

BIRMINGHAM CITY COUNCIL

PUBLIC

Report to: **CABINET**

Report of: **Corporate Director – Children & Young People**

Date of Decision: **12th December 2017**

SUBJECT: **SMALL HEATH SCHOOL CONVERSION FROM FOUNDATION SCHOOL TO ACADEMY STATUS**

Key Decision: **Yes** **Relevant Forward Plan Ref: 003489 / 2017**

If not in the Forward Plan: **Chief Executive approved** ☐
(please "X" box) **O&S Chair approved** ☐

Relevant Cabinet Member(s) or Relevant Executive Member: **Cllr Carl Rice, Children, Families and Schools**

Relevant O&S Chair: **Cllr Susan Barnett, Schools, Children and Families**

Wards affected: **Nechells**

1. Purpose of report:

- 1.1 To provide an update to Cabinet to ensure Members are fully aware of the financial implications associated with the academisation of Small Heath School. Specifically that under current legislation the cumulative projected deficit of £1.8m falls on the Local Authority to fund.
- 1.2 This report also seeks approval for the execution and completion of the commercial and legal documentation associated with the conversion, substantially in the form required by the Department for Education (DfE).

2. Decision(s) recommended:

That Cabinet :-

- 2.1 Notes that Small Heath School, Muntz Street, Small Heath, Birmingham B10 9RX is proposing to convert to Academy status on or after 1st January 2018. Small Heath School is to become a Sponsored Academy and will be sponsored by the Tauheedul Education Trust (TET).
- 2.2 Notes that at the point of conversion Small Heath School will have a cumulative deficit balance of £1.8m and 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.'
- 2.3 Notes that from 1st September 2017 Small Heath School has been known as Small Heath Leadership Academy. Although the school will not convert to an Academy until 1st January 2018 the Interim Executive Board (IEB) of the school made a decision to

change the name of the school in advance of the conversion at the beginning of the school year.

- 2.4 Notes that Small Heath School became a single site school from 1st September 2017 and the lower School Site (Waverley Road, Small Heath B10 0EG) will remain with the Local Authority when the school converts on 1st January 2018.
- 2.5 Notes that as Small Heath School is a Foundation School there is no requirement on the Local Authority to enter into the usual 125 year lease arrangement with the Academy Trust. As the freehold for the site is already vested with the IEB it will transfer to TET at the point of conversion.
- 2.6 Authorises the completion of a Commercial Transfer Agreement (CTA) in respect of Small Heath School relating to the existence of an IEB and the requirement for all responsibilities of the IEB to transfer to TET at the point of conversion. The school site being transferred is identifiable as shown on the accompanying redline plans (see Appendices 1a, b, and c).
- 2.7 Authorises the City Solicitor to negotiate, execute and complete all necessary documents to give effect to the above recommendations.

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3. Consultation:

Consultation should include those that have an interest in the decisions recommended

3.1 Internal

The Cabinet Member for Children, Families and Schools and Senior Officers in the Directorate for Children & Young People are aware of the conversion and have been involved in discussions relating to the transfer. Ward Councillors for Nechells, the Executive Member and the Service Integration Head for Ladywood and Senior Officers from Legal and Finance have also been consulted and any outcomes have been noted in the report.

3.2 External

The Secretary of State has issued the Academy Order attached as Appendix 2 requiring the conversion of Small Heath School.

4. Compliance Issues:

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

4.1.1 The Academies Conversion Programme is a Central Government Policy.

4.2 Financial Implications

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

- 4.2.1 The recommendations in this report will enable Small Heath School to transfer 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 & Skills Infrastructure Budget for the purposes of the Academy conversion process.
- 4.2.2 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 Small Heath School will be £4,500.
- 4.2.3 At the point of conversion (01.01.18) the cumulative deficit balance at Small Heath School will be £1.8m this includes the pension strain costs of approx. £57,000 and this will remain with the Local Authority at the point of conversion as outlined in 2 above. The deficit will be funded from a contingency within the Dedicated School Grant which includes utilising DSG carried forward from 2017/18. Redundancy costs will be funded separately from a allocated budget held in DSG.

