

TELFORD & WREKIN COUNCIL**CABINET - 13 JULY 2017****ACADEMY CONVERSION FOR HADLEY LEARNING COMMUNITY (HLC) PRIVATE FINANCE INITIATIVE (PFI) SCHOOL TO A MULTI - ACADEMY TRUST (MAT)****REPORT OF ASSISTANT DIRECTOR: EDUCATION & CORPORATE PARENTING****LEAD CABINET MEMBER – CLLR SHIRLEY REYNOLDS****PART A) – SUMMARY REPORT****1. SUMMARY OF MAIN PROPOSALS**

1.1 Government policy on Academy Schools seeks to improve standards and increase choice for parents. The Hadley Learning Community (HLC) is a Private Finance Initiative (PFI) School undergoing an academy conversion to a MAT. The Council is under a statutory duty by virtue of the Academies Act (2010) and Section 10 of the Education and Adoption Act (2016) and is legally obliged, to facilitate the process of conversion by a school to academy status within a specified time period. The target date for conversion is the 1st September 2017 (but is not restricted depending on unforeseen and extenuating circumstances). The Council is aware that the PFI arrangements add complexity and heightened legal and financial risks that the Council may become exposed to. The Council will at all times seek to safeguard its position and achieve minimum financial expenditure and future liabilities. As part of the academy conversion HLC will absorb within its establishment the following Telford schools; Mount Gilbert School, Queensway School and Charlton Secondary School following which they will be comprised in a MAT. The HLC MAT is a single entity and will be established to undertake a strategic collaboration to improve and maintain high educational standards across the aforementioned schools. The MAT will have overarching responsibility for all the schools operation and governance.

2. RECOMMENDATIONS

2.1 In consultation with the Cabinet Members for Finance, Commercial Services and Economic Development and Education and Skills, Cabinet delegates authority to the Assistant Director – Education and Corporate Parenting to facilitate the HLC PFI academy conversion to the newly incorporated Multi Academy Trust. More specifically authority to negotiate and enter all the necessary legal agreements (including but not limited to Deed of Variation of the Project Agreement, the Principal Agreement, the School Agreement and the Commercial Transfer Agreement) and complete the formalities to effect the conversion and the level of annual charges to the academy for the Council’s continuing responsibility to monitor the PFI contract.

2.2 Cabinet delegates authority to the Assistant Director - Business, Development and Employment for the land transfer, lease and licence agreements to be negotiated, signed and completed relating to the site.

3. SUMMARY IMPACT ASSESSMENT

COMMUNITY IMPACT	Do these proposals contribute to specific Co-Operative Council priority objective(s)?	
	Yes	In the long term this proposal will assist the City Council in ensuring that it can continue to meet its statutory responsibilities regarding the academy conversion process.
	Will the proposals impact on specific groups of people?	
	No	
TARGET COMPLETION/DELIVERY DATE	September 2017	
FINANCIAL/VALUE FOR MONEY IMPACT	Yes	<p>Although academy schools become independent organisations after conversion and occupy their buildings using a 125 year lease, the responsibility for the HLC PFI contract and the associated monitoring, remains with the Council. The Council's PFI contract is a long term commitment lasting until 2034/35 and responsibility for monitoring and funding the contract will remain with the Council until this date.</p> <p>The annual costs of the PFI contract are funded by a combination of:</p> <ul style="list-style-type: none"> · PFI credits (from the Government); · Contributions from Council budgets; · Contributions from school budgets. <p>After conversion, academies budgets therefore continue to contribute towards the overall costs of the PFI scheme. We will need to ensure that the transfer agreement for HLC ensures that the academy contributes the appropriate annual sum due from its budget towards PFI costs and so ensures that the Council can continue to meet its obligations in terms of funding PFI over the contract period. We will need to ensure that no additional liabilities arise in relation to the contract as a result of the specific legal agreements put in place with the academy</p> <p>As noted above, the responsibility for monitoring the contract, including the impact of any changes to the building, utility</p>

