

## Birmingham City Council

### Report to Cabinet Member for Education Skills and Culture, jointly with the Director of Education & Skills

Date January 2019



**Subject:** PROPOSAL TO ALTER THE AGE RANGE OF AL-HIJRAH SCHOOL

**Report of:** Interim Assistant Director (Safeguarding)

**Relevant Cabinet Member:** Councillor Jayne Francis, Cabinet Member for Education Skills and Culture

**Relevant O & S Chair(s):** Councillor Mariam Khan, Learning, Culture and Physical Activity

**Report author:** Jaswinder Didially: Head of Service, Education Infrastructure;  
Telephone No: 0121 303 8847  
Email Address: [jaswinder.didially@birmingham.gov.uk](mailto:jaswinder.didially@birmingham.gov.uk)

Are specific wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s): Bordesley and Highgate		
Is this a key decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, add Forward Plan Reference:		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential :		

#### 1 Executive Summary

To seek the determination of the statutory proposal to:

- Alter the age range of Al-Hijrah School from 4 – 16 years to become 4 – 11 years.

This proposal will result in the school becoming a mixed (coeducational) Islamic primary school for girls and boys aged 4 – 11 years. The school would no longer have a secondary phase.

## **2. Recommendations**

That the Cabinet Member for Education Skills and Culture jointly with the Director for Education and Skills; approve, having taken account of the statutory guidance, the statutory proposal to alter the age range of Al-Hijrah School from 4 – 16 years to become 4 – 11 years with effect from 1<sup>st</sup> September 2019.

## **3. Background**

- 3.1 Al- Hijrah School is a voluntary aided Islamic faith school for boys and girls aged between 4 -16. The school was judged as “Inadequate” by Ofsted in February 2014, a Board (IEB) has been in place since May 2014.
- 3.2 In January 2016 an Ofsted inspection report found that Al-Hijrah School had made some positive progress, in this report the school received an overall rating of “requires improvement”, however in subsequent inspections in June 2016 and March 2017 the school was again judged as “inadequate”.
- 3.3 One of the reasons for the Ofsted “inadequate” ruling in June 2016 was due to the school’s practice of segregation of older pupils by gender. The school challenged Ofsted’s findings. In October 2017 the Court of Appeal ruled in favour of Ofsted, in that segregation by gender in co-educational schools is contrary to the Equality Act 2010. This Court of Appeal judgement requires Al-Hijrah School to stop its practice of segregation by gender, as it is unlawful and contrary to the Equality Act 2010. Following the Court of Appeal ruling, the DfE published “Gender Separation in Mixed Schools” non- statutory guidance June 2018.
- 3.4 Following the Ofsted inspection in March 2017, the school was made subject to a Directive Academy Order in May 2017. Under the Academies Act 2010, the Secretary of State must make an Academy order in respect of a maintained school in England that is eligible for intervention by virtue of section 61 or 62 Education and Inspections Act 2006 (schools requiring significant improvement or schools requiring special measures).
- 3.5 Should the proposal to alter the age range be approved this would result in the school becoming a mixed Islamic primary school for girls and boys aged 4 – 11years. The school would no longer have a secondary phase and therefore parents would need to apply for a different school for year 7 entry. There would no longer be segregation of pupils by gender.
- 3.6 The current accommodation for primary age pupils at Al-Hijrah School is in portacabins located on the Burbidge Road site. The temporary planning permission for the portacabins has expired. The main buildings, which are currently occupied by the secondary age pupils, are not considered suitable for occupation by the Primary Academy.
- 3.7 In pursuance of the Directive Academy Order, the school must convert to an Academy. This would occur after the proposed alteration to the age range had taken place, if approved. Therefore, the school would convert from a Voluntary Aided Primary School to a Primary Academy. The Head Teacher Board has recommended that Star Multi Academy Trust would be the Academy sponsor. The Academy governance arrangements would replace the current Interim Executive Board.

