

Birmingham City Council

Report to Cabinet

26th May 2020



Subject: QUEENSBURY SCHOOL CONVERSION FROM COMMUNITY SPECIAL SCHOOL TO ACADEMY STATUS AND FULL BUSINESS CASE

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

Relevant Cabinet Member: Cllr Jayne Francis - Education, Skills & Culture
Cllr Tristan Chatfield - Finance & Resources

Relevant O &S Chair(s): Cllr Kath Scott - Education and Children's Social Care
Cllr Sir Albert Bore - Resources

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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): Gravelly Hill		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: 007625/2020		
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 order to achieve this, the City Council is required to grant a 125 year lease and also complete a Commercial Transfer Agreement (CTA).

- 1.2 This report seeks approval for the grant of the lease and to enter into the CTA and execution and completion of the legal documentation associated with this arrangement, substantially in the form required by the Department for Education (DfE).
- 1.3 This report also seeks approval of the capital works required on site outlined in **Appendices 3 & 4**, which will not exceed £2.046million. The value of these works exceeds the delegated authority in place for Academy Reports.

2 Recommendations

That Cabinet:

- 2.1 Notes that Queensbury School, Wood End Road, Erdington, Birmingham B24 8BL will be converting to Academy status on or after 1st July 2020.
- 2.2 Notes that Queensbury School will be a Sponsored Academy and the sponsor is the Education Impact Academy Trust.
- 2.3 Notes that at the point of conversion Queensbury School is expected to have a small deficit balance of £58,068 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'.
- 2.4 Authorises the grant and completion of the lease for Queensbury 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 site is identifiable as shown on the accompanying redline plan (see **Appendix 2**).
- 2.5 Authorises the completion of a Commercial Transfer Agreement 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.
- 2.6 Approves the Full Business Case (**Appendix 3**) for the capital works at Queensbury School at a project cost not to exceed £2.046 million outlined in the Schedule of Works in **Appendix 4**.
- 2.7 Authorises the City Solicitor to negotiate, execute and complete all necessary documents 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 Queensbury School is a Community Special School at present and an Academy Order for the school to convert has been granted (see **Appendix 1**). The school will convert on or after 1st July 2020.
- 3.3 A Directive Academy Order was granted in May 2018 following an Ofsted inspection in March 2018, which rated the school inadequate. Education Impact Academy Trust

was identified as the sponsor and has been supporting the school since then to provide stability to the leadership in the school and address concerns raised by Ofsted. As a result, there is now a greater level of stability in staffing and school finances as well as a welcoming environment which has resulted in much improved teaching and learning for the pupils.

3.4 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 3.4 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 possible. 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.

3.5 In addition, members of staff at the school 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).

3.6 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. The consultations for Queensbury School took place with Staff and Unions on 4th December 2019.

3.7 The Trust also requested an additional indemnity relating to Equal Pay Claims, which is not covered in the standard Birmingham CTA – this has also now been agreed and details of the indemnity are outlined in the CTA.

- 3.8 In the case of some Academy conversions maintenance works, funded from the School Capital Allocation grant, are required prior to or post conversion. Some works have already been undertaken to support the school to address long standing maintenance issues relating to health & safety, structural integrity and statutory compliance. Additional funding as outlined in section 2.6 above is required to address further backlog maintenance issues and contribute to the permanent replacement of the temporary modular accommodation on site, which is beyond economic repair. These additional classrooms will improve the circulation around the site and remove the health and safety concerns resulting from the current condition of the buildings. As the new building will be located adjacent to the current school building this will reduce movement of pupils across the site (**Appendix 4**). This will create a better fit for purpose environment for some of the most vulnerable Birmingham pupils.
- 3.9 Additional works (approx. £1 million) required at the school that the Local Authority was unable to find funding for, will be funded from either the Trust's own resources or directly from the DfE (**Appendix 5**). This additional funding will enable the continued improvement of the site.

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

5 Consultation

- 5.1 The Ward Councillor for Gravelly Hill was consulted and there were no comments received.

6 Risk Management

- 6.1 The Directive Academy Order granted by the Secretary of State requires the Local Authority to take all reasonable steps to facilitate the conversion and then 'Cease to Maintain' the school. If the conversion is delayed beyond 1st July 2020 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 and all works associated with it on track. This has remained the same in spite of the current COVID-19 restrictions.

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 Queensbury School was judged inadequate by Ofsted in March 2018. Consequently, in May 2018 the Secretary of State for Education made 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 proposed capital works at Queensbury School means that Cabinet must be the decision-maker for all matters relating to this school's conversion.
- 7.2.3 Pursuant to section 14 of the Education Act 1996 the Local Authority has overall responsibility for the capital strategy for schools.

7.3 Financial Implications

- 7.3.1 At the point of conversion, 1st July 2020, it is estimated that Queensbury School will have a deficit balance of £58,068 as outlined in section 2.3. Under the DfE guidance relating to directed Academy conversions, the City Council will need to fund this deficit. This 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 amount to be funded will be confirmed after conversion has taken place.
- 7.3.2 The recommendations in this report will enable Queensbury 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 Queensbury School, as a Community School is £7,500.

The post Academy conversion Capital works at Queensbury School will be funded from the Basic Need Funding Allocation and School Condition Allocation Funding as outlined in **Appendix 3** – Full Business Case and will not exceed £2.046 million.

7.4 Procurement Implications (if required)

- 7.4.1 The capital works will be procured directly by Education Impact Academy Trust post conversion and although the capital works will be undertaken by the Academy Trust compliance with Birmingham Business Charter for Social Responsibility will be sought. This requirement will be outlined in the Grant Agreement between BCC and the Trust.

7.5 Human Resources Implications (if required)

- 7.5.1 The Statutory TUPE consultation process was undertaken by the Schools ER Team as outlined in section 3.6.

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 policy for Academy conversions remains the same.

8 Appendices

- 8.1 List of Appendices accompanying this Report (if any):

Appendix 1 - Academy Order Queensbury School

Appendix 2 - Redline Plan Queensbury School

Appendix 3 - Full Business Case – Queensbury School

Appendix 4 - Schedule of Works – Queensbury School – BCC

Appendix 5 - Schedule of Works – Queensbury School – DfE or Trust

9 Background Documents

- 9.1 Relevant officer files.