

# Birmingham City Council

## Report to Cabinet

Date: 25<sup>th</sup> June 2019



**Subject:** AL-HIJRAH SCHOOL CONVERSION FROM VOLUNTARY AIDED SCHOOL TO ACADEMY STATUS

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

**Relevant Cabinet Member:** Councillor 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): Bordesley & Highgate		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: <b>006447/2019</b>		
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

- 1.1 To ensure Members are fully aware of the financial implications associated with the academisation of Al-Hijrah School. Specifically that under current legislation the cumulative projected deficit of £2.92m falls on the Local Authority to fund.
- 1.2 This report also seeks approval for the execution and completion of the legal documentation associated with this arrangement, substantially in the form of the standard template documents required by the Department for Education (DfE).

## **2 Decisions Recommended**

- 2.1 Notes that Al-Hijrah School is proposing to convert to Academy status on or after 1<sup>st</sup> September 2019. At the point of conversion the school will relocate from its current site to an alternative site as outlined in 2.5.
- 2.2 Notes that Al-Hijrah School is a Sponsored Academy and the sponsor will be Star Academies. The school will be called Olive School, Small Heath.
- 2.3 Notes that at the point of conversion Al-Hijrah School is expected to have a deficit balance of £2.92m and this will remain with the Local Authority at the point of conversion (and may increase if conversion occurs after September 2019) as outlined in the DfE guidance entitled 'Treatment of surplus and deficit balances when maintained schools become Academies' – see attached **Appendix 3**.
- 2.4 Notes that as Al-Hijrah School is a Voluntary Aided (VA) School and as such it is not necessary for the Local Authority to grant and complete a Lease for 125 years of the school site. Completion of a Commercial Transfer Agreement (CTA) in respect of the transfer of staff and assets is also not required to be entered into by the Council as the freehold for the school site is already vested with the Al-Hijrah Trust, however as the school is relocating to a new site at the point of conversion a separate lease of the new site is required.
- 2.5 Authorises the grant and completion of the lease for the new school site (10 Waverley Road, Small Heath B10 0EG) as identified on the attached redline plan (**Appendix 1**) to Star Academies for 125 years substantially in the form of the model lease produced by the DfE at a peppercorn rent.
- 2.6 Authorises the City Solicitor to negotiate, execute and complete all necessary documents to give effect to the above recommendations.

## **3 Background**

- 3.1 Al-Hijrah School is a Voluntary Aided Muslim Faith School based in the Bordesley Green area of Birmingham. The site is owned by the Al-Hijrah Trust.
- 3.2 In February 2014 the school was judged as 'Inadequate' by Ofsted, and owing to the ongoing concerns relating to financial management practises, building management arrangements and management and leadership issues at the school, the Governing Body of the school was removed and an Interim Executive Board (IEB) was appointed in May 2014.
- 3.3 In January 2016 a further Ofsted inspection found that Al-Hijrah School had made some positive progress towards improvement with the overall rating of 'Requires Improvement'. Subsequent inspections in June 2016 and March 2017 then judged the school as 'Inadequate'. One of the reasons for the 'Inadequate' category was due to the school's practice of segregation of older pupils by gender. This was deemed unlawful practice in a co-educational designated school and contrary to the Equality Act 2010.
- 3.4 In May 2017 the school became subject to a Directive Academy Order following the March 2017 Ofsted inspection, which had again judged the overall provision to

be 'Inadequate' as outlined in 3.3. The Court of Appeal judgement required Al-Hijrah School to stop its practice of segregation by gender, as it is unlawful and contrary to the Equality Act 2010.

