

OPEN

## **Children and Families Committee**

**11 November 2024**

**Academisation of St John's CofE  
Primary School, Heath Road, Sandbach,  
Cheshire, CW11 2LE**

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**Report of: Theresa Leavy, Interim Executive Director of Children's Services**

**Report Reference No: CF/28/24-25**

**Ward(s) Affected: Sandbach Heath and East**

### **Purpose of Report**

- 1 This report sets out the arrangements in place to support the intended academy conversion of St John's CofE Primary School to become part of the North West Academies Trust Limited. The report provides the necessary assurances to enable the Committee to consider their support for the conversion.
- 2 The report is connected to the Council's Corporate Plan 2021-25 priorities:
  - (a) an open and enabling organisation ensuring that there is transparency in all aspects of council decision making.
  - (b) a council which empowers and cares about people by supporting all children to have the best start in life and ensuring all children have a high quality, enjoyable education that enables them to achieve to their full potential.

### **Executive Summary**

- 3 The Children and Families Committee on 12 July 2021, approved a process by which a school would convert from a local maintained school to an academy. The Committee delegated authority to certain officers to enable delegated decisions to be taken by them subject to a number of exemptions.
- 4 The proposed conversion does not fall into any of the exemptions approved by Committee. However, Committee approval is sought for the academisation of the school as it is a significant decision in terms of the effects of the

decision on communities living or working in an area comprising one ward or electoral divisions.

- 5 The academisation of a school removes it from the control of the local authority and transfers it a charitable trust. The staff and assets of the school are all transferred to the charity with the Council owned playing field being leased to them by the Council on a 125-year lease, with the charitable trust receiving funding direct from the Government.
- 6 However, as St John's CofE Primary School is a voluntary aided school, the Diocese/Trustees will retain the ownership and control of the school site. A church supplemental agreement (CSA) will act to permit the occupation of the school site by the Academy, effectively under a licence.
- 7 The Council owned playing fields will be leased to the academy trust by the Council on a 125-year lease.

## RECOMMENDATIONS

The Childrens and Families committee is recommended to:

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 North West Academies Trust Limited 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, and completion of a lease (see Appendix 2) to the North West Academies Trust Limited for 125 years substantially in the form of the model lease produced by DfE at a peppercorn rent. The school playing field is identifiable as shown on the accompanying redline lease plan (see Appendix 3).

## Background

- 8 The introduction of the Academies Act in 2010 enabled schools to apply to the Secretary of State to convert to an Academy. The effect of becoming an Academy is to remove the school from the control of the local authority and enables them to become a publicly funded independent state school which is directly funded by the Department of Education. Academies are run by academy trusts which are charitable companies limited by guarantee.
- 9 The Council is under a statutory duty to facilitate the academisation of schools and are expected to work constructively with academies so that the conversion takes place within a specified time period. Local authorities liaise with regional schools' commissioners, schools and academy trusts to transfer the school's assets and liabilities to the academy trust. This includes agreeing a lease for the land occupied by the school. A commercial transfer

agreement between the local authority, the school governing body and the academy trust records the assets and liabilities (such as existing contracts and staff) that the academy trust is acquiring.

- 10 St John's CofE Primary School is a voluntary aided school. A voluntary aided school (VA school) is a state-funded school in England and Wales in which a foundation or trust (usually a religious organisation) contributes to building costs and has a substantial influence in the running of the school. In most cases the foundation or trust owns the buildings. The running costs of voluntary aided schools, like those of other state-maintained schools, are fully paid by central government via the local authority. They differ from other maintained schools in that only 90% of their capital costs are met by the state, with the school's foundation contributing the remaining 10%. Many VA faith schools belong to diocesan maintenance schemes or other types of funding programme to help them to manage those costs.
- 11 The Diocese of Chester are the owners of St John's CofE Primary School's buildings, equipment and the ultimate employer of the school staff. The Council own the playing field's. The governing body employs the staff and sets the admissions criteria. Responsibility for work to St John's CofE Primary School premises is shared between the school's governing body and the local authority. The LA has responsibility for the playing fields and the governing body are liable for all other capital expenditure.
- 12 On conversion, the Academy needs to formalise its occupation of the school site so that it can operate the School following conversion. In respect of the Diocese/Trustee owned land at Church Schools, the land owned by the Diocese/trustees is made available to an Academy using a Church Supplemental Agreement (CSA). The CSA sets out the terms upon which the Academy may occupy the school site. It also acts to protect the religious designation of the Academy and aims to allow the land arrangements to continue 'as is' following conversion.
- 13 The main difference between the CSA and a lease is that the Academy will not be granted an interest in the school site under the CSA which can be registered at the Land Registry. The CSA acts only to permit the occupation of the school site by the Academy, effectively under a licence. The Diocese/Trustees retain the ownership and control of the school site.
- 14 The school received an Inadequate inspection on 26 September 2023, and subsequently received a directive academy order (DAO) on 16 February 2024 (see Appendix 4). A DAO is a legal instruction which ultimately leads to a maintained school academising and joining a multi academy trust (MAT). In most cases, a DAO is triggered by an inadequate Ofsted judgement or being judged less than good twice. The Department for Education North West Regional Director selects the Trust sponsor and it is the LA's responsibility to support in enabling the conversion to happen as swiftly as possible.
- 15 The planned transfer of St John's CofE Primary School to the North West Academies Trust Limited is 1 January 2025. The school will be renamed St John's CofE Primary Academy.
- 16 St John's CofE Primary School is in Sandbach, Cheshire. School capacity is 210 pupils; at 7 October 2024 there were 168 pupils in the single form entry school. The main current secondary feeders are Sandbach Boys and

