

Birmingham City Council

Report to Cabinet

20th April 2021



Subject: MAYFIELD SCHOOL CONVERSION FROM COMMUNITY SPECIAL SCHOOL TO ACADEMY STATUS

Report of: Andy Couldrick
Interim Director of Education & Skills

Relevant Cabinet Member: Cllr Jayne Francis, Education, Skills & Culture

Relevant O & S Chair(s): Cllr 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): Lozells		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: 007494/2020		
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 Academy conversions are commenced by Order of the Secretary of State; the resulting process requires the property occupied by the school, together with all relevant and associated rights, liabilities and staff, to be transferred to the Education Impact Academy Trust in accordance with the terms as set out in the CTA and the suite of conversion documents. In order to achieve this, the City

Council is required to grant a 125 years lease and also to complete a Commercial Transfer Agreement (CTA).

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

2 Recommendations

That Cabinet;

- 2.1 Notes that Mayfield School is proposing to convert to Academy status on or after 1st June 2021 and their sponsor will be the Education Impact Academy Trust.
- 2.2 Notes that at the point of conversion Mayfield School will have a deficit balance of circa £2 million due to the staffing structure and over reliance on agency staff. This 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' (Appendix 4)
- 2.3 Notes that Mayfield School occupies two separate sites: Heathfield Road B19 1HJ; and Wheeler Street B19 2EP. The Wheeler Street site is subject to PFI (Private Finance Initiative) contract arrangements until 2036, and the site is shared with two other schools, Holte School and Lozells Junior and Infant School and Nursery and known as the HML site.
- 2.4 Notes that a Shared Use Agreement is in place on the site between Lozells, Holte and Mayfield Schools (HML), which identifies the areas of the site that are shared and who is responsible for them. This document will form a schedule to the Commercial Transfer Agreement. The Shared Use Agreement has been prepared by the Council and currently in negotiation. The Shared Use Agreement will be agreed and signed with Lozells, Holte and Mayfield Schools before the conversion.
- 2.5 Authorises the grant and completion of 2 leases (one for each site) for Mayfield School to the Education Impact Academy Trust for 125 years substantially in the form of the model lease produced by the DfE at a peppercorn rent. The school's sites are identifiable as shown on the accompanying redline plans (**see Appendix 1a, 1b, 1c, and 2**).
- 2.6 Authorises the completion of a School Agreement between the Council and the academy trust relating to the PFI arrangements (as per section 2.7 below) on the HML site, this document replaces the Governing Body Agreement of the community school, this will be substantially in the form of the model provided by the DfE.

- 2.7 Authorises the completion of a standard form Deed of Variation to the Project Agreement relating to the Phase 1a PFI Contract and Schedules. This document is prepared by the Council and formally recognises Mayfield school's Academy status (in name change only) and that Council remains the client in respect of the PFI Contract and schedules.
- 2.8 Authorises the completion of a Commercial Transfer Agreement (CTA) to the Education Impact Academy Trust relating to the transfer of staff under the Transfer of Undertakings (Protection of Employment) Regulations 2006 and assets to the Academy Trust.
- 2.9 Authorises the City Solicitor to negotiate, execute and complete all necessary documents, including the Deed of Variation to the Facilities Management Contract, Principal Agreement and the Shared Use Management Agreement, to give effect to the above recommendations.

3 Background

- 3.1 The Academies Act 2010 empowered the Secretary of State for Education to create Academies through Academy Orders.
- 3.2 Mayfield School is a Community Special school. Following an Ofsted inspection in May 2018, the school was judged as 'Inadequate' and was subject to a Directive Academy Order in June 2018 with Education Impact Academy Trust (EIAT) identified as the sponsor. The school intends to convert on or after 1st June 2021.
- 3.3 EIAT has been working with the school since 2018 and has supported the leadership team and the members of the Interim Executive Board (IEB) to ensure effective action is being taken to provide education for all of the pupils in the current context. This support was recognised by OfSTED during their most recent visit on 10th February 2021

"Effective support is being given by the MAT in the development of the new curriculum. This includes support to leaders in the development of literacy, reading and mathematics"

- 3.4 The school occupies two sites and associated buildings. One of the sites is a PFI (Private Finance Initiative), which will require a School Agreement to be entered into with the Council, the PFI provider and the academy sponsor.
- 3.5 The land and assets occupied and used by the school are currently owned by the City Council. In order for the Academy to operate, a lease is to be granted to the Academy 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 3.3 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 school's 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.

