

BIRMINGHAM CITY COUNCIL

PUBLIC

Report to: **CABINET**

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

Date of Decision: **24th January 2018**

SUBJECT: **JOHN WILLMOTT SCHOOL CONVERSION FROM COMMUNITY SCHOOL TO ACADEMY STATUS**

Key Decision: **Yes** **Relevant Forward Plan Ref: 004650 / 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: **Sutton Trinity**

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 John Willmott School. Specifically that under current legislation the cumulative projected deficit of £1.1m 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 John Willmott School, Reddicap Heath Road, Sutton Coldfield B75 7DY is proposing to convert to Academy status on or after 1st February 2018. John Willmott School is to become a Sponsored Academy and will be sponsored by the Arthur Terry Learning Partnership (ATLP).
- 2.2 Notes that at the point of conversion John Willmott School will have a cumulative deficit balance of £1.1m 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 Approves the grant and completion of the lease for John Willmott School to the ATLP 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 1).

- 2.4 Approves the completion of a Commercial Transfer Agreement to the ATLP relating to the transfer of staff under the Transfer of Undertakings (Protection of Employment) Regulations 2006 and assets to the Academy Trust.
- 2.5 Authorises the City Solicitor to negotiate, execute and complete all necessary documents to give effect to the above recommendations.

Lead Contact Officer(s): Jaswinder Didially – Head of Education Infrastructure

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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 Sutton Trinity, the Executive Member and the Service Integration Head for Sutton Coldfield 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 John Willmott 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 John Willmott 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 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 John Willmott School will be £5,000.

4.2.3 At the point of conversion (01.02.18) the cumulative deficit balance at John Willmott School will be £1.1m and this will remain with the Local Authority at the point of conversion as outlined in 2.2 above. Given the 2017 / 18 DSG contingency against which most of the projected deficit of £1.1m could have been charged is fully allocated an interim solution will involve funding the deficit from the Capital Maintenance Grant in 2017 / 18. The capital account will then be reimbursed in 2018 / 19 from the 2018 / 19 DSG contingency budget (£0.9m) plus capital receipts (£0.2m). The use of capital maintenance grant in 2017/18 is made possible by identifying capital expenditure funded from revenue contributions and resourcing that spend from the grant and using the revenue contributions to fund the deficit.

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 John Willmott School was issued in April 2016; and the school will be sponsored by a Multi Academy Trust.

5.2 The land and assets occupied and used by the school (including the caretaker's house) on the school site 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. 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 (including subletting and other forms of tenancies up to a maximum of 10 years) with another entity providing ancillary services to the Trust. The lease can only be transferred to a successor organisation (if the Trust falls away for any reason) with the consent of the Secretary of State.

5.3 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.

- 5.4 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 Commercial Transfer Agreement (CTA).
- 5.5 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 John Willmott School took place with Staff on 17.11.17 and Unions on 23.11.17.
- 5.6 There are some planned works relating to Health & Safety, structural integrity and statutory compliance that are currently ongoing on the site and will continue post conversion. Full details of the works will be recorded in a schedule of the CTA and will be funded from the 17 / 18 Capital Maintenance Grant with it not to exceed budget of £500k. If any works are undertaken beyond the agreed scope and budget these costs for the additional works will be met by ATLP.

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 John Willmott School to become an Academy.

7. Reasons for Decision(s):

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

Signatures

Date

Cabinet Member Children, Families & Schools:

Cllr Carl Rice:

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Corporate Director Children & Young People:

Colin Diamond:



5 January 2018

List of Background Documents used to compile this Report:

1. Relevant Officer(s) Files

List of Appendices accompanying this Report (if any):

1. Redline Plan - John Willmott School
2. Academy Order for John Willmott School