Sandbach High (girls) although some children do travel to Alsager or Holmes Chapel High Schools. Approximately 90% attend their local High Schools in Sandbach.

- 17 Following the school's Ofsted Inspection which had been paused in September 2023, and resumed in December 2023 an Interim Executive Board replaced the Governing Board with a Chair of Governors recommended by the LA and DfE.
- 18 North West Academies Trust Limited, The Coach House, Union Street, Chester, CH1 1QP, was established on 20 January 2014. It currently has eleven academies, one Secondary Cheshire West and Chester, three Primary Cheshire East, six Primary Cheshire West and Chester and one Primary, Shropshire. The Trustees are responsible for setting the strategic direction of the Trust and are accountable for the performance of the schools and ensuring financial probity. They also link the NWAT Central Governing Body with the Schools' Governing Bodies. The Trust want all schools to maintain their autonomy through their own governance and leadership, with each school supported by the central team.
- 19 Two Cheshire East Primary Schools converted to the Trust in September 2021, with the most recent in January 2024, so the Council have supported previous conversions. The Trust Chief Executive Officer (CEO) attends regular meetings with the CEC Education Team, sharing working practices with other Trust Senior Leaders.
- 20 The CEO works alongside the Trust School Development Partner to collaborate with Headteachers through the many challenges of running a successful school. The Trust has specialist teams in Finance, Facilities Management, People Management, Safeguarding and Marketing and work closely with Browne Jacobson Solicitors to ensure the Trust policies and procedures are the best they can be.
- 21 As the playing field used by the school is currently owned by the Council, it will therefore be necessary for the Council to negotiate and enter into a 125-year lease. The lease will enable the Academy to use the land in accordance with the lease. The granting of the 125-year lease will be of the school playing field and will be a peppercorn rent to the Academy, with the Academy Trust taking the responsibility of maintaining the land. The freehold interest of the playing field will remain with the Council.
- 22 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 playing field and insurance to the Academy Trust.

- 23 Non-teaching staff at schools fall within the Local Government Pension scheme (“LGPS”). As the employer, the academy would be responsible for meeting the employers pension contributions. Academies are obliged to offer LGPS membership to all staff and staff transferring would simply continue their scheme membership. The Council remain the pension authority under the LGPS.
- 24 The Council will remain the co-ordination body for admissions for the Academy which means that parents/carers only need to complete one application form. The academy will be responsible for applying its own allocation criteria to the list of applications supplied by the Council. The Academy will be responsible for the setting up of an independent admission appeals panel on conversion to hear appeals, however, whilst the Academy is establishing its own independent panel the Council may continue to hear any outstanding appeals.

## **Consultation and Engagement**

- 25 Appropriate consultation and engagement has taken place as required to support the conversion. Specific Human Resources engagement is set out in sections 48, 49 and 50 below.

## **Reasons for Recommendations**

- 26 In April 2021, the Education Secretary set out the government’s vision of “a world-class school-led system where every school is part of a family of schools in a strong multi-academy trust (MAT).”
- 27 Key reasons schools consider conversions to MATs are to increase collaboration, to benefit from better strategic planning and direction; to provide more opportunities to staff for professional development; to gain access to better centrally provided services; to benefit from cost savings and efficiencies; to benefit from strengthened governance and leadership. Source: [Schools’ views on the perceived benefits and obstacles to joining a multi-academy trust \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/90422/schools_views_on_the_perceived_benefits_and_obstacles_to_joining_a_multi-academy_trust.pdf)
- 28 St John’s CofE Primary School is one of 51 primary school provisions in Cheshire East which has not already converted to an Academy. There are currently 72 primary academies.
- 29 The DfE granted a directive academy order on 16 February 2024. Under section 5B of the Academies Act 2010, as amended by the Education and Adoption Act 2016, the governing body of the school and the local authority are under a duty to take all reasonable steps to facilitate the conversion of the school into an academy.