- 3.8 Should the proposal be approved the current year 6 – 10 pupils (year 7-11 in September 2019) would no longer have a place at the school. The proposal would result in the displacement of these pupils. Therefore, alongside the coordinated admissions round under which arrangements will be made to support Year 6 pupils transferring to Year 7 at alternative schools, a mini admission round will take place in the summer term to support pupils on roll in Years 7 – 10 with finding suitable alternative school places. The Local Authority will provide additional information and support to families in making their applications and during the transition. Having regard to the designation of Al-Hijrah as a Muslim Faith School, and the wishes expressed by parents for Islamic Faith school provision, the Local Authority has taken steps to secure alternative places for the majority of displaced secondary boys to apply for at Eden Boys' School, and has invited applications for the provision of a new Islamic Free School for girls which would offer alternative places for secondary girls from September 2019. Particular regard has been had for the needs of pupils due to commence or already undertaking GCSE studies.
- 3.9 There are currently 11 mainstream single gender secondary schools for boys in Birmingham, 4 of which are grammar schools and 2 of which are Islamic ethos. There are currently 13 single gender girls' secondary schools in Birmingham, 3 of which are grammar. To address the fact that there are currently no Islamic ethos girls' schools in the city, the Local Authority has issued separate proposals for a new Islamic ethos single gender secondary school for girls. Parents will have the opportunity to express a preference for this provision, or another provision, as part of the managed admissions rounds.
- 3.10 The proposal for a new Islamic ethos single gender secondary school for girls to open in September 2019 was issued in October 2018 through the government's free school process (Local Authority presumption route). All shortlisted proposals will be referred to the Regional School Commissioner (RSC) for a final decision in March 2019. If a sponsor is agreed, it is proposed that the new girls' Free School would open in September 2019. An initial temporary site has been secured at Clifton Road, Balsall Heath, B2 8NJ (2 miles from the proposed Primary Academy site). It is expected that a permanent site at Hobmoor Road, Small Heath, B10 9HH will be in operation by September 2021 (0.8 miles from the Primary Academy). The proposed admission number for the school will be 120, with a capacity of 600 eventually across years 7-11 and the growth phased as appropriate.
- 3.11 It is also proposed that, if the proposals for the change of age range are approved and the school then converts to an Academy, the Primary Academy will be permanently relocated at a newly modelled site at Waverley Road, B10 OEG, in September 2019. This site is 1.8 miles from the current site.
- 3.12 Any staff reductions or changes to terms and conditions of employment would be subject to full consultation with the staff, trade unions and teaching associations.
- 3.13 In compliance with DFE guidance and best-practice, a pre-statutory consultation was completed for the proposal between 26<sup>th</sup> September 2018 and 26<sup>th</sup> October 2018 (one month) to engage stakeholders before statutory publication of the full proposal (as set out in Appendix 1 to this report). A total number of 608 responses were received during the pre- statutory consultation phase, of which 511 were in favour, 58 were opposed and 39 either didn't specify or didn't know. An analysis of the pre-statutory consultation responses can be found in the full proposal document in Appendix 1.

3.14 As part of the informal consultation arrangements, Senior Local Authority Officers held a meeting for parents and stakeholders on Monday 24<sup>th</sup> September 2018. Information on the IEB's proposal to change the school's age range and also on the wider proposals for Al-Hijrah School was provided at the meeting. Birmingham City Council Officers also held a "drop in" session for parents, pupils and staff on Wednesday 24<sup>th</sup> October 2018 to allow parents, pupils and staff the opportunity to ask any questions. This session ran from 9.30 and – 5.00pm and was attended by approximately 40 parents, pupils and staff. An additional meeting for year 9 and 10 girls and parents was held on Friday 14<sup>th</sup> December 2018 to provide information about the availability of alternative school places.

3.14 In compliance with DFE guidance, the IEB (with the assistance of Local Authority officers) carried out a statutory consultation between 22<sup>nd</sup> November 2018 and 20<sup>th</sup> December 2018 (four weeks). The statutory consultation (representation period) commenced with a statutory notice for the following:

- Alteration to the Age range of Al-Hijrah School from 4 -16 years to 4 – 11 years with effect from 1 September 2019.

During the four week representation period, comments on the proposal could be submitted in writing to Education Infrastructure, via the BeHeard webpages, email or letter. A copy of the full proposal and public notice can be found within Appendices 1 & 2.

3.15 At the close of the statutory consultation (representation period) 1013 responses were received regarding the proposals. Of the 1013 responses received 949 were in favour (93.7%), 29 were against (2.8%) and 35 were either not specified/unsure or not answered (3.4%). Of the 1013 responses 583 made representation (comments), a breakdown analysis can be found in Appendix 3 of this report.