3.6 In addition, members of staff that are currently employed by the City Council are to transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006 to the Academy Trust as well as the assets of the school under a Commercial Transfer Agreement (CTA).

3.7 The statutory TUPE consultation process, which needs to take place prior to the proposed conversion date, is being managed and coordinated by the HR Team. Following the completion of the restructure process which is currently taking place at the school, the TUPE process and consultations will commence in late April - early May with all staff remaining in the new staffing structure and the unions.

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 Mayfield School to become an Academy. The recommendation is to allow the completion of the transfer of Mayfield School in accordance with the Academy Order granted by the Secretary of State.

5 Consultation

5.1 Ward Councillor for Lozells has been consulted and no comments received.

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 1st June 2021 it would have a negative impact on the school budget resulting in the deficit increasing.

- 6.2 Weekly Meetings are held with all parties to keep them informed of progress to ensure that any concerns are picked up at the earliest opportunity and are resolved in a timely manner to keep the Academy conversion on track.

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 section 4 of the Academies Act 2010. Section 5B of that Act requires all concerned parties, including the local authority, to take all reasonable steps to facilitate the conversion of the school into an Academy.

- 7.2.2 Although the Director for Education & Skills has the delegated authority under the Council's constitution to authorise the grant of long leases, Commercial Transfer Agreements and other ancillary documentation relating to the changing status of maintained schools to Academies, the value of the estimated deficit balance at Mayfield School means that Cabinet must be the decision-maker for all matters relating to this school's conversion.

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 can therefore be granted at a peppercorn rent. The arrangements relating to the school land are firstly a matter for agreement between the Council and the relevant Academy Trust but the Secretary of State has reserve powers to make a scheme relating to the school land under Part 1 of Schedule 1 to the Academies Act 2010.

- 7.2.3 The Transfer will be subject to TUPE Regulations and all employees currently working at Mayfield School will move to the Academy Trust on their current terms and conditions of employment as at the date of transfer. There is an obligation on both parties to enter into meaningful consultation concerning the transfer. Consultation will commence with the majority of employees in late April – early May. Furthermore, there is an obligation on the Council to provide up to date Employee Liability Information at least 28 days prior to the date of transfer.

7.3 Financial Implications

- 7.3.1 At the point of conversion (1st June 2021) it is estimated that Mayfield School will have a deficit balance of circa £2 million as outlined in para. 2.3. The

Local Authority has worked with the school and the sponsor to stabilise the deficit position. Under the DfE guidance relating to directed Academy conversions, the City Council will need to fund this deficit. The final deficit amount to be funded will be confirmed after conversion has taken place, following the usual 3 months financial close down process. The deficit will be funded from the one-off budget in Education & Skills directorate set up for this purpose in the 2021/22 budget

7.3.2 The recommendations in this report will enable Mayfield 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, taking into account the requirement for 2 leases and the PFI elements, the contribution for Mayfield School, as a Community School is £18,000.

7.4 Procurement Implications (if required)

7.4.1 Not applicable

7.5 Human Resources Implications (if required)

7.5.1 The Statutory TUPE consultation process is being undertaken by the Schools ER Team as outlined in 3.7.

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. The Central Government Policy has not changed since the initial Equality Analysis and it has been decided that the recommendations in this report do not require a full equality impact assessment.

8 Appendices

Appendix 1a - Redline Plan HML Wheeler Street Site

Appendix 1b - Ground Floor Plan HML Wheeler Street Site

Appendix 1c - First Floor Plan HML Wheeler Street Site

Appendix 2 - Redline Plan - Heathfield Road Site

Appendix 3 - Academy Order Mayfield School

Appendix 4 - Treatment of surplus and deficit balances when maintained schools become Academies

Appendix 5 - Environment and Sustainability Assessment

9 Background Documents

- 9.1 Relevant officer files.
- 9.2 Phase 1 A Project Agreement and associated documents relating to HML.