		<p>costs, service costs, etc also remains with the Council. As HLC will occupy the largest part of the building, a substantial proportion of this cost will relate to the academy.</p> <p>We are in the process of analysing the work involved and the charges adopted by other local authorities and have yet to determine a final figure, but the final sum identified may be in the region of £25,000 per annum, increasing by RPI(x) annually to reflect the cost mechanism in the general PFI contract. Calculations are being undertaken to determine the appropriate annual administrative charge to the Council (TD) 23.06.17</p>
LEGAL ISSUES		Please refer to Section 6
OTHER IMPACTS, RISKS & OPPORTUNITIES	No	Each academy conversion is unique and officers will continue to ensure that the interests of the Council are protected and any liabilities dealt with in an appropriate manner.
IMPACT ON SPECIFIC WARDS	No	

PART B) – ADDITIONAL INFORMATION

4 CONTEXT

4.1 The Academies Act 2010 gives all maintained schools the opportunity to become academies. Those in the first tranche of new publicly funded academies opened in September 2010. They are independent of Local Authority (LA) control. They are able to set their own pay and conditions for staff, and are able to buy in private services; including buying back services from the LA should they so wish.

4.2 All academies established by the Secretary of State enter into a contract (the Funding Agreement) with a charitable company, which is often referred to as the Academy Trust. The funding agreement provides the framework within which the academy must operate. The ongoing funding of the Academy Trust is contingent upon the conditions in its Funding Agreement being met.

4.3 There is no statutory requirement for any formal relationship between Local Authorities and academies beyond that which is required for the delivery of statutory duties, such as the making and reviewing of SEN statements, securing sufficient education in an area and provision of home-to-school transport for eligible children.

4.4 However, councils continue to play a key strategic role locally and Telford and Wrekin recognises that there are significant advantages for both academies and Local Authorities in constructive partnership working, not least in ensuring that all academies remain committed

to putting Children and Young People first by raising aspirations. We are also keen to foster effective relationships in order to encourage all schools and academies to buy back Local Authority services which are well-established and provide value for money.

5.0 COMPONENTS OF THE TRANSACTION: TRANSFER PROCESS OF LAND AND NON-LAND ASSETS

5.1 Academy conversions can take about three months pre-conversion (but may take longer, depending upon the complexity of the situation and how quickly the transfer of staff, assets and land can be negotiated with the Council) and four months post conversion (regarding the financial closure of the LA School accounts and transfer to the new charitable company). The DfE has issued model documentation which is intended to make the process more straight forward.

5.2 When entering into an Academy conversion, each converting school receives a grant from the DfE of up to £25,000 towards their conversion costs. The Council receives no direct source of funding to cover the costs linked to Academy conversions, however, there is a great deal of officer time required to ensure smooth transfer arrangements are undertaken within a reasonable timeframe.

5.3 There are two main aspects to an academy transfer agreement between the Council and a new academy. These are the Commercial Transfer Agreement (CTA) and the Land Ownership (Lease) documentation.

6.0 RISK ASSESSMENT AND LEGAL IMPLICATIONS ON THE HLC PFI SCHOOL ACADEMY CONVERSION

The Council is obliged to facilitate a successful academy conversion as provided under the Academies Act 2010. The DfE assists with model agreements and precedents in respects of an academy conversion and those peculiar to a PFI institution. The DfE does not fund the costs that follow a school converting to Academy status out of existing Local Authority held PFI contracts. There are cross-council implications for a PFI Academy conversion as set out in the Report. Agreements will need to be negotiated in order to back off risks and to eradicate and minimise exposure to future obligations and liabilities. It is important that the Council enter into all relevant agreements in order to safeguard its interests, protect itself legally and to mitigate and eliminate and minimise future liabilities.

Change Control Document and the Deed of Variation of the Project Agreement: The Change Control is a purposive document that will set out the scope and proposal for the academy conversion. It will precipitate the request for costings from the Special Purpose Vehicle and the Facilities Management Contractor. All costs in respects of the Change Control are payable by HLC. As this is a major change to the PFI Project Agreement it will be necessary to negotiate a Deed of Variation which will evidence further the intention set out in the Change Control. The extent of the Authority Change will be restricted to minor changes to the Project Agreement and should not be significant. The key area for the Council is to ensure is that the Academy Trust will be bound to continue to receive and pay for the services for the duration of the Project Agreement until the end of the term of the PFI arrangement.