3.16 Regulation 7 of the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 ("the Prescribed Alterations Regulations") states that the Local Authority must have regard to any guidance issued by the Secretary of State when making a decision on such proposals. The relevant extract of the statutory guidance is attached (Appendix 4). Paragraph 5 of Schedule 3 to the Prescribed Alterations Regulations allows for the proposals to be approved, approved with modification, approved subject to meeting a prescribed condition, or rejected.

3.17 If the proposals are approved Al-Hijrah School will alter the age range to 4 – 11 with effect from 1 September 2019.

#### **4 Options considered and Recommended Proposal**

4.1 It is recommended that the proposal by the IEB of Al-Hijrah School to alter the age range of the school from 4 – 16 to 4 – 11 with effect from 1 September 2019 be approved. By becoming a 4- 11 Voluntary Aided primary school the IEB proposes to address the unlawful practice of the segregation of boys and girls that has been deemed unlawful in a co –educational school. The implementation of the alteration proposals would also pave the way for the Directive Academy Order to take effect, and for the school to convert to a Primary Academy sponsored by Star Academy Trust. Star Academy Trust would support the school on its improvement journey to

becoming an outstanding school, which would include the relocation of the Academy to the new site at Waverley Road.

- 4.2 Should the proposals be rejected, Al-Hijrah School will remain as a 4 – 16 years all through co –educational school. To date it has not been possible to identify an Academy Trust that is willing to sponsor Al-Hijrah School as an all-through school. An alternative solution would need to be sought to address the serious issues at the school;
- Ofsted’s judgement of “inadequate”
  - Unlawful segregation of secondary age boys and girls in a mixed school
  - Outstanding Directive Academy Order (issued May 2017)

## **5 Consultation**

- 5.1 The proposal has been fully consulted upon in line with the requirements set out in the statutory guidance “Making significant changes (‘prescribed alterations’) to maintained schools – statutory guidance for proposers and decision-makers” published by the Department for Education (DfE) in October 2018. A copy of the guidance for decision makers can be found in Appendix 4.

### **5.2 Internal**

- 5.2.1 During the consultation process information about the proposal was sent to all elected Councillors of Birmingham City Council together with officers from services across Birmingham City Council including Admissions, Finance, School and Governor Support, Human Resources, Legal, Planning, Research and Statistics Information Officers for Children and Young People.
- 5.2.2 Details of the responses received and outcome of the statutory consultation is set out in Section 3.15 of this report and in Appendix 3. The names of the Ward Councillors and the date and method of consultation is set out in Appendix 5.

### **5.3 External**

- 5.3.1 During the consultation process, information about the proposal was publicised to the parents, teaching staff, and non-teaching staff. Information about the proposal was also publicised to all elected Members of Parliament for Birmingham and the following additional consultees:
- Birmingham Schools – including all state funded Islamic faith and single gender schools;
  - The Al-Hijrah Trust (Charity 1018850) and The Al-Hijrah Trust (CIO 1154046)
  - Neighbouring Local Authorities;
  - The Archdiocesan and The Anglican Diocese of Birmingham;
  - Professional Associations and Trade unions
  - The Association of Muslim Schools
- 5.3.2 The information was publicised in the following ways:

- Letters or Emails to stakeholders
- Letters to each family of the school
- Public notice displayed at the school;
- On the school's webpages;
- Public notice in Birmingham Post newspaper;
- On Birmingham City Council BeHeard webpage;
- On the Birmingham City Council School Notice Board.

5.3.3 A copy of the full proposal document can be found in Appendix 1 and the Public Notice in Appendix 2. The outcome of the external consultation is set out in Section 3.15 of this report and in Appendix 3.

## **6 Risk Management**

6.1 A detailed risk register for the whole Al-Hijrah transformation, of which this school organisation is part, is being maintained through project management arrangements. Please see Appendix 7.

## **7 Compliance Issues:**

### **7.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?**

7.1.1 The proposal for Al-Hijrah School to become a primary school is part of several proposals to transform and reorganise the provision currently offered by Al-Hijrah School. These proposals are necessary in response to the following issues at Al-Hijrah School:

- Ofsted's judgement that Al-Hijrah School is inadequate
- Unlawful segregation of boys and girls in a co-educational school
- The Directive Academy Order in place (issued May 2017).
- The condition/circumstances of the Al-Hijrah School estate, including the temporary primary buildings.

7.1.2 The changes support the council's vision and forward plan priorities for children, "A great place to grow up in" by providing education opportunities for children to have the best start in life and realise their full potential through great education".

