

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to:	CABINET
Report of:	Corporate Director for Children and Young People
Date of Decision:	24th January 2018
SUBJECT:	SCHOOLS PRIVATE FINANCE INITIATIVE & BUILDING SCHOOLS FOR THE FUTURE SAVINGS REVIEW – CONTRACT TERMINATION
Key Decision: Yes	Relevant Forward Plan Ref: 004669/2018
If not in the Forward Plan: (please "X" box)	Chief Executive approved <input type="checkbox"/> O&S Chair approved <input type="checkbox"/>
Relevant Cabinet Member(s)	Cllr Majid Mahmood, Commercialism, Commissioning and Contract Management Cllr Carl Rice, Children, Families & Schools
Relevant O&S Chair:	Cllr Mohammed Aikhlaq - Corporate Resources and Governance Cllr Susan Barnett – Schools, Children and Families
Wards affected:	ALL

1. Purpose of report:

- 1.1 Further to the agreed Cabinet report on 15th November 2016 – Schools Private Finance Initiative (PFI) and Building Schools for the Future (BSF) Savings Review, this report is to advise of the proposal to progress one of the PFI and BSF related savings initiatives previously identified, namely the removal of Facilities Management (FM) provision for the 7 BSF Design and Build (D&B) Schools and Academies (as listed in Appendix 1).
- 1.2 The accompanying private report contains commercially confidential information related to this proposal.

2. Decision(s) recommended:

That Cabinet:-

2.1 Notes this report.

Lead Contact Officer(s): Jaswinder Didially, Head of Service

Nadia Majid, Lead Contracts Manager, Education Infrastructure

Telephone No: 0121 303 8847

E-mail address: jaswinder.didially@birmingham.gov.uk

nadia.majid@birmingham.gov.uk

3. Consultation:

3.1 Internal

Officers from City Finance, Legal and Governance have been involved in the preparation of this report.

3.2 External

BSF Schools and Academies (as per Appendix 1), Birmingham Lend Lease Partnership, Amber Investments (on behalf of BSFi¹ LLP), have been consulted on all relevant matters and are aware and support the Council's interest in pursuing this initiative.

4. Compliance Issues:

4.1 Are the recommended decisions consistent with the Council's policies, plans and strategies?

4.1.1 The proposals contribute towards the City Council's Financial Plan 2017+ which sets out the annual budget and long term financial strategy of the City Council and plans for assets, capital investment and other resource issues to deliver the City Council's priorities.

4.2 Financial Implications
(How will decisions be carried out within existing finances and Resources?)

4.2.1 Under the 7 D&B BSF contracts in question, the City Council has a Facilities Management (FM) Agreement in place at 7 Schools and Academies which provides for services such as cleaning, caretaking, grounds maintenance, etc. to be provided by a third party. The FM arrangements were a condition of the DfE capital works funding being allocated to these Schools and Academies under the Building Schools for the Future ("BSF") Programme and mirror FM arrangements in our PFI Schools. The FM agreements are for up to 25 years and are subject to an annual indexation increase.

¹ BSFi is the financial arm of the former Partnerships for Schools; the body set up to support the delivery of BSF on behalf of Central Government.

4.3 Legal Implications

4.3.1 Sections 13, 14 & 16 of the Education Act 1996 provides the powers under which PFI and the BSF Programme were established. The proposals will assist the City Council to meet its statutory obligation to make arrangements and secure continuous improvement in the delivery of its functions (Best Value) under S.3 Local Government Act 1999.

4.3.2 Of the 150 staff subject to TUPE 144 will transfer straight to Academies and because they do not have any relationship to the Council the TUPE arrangements will be between the individual Academies as independent organisations and the outgoing FM contractor.

5 of the 7 Schools implicated are independent Academies and 1 is a Foundation School therefore all staff will transfer directly from the FM contractor to the Academy Trust / Governing Body. The only Community School implicated is George Dixon Primary a co-located Primary School which shares a site with George Dixon Academy. The number of staff to transfer to the Community School / the City Council will be between 4 and 6 depending on the part-time employment arrangements of the individuals and the “Relevant Proportion” funding currently held by the City Council to cover the costs of the staff. As part of the proposed contractual arrangements these staff will revert back to the School as part of the initiative, allowing the School to manage the staff directly.