- 3.5 The Local Authority worked closely with the Regional Schools Commissioner (RSC) to identify a suitable sponsor for Al-Hijrah School, however owing to the unlawful practices outlined above, no suitable sponsor was identified.
- 3.6 In September 2018 the IEB put forward a proposal to 'Lower the Age Range of Al-Hijrah School from 4 - 16 to 4 – 11 with effect from 1<sup>st</sup> September 2019' thus removing the unlawful practice of segregation by gender at Key stages 3 and 4. Following a thorough consultation process this was approved by the Cabinet Member in January 2019 and Al-Hijrah School will become a Primary School on 1<sup>st</sup> September 2019 (see approval attached as **Appendix 4**). Star Academies then agreed with the RSC that they would become the sponsor of the Primary School.
- 3.7 This will mean that from September 2019 the secondary provision at the school will no longer exist and measures are in place to ensure that suitable alternative places have been offered to all displaced secondary boys and girls.
- 3.8 The current Al-Hijrah School site is owned by the Al-Hijrah Trust and will pass back to the Trust on 31<sup>st</sup> August 2019.
- 3.9 The lease of the Waverley Road site is to be granted to the Star Academies Trust substantially in the form prescribed by the DfE – this requires the lease to be for 125 years and at a peppercorn rent. Under the terms of the lease granted to an Academy, the Trust cannot transfer or assign the land or assets to anyone else (save for as is set out at 3.9 a) – c) (incl.) below). The Trust can only use the land for the provision of educational services and any community and recreational use ancillary to the schools educational use. The Trust can only share occupation with another entity providing ancillary services to the Trust, and can only sub-let part or parts (not the whole) of the property demised under the lease under sub-leases of up to a maximum term of 10 years. The lease can only be assigned to:
  - a) such secretary of state or Minister of the Crown as may be nominated by the Secretary of State for Education to take an assignment of the lease;
  - b) a proprietor or proposed proprietor of an Academy; or
  - c) a successor charitable or public body (if the Trust falls away for any reason) and with the consent of the Secretary of State.

Where an Academy is failing or the Funding Agreement has been terminated there is now an option contained in the Funding Agreement in favour of the Secretary of State to acquire land at nil consideration without City Council (landlord) consent. The purpose of this option is to ensure the Secretary of State is able to arrange for the continuing education of the pupils in the period where the existing trust has failed and handover to another Academy Trust has not been affected. There is an expectation that another Academy Trust may take over the running of the Academy but if there is no alternative trust, then the Secretary of State may decide the land reverts back to the City Council.

- 3.10 As Al-Hijrah School is a VA school, the members of staff are currently employed by the IEB of the school so there are no transfer arrangements required by the Local Authority for this school.
- 3.11 The Waverley Road site is currently being refurbished to enable the Primary School to relocate to the site from 1<sup>st</sup> September 2019 and a report detailing the works was approved by Cabinet on 22<sup>nd</sup> January 2019 – see the attached approval (**Appendix 5**).

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

- 4.1 A do nothing option is not available, as the Secretary of State has made an Academy Order which requires Al-Hijrah School to become an Academy. The recommendation is to allow the completion of the transfer of Al-Hijrah School in accordance with the Academy Order granted by the Secretary of State.

#### **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 Bordesley & Highgate and Senior Officers from Legal and Finance have also been consulted. Please note no comments were received from Ward Councillors in respect of this proposal.

#### **6 Risk Management**

- 6.1 The Academy Order 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 delayed beyond 1<sup>st</sup> September 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 Academy Order 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 The recommendations in this report will enable the reconfigured Al-Hijrah 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.
- 7.3.2 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 VA School, is £5,000.
- 7.3.3 The Al-Hijrah deficit built up progressively since 2012/13 and peaked at a value of £3.17m in 2016/17, before stabilising and reducing under the influence of the Interim Executive Board. At the point of conversion Al-Hijrah School is expected to have a deficit balance of £2.92m, which will remain with the Local Authority as outlined in 2.3. The final deficit at the date of conversion will be funded by using revenue resources released through the application of capital resources, which have been set aside to fund academy deficit conversions.

### **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 as requested by the IEB.

### **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. Redline Plan – Waverley Road
2. Academy Order Al-Hijrah School
3. Treatment of surplus and deficit balances when maintained schools become academies
4. Proposal to Alter to the Age Range of Al-Hijrah School – Implemented
5. Proposal to Refurbishment of the Former Small Heath Lower School Site to Provide Accommodation for Key Stage 1 & 2 pupils from Al-Hijrah Primary School following its conversion to an Academy – Full Business Case and Contract Award – Implemented

## **9. Background Documents**

- 9.1 Relevant officer files.