

Birmingham City Council

Report to Cabinet

Date: 25th June 2019



Subject: UPDATE ON JOHN WILLMOTT SCHOOL CONVERSION FROM COMMUNITY SCHOOL TO ACADEMY STATUS

Report of: Director for Education and Skills
Dr Tim O'Neill

Relevant Cabinet Member: Cllr Jayne Francis - Education, Skills and Culture

Relevant O &S Chair(s): Councillor Kath Scott, Education and Children's Social Care

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Are specific wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s): Sutton Trinity		
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 type="checkbox"/> Yes	<input checked="" 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

- 1.1 To provide an update to Cabinet to ensure Members are fully aware of the additional financial implications associated with the academisation of John Willmott School following the approval given in January 2018.

2 Decisions Recommended

- 2.1 Notes that John Willmott School is proposing to convert to Academy status on or after 1st July 2019.

- 2.2 Notes that at the point of conversion John Willmott School will have a deficit of £1.6m. This is an increase of £0.5m since the approval was given in January 2018 when the deficit was £1.1m. The deficit is likely to increase further if the school does not convert on 1st July 2019. As previously advised this deficit will remain with the Local Authority at the point of conversion as outlined in the DfE guidance entitled 'Treatment of surplus and deficit balances when maintained schools become Academies' – see attached **Appendix 2**.

3 Background

- 3.1 John Willmott School received a Directive Academy Order (DAO) in April 2016 (see **Appendix 1**) and since then the Local Authority (LA) has been in discussion with the school and the sponsor Arthur Terry Learning Partnership (ATLP) to agree the Lease and Commercial Transfer Agreement (CTA) to enable the conversion.
- 3.2 A report was approved at Cabinet in January 2018 which authorised the grant of a 125 year lease and the completion of the CTA and to note the deficit position.
- 3.3 In March 2018 ATLP approached the LA raising concerns around the number of live Equal Pay Claims (EPCs) at John Willmott School which were not covered by the current indemnity in the CTA. Unfortunately we were unable to reach an agreement on the indemnity for the EPCs which has led to a prolonged delay on the progression of the conversion. The City Council had to manage the indemnity request in line with the potential risk from any changes to the terms of the indemnity outside the normal scope of the historical indemnities provided; as such changes could severely impact on the management of the EPCs.
- 3.4 Unfortunately we were unable to reach a resolution to the EPCs which has led to a prolonged delay on the progression of the conversion. The delay in agreeing an indemnity for the EPCs has unfortunately led to the increased deficit position as outlined in 2.2.
- 3.5 The LA are also supporting the school to address some backlog maintenance issues relating to health and safety, structural integrity and statutory compliance, a not to exceed figure of £500,000 was agreed in the original report and works have been ongoing on the site.
- 3.6 Owing to the time that has elapsed since the DAO was granted the Regional Schools Commissioner and the Department for Education are keen for this school to convert on 1st July 2019 to enable the school to continue on its school improvement journey and to enable the LA to comply with the DAO granted by the Secretary of State.

4 Options considered and Recommended Proposal

- 4.1 A do nothing option is not available, as the Secretary of State has made a DAO which requires John Willmott School to become an Academy.

5 Consultation

- 5.1 Senior Officers in the Education & Skills Directorate are aware of the conversion and have been involved in discussions relating to the transfer. Ward Councillors for Sutton Trinity were and Senior Officers from Legal and Finance were also consulted on the original report.

6 Risk Management

- 6.1 The DAO granted by the Secretary of State requires the Local Authority to assist with the conversion and then 'Cease to Maintain' the school. If the conversion is further delayed beyond 1st July 2019 it would have a negative impact on the school budget resulting in the deficit increasing.

7 Compliance Issues:

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

- 7.1.1 The Academies Conversion Programme is a Central Government Policy.

7.2 Legal Implications

- 7.2.1 The Secretary of State for Education has issued the DAO under the Academies Act 2010. Section 5B of that Act requires the local authority to take all reasonable steps to facilitate the conversion of the school into an Academy.
- 7.2.2 The Authority has powers under sections 120 – 123 of the Local Government Act 1972 to hold and dispose of land. Paragraph 20 of Schedule 1 to the Academies Act 2010 dis-applies the requirement in section 123(2) of the Local Government Act 1972 not to dispose of land for less than the best consideration that can reasonably be obtained. The leasehold interest will therefore be granted at a peppercorn rent."

7.3 Financial Implications

- 7.3.1 At the 31st March 2019, the cumulative deficit of the John Wilmott School was £1,589,069. At the point of conversion John Wilmott School is expected to have a deficit balance in the region of £1.6m, which is an increase of £0.5m from the original approval by Cabinet in January 2018 as outlined in 2.2. Under the DfE guidance (Appendix 2) the Council will need to fund this deficit, which will be achieved through the use of revenue resources released through the application of capital resources, which have been set aside to fund deficit balances following Academy conversion. The final deficit to be funded will be confirmed after conversion has taken place.
- 7.3.2 The recommendations in this report will enable John Willmott School to lease land and buildings from the City Council at a peppercorn rent as required by the DfE. Resourcing for corporate legal costs and potentially

external legal costs arising from this conversion and the wider Academy conversion programme will be met from school contributions and earmarked resources within the Education Infrastructure Budget for the purposes of the Academy conversion process.

- 7.3.3 In accordance with the Academy Conversion Charging Policy schools pay a contribution towards the legal costs associated with the conversion of the school and owing to the nature and volume of work anticipated for this conversion the contribution for, as a Community School, is £5,000.

7.4 Procurement Implications (if required)

7.4.1 N / A

7.5 Human Resources Implications (if required)

- 7.5.1 The Statutory TUPE consultation process was undertaken by the Schools Employee Relations Team.

7.6 Public Sector Equality Duty

- 7.6.1 The Academies Conversion Programme is a Central Government Policy. An initial Equality Analysis was undertaken in February 2014 (EA000046) and the outcome indicated that a Full Equality Analysis was not required.

8 Appendices

1. Academy Order John Willmott School.
2. Treatment of surplus and deficit balances when maintained schools become Academies.

9. Background Documents

- 9.1 Relevant officer files.
- 9.2 Cabinet Report – John Willmott conversion – January 2018.