4.4 Public Sector Equality Duty (see separate guidance note)

4.4.1 An Initial Equality Analysis was carried out on 02/10/2017 (EA002379) and the outcome indicated that a Full Equality Analysis was not required as this time due to the commercially sensitive nature of this initiative.

5. Relevant background/chronology of key events:

5.1 The City Council has 4 PFI and BSF packages servicing 36 Schools and Academies at an annual revenue cost of circa £37.6m. The PFI and BSF arrangements have supported £456.8m of capital investment in Birmingham Schools and the long-term contracts in place, which extend up to 30 years, are envisaged to cost the City Council in the region of £755m revenue in total over the respective contract terms. For a protracted period of time the City Council has faced a considerable revenue pressure on its 4 PFI and BSF FM Contracts.

5.2 In light of the nationally recognised financial pressures associated with PFI arrangements, in January 2015 the City Council agreed to support a “pilot study” being undertaken by Local Partnerships. The study sought to explore the potential for savings from PFI contracts and had the buy-in of HM Treasury, Department for Education, Education Funding Agency and the Local Government Association.

5.3 Following the conclusion of the study a report was produced in April 2015. City Council officers have continued to work to implement the identified initiatives and further provide a far more robust challenge to PFI Providers. That challenge has extended to overseeing, critically reviewing and validating benchmarking exercises on all 4 City Council contracts as well as removing life-cycle obligations from the Broadway Academy FM contract. The outcome of implementing such exercises has delivered substantial reductions in the charges being applied to the associated contracts as detailed in previous reports to cabinet on 20th September and 15th November 2016.

- 5.4 This initiative directly to a community primary School is made possible by utilising a clause within the contract but requires commercial negotiations with the Birmingham Lend Lease Partnership (BLLP), the FM provider (Engie) and the impacted individual Schools/Academies. The proposal when implemented will result in the TUPE transfer of circa 144 Soft FM and Hard FM staff currently engaged in the delivery of FM to the designated Academies and up to 6 staff
- 5.5 The Schools and Academies impacted have been directly consulted with over the last 18 months. All are supportive and would prefer to end current FM arrangement and take back direct responsibility of FM, and fully understand the implications and requirement to manage this activity within their respective delegated budgets. This approach is in line with the delegated budgetary arrangements that are in place at all other non- BSF schools. . Through the consultation period the Schools and Academies have confirmed that there is a more cost effective solution to this area of expenditure than that currently operated under the BSF programme and are keen to take back control.
- 5.6 Key to achieving this beneficial position for the City Council is the ability of officers from the Edi team, Legal and external technical support (funded from Edi budget) to challenge the contract assumptions, commercially negotiate the termination and negotiation with the Schools and Academies to pave the way for the initiative to be implemented

6. Evaluation of alternative option(s):

- 6.1 The removal of the FM provision for the D&B contract is a BSF specific opportunity not open to any other part of the PFI Schools contracts. The Edi team has considered carefully the rationale to activate this initiative and whilst it will result in complex negotiation, the current budget pressures faced by the City Council are a driving force behind the work done by the Edi team. There is no other initiative that could deliver this particular savings opportunity.

7. Reasons for Decision(s):

- 7.1 To secure a reduction in the current contractual charges which will contribute to the achievement of significant savings targets across the PFI Schools contracts.

Signatures

Date

Cabinet Member for Children, Families & Schools

Cllr Carl Rice

Cabinet Member for Commercialism,
Commissioning & Contract Management

Cllr Majid Mahmood

Corporate Director for Children &
Young People

Colin Diamond

List of Background Documents used to compile this Report:

1. Report to Cabinet on 15th November 2016 – Schools Private Finance Initiative and Building Schools for the Future Savings Review
2. Report to Cabinet on 20th September 2016 – Broadway Academy Building Schools for the Future savings Review

List of Appendices accompanying this Report (if any):

1. List of BSF D&B Schools/Academies

Report Version 5 Dated: 15/01/2018