4.3 Legal Implications

- 4.3.1 The Secretary of State for Education has issued the Order under the Academies Act 2010 which requires all concerned parties to facilitate the creation of the Academy.

4.4 Public Sector Equality Duty (see separate guidance note)

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

5. Relevant background / chronology of key events:

- 5.1 The Academies Act 2010 empowered the Secretary of State for Education to create Academies through Academy Orders. A Directive Academy Order for Small Heath School was issued in April 2016 following Ofsted inspections; the school is required to be sponsored by a Multi Academy Trust.
- 5.2 On 27th March 2015 an Interim Executive Board (IEB) was put in place at Small Heath School. This was chaired by King Edward VI Foundation who was the potential sponsor at the time. Following a due diligence exercise the King Edward VI Foundation decided not to proceed with the sponsorship of Small Heath School and the members resigned from the IEB.
- 5.3 On 28th January 2016 a new IEB was put in place to replace the original Board. The new IEB worked on stabilising the leadership of the school and securing school improvement during a prolonged period of industrial action within the school causing general unrest amongst the community.
- 5.4 In September 2016 the IEB began their own due diligence process to enable them to progress conversion with a suitable trust once one was identified. This due diligence

exercise identified that a significantly large proportion (93%) of the overall school budget was made up of staffing costs. Although the school had declared a balanced budget in March 2016, it was clear that due to the high level of staffing costs it was rapidly moving into a deficit position.

- 5.5 In October 2016 TET expressed an interest in sponsoring Small Heath School and in December 2016 consultations began with staff, Trade Unions and the wider community. During this period TET in partnership with the Council undertook a robust due diligence exercise which uncovered the true extent of the financial issues facing the school.
- 5.6 TET in conjunction with the Council developed a Business Case which was submitted to the DfE in February 2017 outlining the financial issues and requesting support from the DfE to resolve this. A response was received from the Regional Schools Commissioner confirming that any deficit should remain with the Local Authority and that the Local Authority would be expected to share the responsibility for costs related to any necessary staff redundancy and restructuring as it could be deduced that these costs have increased due to a lack of intervention on the part of the Local Authority. The lack of timely intervention was in large part constrained by the school being in special measures and industrial action by staff during the 2016 summer term.
- 5.7 The land and assets occupied and used by the school will transfer under the arrangements prescribed by the DfE and as outlined in 2.5 above. The transfer will be subject to the land being used for the provision of educational services and any community and recreational use ancillary to the school's educational use. The staff will also transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006 to the Academy Trust. The consultations for Small Heath School took place on 09.03.17 with Staff and Unions and further consultations and discussions with unions are ongoing.
- 5.8 In order to support a long term sustainable financial solution and ensure a 'standards driven' agenda remains a key priority, a staffing restructure based on the school operating from a single site was implemented by the IEB for September 2017. During the summer period temporary modular accommodation was installed on the site and the lower school site relocated to the Muntz Street site.
- 5.9 The Council in partnership with TET are required to provide a permanent solution for the site within 18 months of the conversion in line with the current planning permission for the temporary modular accommodation. This will involve remodelling of the current site and a small amount of new build will be required to provide appropriate space to accommodate the additional footfall on the site. These works will be delivered using Local Authority's Basic Need grant funding. Further details will be identified as a schedule to the CTA and a separate report will follow in line with BCC's approval Gateways.

6. Evaluation of alternative option(s):

- 6.1 A do nothing option is not available, as the Secretary of State has made an Academy Order which requires Small Heath School to become an Academy.

7. Reasons for Decision(s):

- 7.1 To allow the completion of the transfer of Small Heath School in accordance with the Academy Order granted by the Secretary of State.

Signatures

Date

Cabinet Member Children, Families & Schools:

Cllr Carl Rice:

Corporate Director Children & Young People:

Colin Diamond:

List of Background Documents used to compile this Report:

1. Relevant Officer(s) Files

List of Appendices accompanying this Report (if any):

- 1a. Small Heath Upper School and Library – Ground Floor
- 1b. Small Heath Upper School and Leisure Centre – Ground Floor
- 1c. Small Heath Upper School and Leisure Centre – First Floor
2. Academy Order for Small Heath School

Report Version v5 Dated 30.11.17