## **Other Options Considered**

- 30 The Council's consent is not required for the School to convert to a Academy. The Council consent 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. This may include historic land issues and sporting facilities as way of example.
- 31 An Academy Proprietor is entitled to expect the lease of all the premises and facilities which the school uses and are matters 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.
- 32 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.
- 33 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.

## **Implications and Comments**

### *Monitoring Officer/Legal*

- 34 Under section 6 subsection (2) of the Academies Act 2010, the Council as the local authority must cease to maintain the school on the conversion date, being 1 January 2025, the date on which the school is expected to open as an Academy.
- 35 In order to facilitate this, approval is required to enter into two legal agreements, being a lease of the playing field and a commercial transfer agreement. Under the provisions of the Academy Order and of the Academies Act, the Council is required to negotiate and enter into a 125-year lease. If the Council fails to negotiate terms of the lease, the SoS has power to make a property transfer scheme and impose terms on the Council. The Council will finalise the terms of lease before the transfer. The Council is required to formalise the transfer of the maintenance responsibility of the Schools to the Academy Trust by way of the commercial transfer agreement.

### *Section 151 Officer/Finance*

- 36 The conversion to Academy status has a number of financial implications for the Council. However, the authority must cease to maintain the school on the appropriate date.

- 37 The transfer of staff who are members of the LGPS as described above creates an obligation on the school to meet an appropriate proportion of the pension fund scheme deficit; agreement was made by the Council's Corporate Committee on an appropriate basis for determining the relevant resource and this has been advised to the schools and their identified sponsors.
- 38 The Academy will be responsible for all outgoings related to the land to include public liability and participation in the DfE Risk Protection Arrangement, and repairs / maintenance. 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.
- 39 The CTA can also provide for certain liabilities to fall on the Council, e.g. certain staff termination costs where a reorganisation is necessary to balance the budget and action has not been previously taken by the school. The extent of such liabilities would need to be identified in the CTA. 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). However, in this case, the school do not have a local bank account.
- 40 The creation of an Academy means that resources are paid to the school directly by the Education Funding Agency (EFA) once the local Authority ceases to maintain the school. There is a consequent reduction in an Authority's Dedicated Schools Grant (DSG), based broadly on replication of the Authority's funding formula for schools.
- 41 The Local Authority has made it clear that it expects the School and the Interim Executive Board to discharge their financial responsibilities in respect of public money appropriately. The school is predicted to have a surplus on conversion.
- 42 The Local Authority requires that any surplus or deficit at the point of closure will be treated in accordance with the provisions of the Academies Act 2010 and the guidance on Academy surplus and deficits issued by the Department for Education.

### *Policy*

- 43 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.
- 44 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*

- 45 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.
- 46 The SoS has confirmed that the School will convert to Academy status on 1 January 2025. 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.
- 47 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*

- 48 The school employees will transfer from the Governing Board of the school to the Academy Trust under TUPE regulations. The school uses the dedicated Local Authority HR service for Schools who will advise on human resource implications with the Council and the Governing Board keeping a watching brief to ensure all statutory requirements are met and often responds where Union concerns are raised.
- 49 In addition, members of staff at the school that are currently employed by the Governing Board are to transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006 to the Trust under a Commercial Transfer Agreement (CTA).
- 50 The statutory TUPE consultation process is on-going and is being managed and co-ordinated by the HR Team. A formal consultation meeting will take place with relevant Unions on 24 October 2024. The minutes of the meeting will be circulated to all relevant parties.

### *Risk Management*

- 51 The management of risk to the Council arising from the conversion of the school to an academy is governed by the structured legislative process which is followed; this ensures due diligence is undertaken at all stages and that the Council complies with its statutory responsibilities and the conversion process is completed effectively and efficiently.



52 The Council is required to take all reasonable steps to facilitate the conversion, as described in the body of the report, and then “Cease to Maintain” the school; by co-operating with the conversion process, negotiating and entering into the lease agreements, the need for the Secretary of State to enforce a transfer scheme under the Academies Act 2010 is mitigated.

53 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.

#### *Rural Communities*

54 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)*

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

#### *Public Health*

56 There are no direct implications for public health.

#### *Climate Change*

57 There are no direct implications for climate change.

<b>Access to Information</b>	
Contact Officer:	Joe Carter Education Project Manager <a href="mailto:Joe.carter@cheshireeast.gov.uk">Joe.carter@cheshireeast.gov.uk</a>
Appendices:	Appendix 1: Draft Commercial Transfer Agreement Appendix 2: Draft Model Lease Appendix 3: St John’s CofE Primary School Lease plan (to be provided) Appendix 4: Academy Order for St John’s CofE Primary School Appendix 5: Not for publication
Background Papers:	<a href="http://www.gov.uk">Convert to an academy: documents for schools - GOV.UK (www.gov.uk)</a>