### **7.2 Legal Implications**

7.2.1 This report exercises powers contained within sections 19 and 21 of the Education and Inspections Act 2006 and Schedule 2 and Schedule 3 to the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 (the "Prescribed Alterations Regulations"), whereby the Governing Body of a Voluntary Aided School can propose a change of age range by following a statutory process. Under the Prescribed Alterations Regulations, the Local Authority is the decision maker for this statutory proposal put forward by the Interim Executive Board of Al-Hijrah School (acting as the governing body).

### **7.3 Financial Implications**

- 7.3.1 The capital cost of the proposed works to the former Small Heath lower school site to accommodate the proposed Primary Academy will be funded from the Department for Education (DfE) Basic Need Grant. Detailed costs and scope are provided in a Full Business Case (FBC), which was approved by Cabinet on 22nd January 2019. The new school site will be designed with ancillary spaces for future flexibility and to alleviate space constraints that exist on the current school site. The refurbishment provides long term value for money by locating the Primary Academy at a site where there will be lower anticipated maintenance costs, as well as flexibility to meet the educational needs of the pupils.
- 7.3.2 Consequential revenue costs associated with the Primary Academy, including staffing changes and any on-going day to day repair and maintenance of the asset, would be the responsibility of the future Academy sponsor and the Education and Skills Funding Agency.
- 7.3.3 In 2019/20 the pupil funding for displaced pupils will be met from Birmingham's centrally held growth fund which has been increased to reflect the cost and number of expected displaced pupils.

### **7.4 Procurement Implications (if required)**

- 7.4.1 There are no procurement implications for the proposal to change the age range of Al-Hijrah School.

### **7.5 Human Resources Implications**

- 7.5.1 Any staff reductions or changes to terms and conditions would be subject to full consultation with the trade unions and teaching associations by the existing IEB or the future academy sponsor (primary).

### **7.6 Public Sector Equality Duty**

- 7.6.1 An equality assessment has been carried out for the Al-Hijrah Transformation Project (EQUA139) which covers multiple activities including reference to the school organisation project at Al-Hijrah School. (Appendix 6)
- 7.6.2 The change of age range of Al-Hijrah School has a specific impact on the following characteristics recognised in the Equality Act 2010: Age, Sex; and, Religion or Belief.

The impact on age is due to the proposal affecting school age children and young people (ages 4 to 16) and the Department for Education processes and policies being about schools.

The impact on sex is that the proposal is to address segregation of male and female pupils in the secondary phase of education at this mixed [sex] school. The segregation has been judged to be unlawful; so the change of age

range and subsequent/linked proposals (establish a secondary school for girls with an Islamic ethos) address this inequality by removing the segregated secondary provision and providing opportunities for [lawful] single sex secondary education for affected pupils. The opportunities for secondary boys are detailed in section 3.8 of this report.

The impact on religion or belief is due to the change specifically impacting Muslim children and young people. The proposal and subsequent/linked proposals (to establish a secondary school for girls with an Islamic ethos) aims to provide diversity of provision in Birmingham Schools to reflect the practiced religion and belief of the diverse Birmingham citizens.

The statutory consultation process that was followed in proposing this change gathered the views from any and all stakeholders with an interest in this change. All stakeholder comments from the statutory consultation are shared with the decision makers in full (with personal data removed), as included in appendix 3 of this report.

## **8 Background Documents**

### **8.1 Documents:**

- Gender Separation in Mixed Schools: Non –Statutory Guidance June 2018
- Al-Hijrah School Ofsted Reports – February 2014, January 2016, October 2017 and May 2017
- Refurbishment of the Former Small Heath lower school site to provide accommodation for Keystage 1 and 2 Pupils from Al-Hijrah School following its conversion to an academy – Full Business Case and Contract Award
- A new Islamic Girls' Secondary Academy in Small Heath, Birmingham – Free School Specification
- Birmingham City Council Plan: 2018-2022
- Education and Services Delivery and Improvement Plan

### **8.2 List of Appendices accompanying this Report (if any):**

- Appendix 1: Full (Final) proposal document
- Appendix 2: Public Notice
- Appendix 3: Statutory Consultation Results
- Appendix 4: Making significant changes ('prescribed alterations') to maintained schools – statutory guidance for proposers and decision-makers
- Appendix 5: Ward Councillors Consulted.
- Appendix 6: Equality Assessment
- Appendix 7: Risk Register