local authority must cease to maintain the school on the date ("the conversion date") on which the school, or an educational institution that replaces it, opens as an Academy ("the Academy").

(2A) Subsection (2) does not prohibit the local authority from providing financial or other assistance in respect of the Academy, including by—

(a) making payments in respect of some (but not all) of the expenses of maintaining the Academy,

(b) providing premises, goods or services for the Academy, or

(c) making premises, goods or services available to be used for the purposes of the Academy.

Failure to amend the CTA, will further delay the conversion and potentially have reputational damage to the Council. The Department for Education is also empowered under section 8 of the **Academies Act 2010** [as amended]

The Secretary of State may make a scheme (a "transfer scheme") in relation to the conversion which inter alia allows it to apportion rights and liabilities. Given the position of Department for Education on liabilities and safety of the buildings to be transferred, exercise of this right could be a possibility.

Section 151 Officer/Finance

- 23 The anticipated capital cost of the replacement floor screed and consequential heating improvements is detailed in appendix 1.

- 24 This will be funded from the School Condition Allocation DfE capital grant.

Policy

- 25 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.
- 26 The governing body of an academy will be the admitting authority. This means they have the power to set and apply their admission criteria. They must adhere to the mandatory provisions of the School Admissions Code and follow the provisions set out in the local authority's scheme of co-ordination.

Equality, Diversity and Inclusion

- 27 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. The Council will urge the new academy, as a public body, to be mindful of its Public Sector Equality Duty in particular in relation to its admissions policy and recruitment and management of staff.
- 28 An Equality Impact Assessment (EqIA) should be undertaken by the relevant governing body/interim executive board of the school prior to conversion for the school to adequately discharge their equality duty. The local authority will work with and remind the schools governing body/interim executive board of its duty to ensure this is undertaken to address the impact prior to conversion.

Human Resources

- 29 There are no direct human Resources implications associated with this report.

Risk Management

- 30 Remedial works would need to be undertaken in summer 2025. The full timescale for the works has not yet been confirmed and may not be fully completed over the summer holiday period, given their scope and complexity. Therefore, contingency arrangements may be required for term time works.

Rural Communities

31 There are no direct implications for rural communities.

Children and Young People including Cared for Children, care leavers and Children with special educational needs and disabilities (SEND)

32 The timescale for the remedial works may impact on the availability of teaching accommodation. The implications for this will be explored as the project develops.

Public Health

33 There are no direct implications for public health.

Climate Change

34 There are no direct implications for climate change.

Access to Information	
Contact Officer:	Claire Williamson Claire.williamson@cheshireeast.gov.uk Joanne Prophet Joanne.Prophet@cheshireeast.gov.uk
Appendices:	Appendix 1
Background Papers:	Convert to an academy: documents for schools - GOV.UK (www.gov.uk)