The School Agreement replaces any existing Governing Body Agreement and will commit Pyramid Schools (Hadley) Limited to pay the Council a proportion of the Adjusted School Budget. The provisions will also set out expectations and responsibilities of the Council in regards to aspects of the Services under the Project Agreement at HLC and subsequently the Academy. Any such Services will be identified, so that the Council can deliver them as required working with Pyramid Schools (Hadley) and in accordance with the terms of the Agreement and Principal Agreement. The Council will ensure that financial contributions shall be certain so that the PFI agreement is sustainable and provides all parties certainty on budgets in the future. Calculations in respect of the proportion of the budget allocated to Pyramid Schools (Hadley) and will be reviewed by Finance Officers taking into account Indexation Provisions.

To mitigate risks the Council will include drafting for provisions in the School Agreement to cover identifiable risk areas including:

- Ensuring that the Governing Body contribution exactly matches the costs paid to Facilities Management Contractor in respect of the Facilities Management costs only. Any current gaps (if any) subsidised by the Council would need to be discussed by the senior management before inclusion;
- Facility Management and Life Cycle costs relating to operational variations would need determining;
- Approach to Utility costs;
- Indexation costs for inflation (RPIX) to make the payments sustainable;
- Benchmarking costs for increases in the future to achieve sustainability;
- Monitoring costs for relevant Council Officers to manage the contract on their behalf. Perhaps output based.

DFE Principal Agreement – When HLC converts to an Academy, it comes under the remit of central government so the Principal Agreement will include provisions to protect the Council's interests by inserting suitable indemnities and also appropriate drafting in respect of the Dedicated School Grant contribution relating to any affordability gap.

Commercial Transfer Agreement (CTA) – The CTA will include specific indemnities and warranties that protect the Council against certain future liabilities. It is imperative that the CTA is completed to ensure the Council does have the benefit of these. The CTA will provide clarity and certainty with regard to the obligations between the parties and the definitive 'Transfer Date' will signal the regime change. The CTA documents will manage the transfer of non-land assets such as fixtures and fittings, equipment, contracts for services, and staff. The extent of transferring Assets and Excluded Assets will be determined by way of inventory and agreement between the parties. Most of the services will be provided by the FM contractor under the PFI the status quo will be retained as required as per the terms of the Project Agreement.

Performance Issues - Responsibility for school improvement and admission and attainment all transfer to the Academy on conversion. However, the Local Authority will retain some leadership and responsibility for overall performance in the locality and will work in partnership with all schools to achieve high standards. (MG Legal)

7. LAND TRANSFER ARRANGEMENTS

The following is an outline of the proposed structure of the Land Transfer arrangements for the various sites:-

Hadley Learning Community site

In respect of the part of the site which is in the Council's freehold ownership there will be Headlease from the Council to the Academy Trust for a terms of 125 years (to exclude the Bowling Green area and the NEAP playground).

The Academy Trust will lease back to TWC the following areas for 125 years less one day:

- a. The Bridge Special School
- b. the leisure facilities
- c. the ABC private nursery/children's centres and other ancillary areas.

In the short term these areas will be maintained in accordance with the existing PFI arrangements. The Lease structure will need to incorporate service charge mechanism and method for allocation of sharing of costs once the PFI project ends. The Leases will also need to include appropriate site-specific rights.

The Thomas Crump Land

The Council do not own the freehold of this area of the site .It is currently operated and managed under the PFI Contract and is let by the Recreational Trust to the Council on a Lease which is due to expire in approximately 18 years. It is proposed to put in place a new Headlease for this land from the Recreational Trust to the Academy Trust, subject to and with the benefit of the existing Lease to the Council, thus enabling the status quo to be maintained at the end of the PFI Contract .The documentation will need to incorporate a mechanism for the parties to agree a Community Use document to allow for continued community use beyond the PFI Project and use by the Bridge school of the Playing Fields.

Shared Use Agreement

This is the document which the various occupiers will need to agree to set out the basic minimum arrangements for shared use of the building

Leisure Facilities

Further discussions will be needed to consider the future control and operation of the leisure facilities at the end of the PFI contract and the best way to secure long-term availability of the leisure facilities for the community.

The Bridge School /ABC Nursery /Children's Centre

The Bridge School will be leased back to the Council on its own separate lease so that the site could be surrendered to Hadley Learning Centre Academy Trust if the Bridge School does ultimately decide to convert and become part of the Trust.

ABC Private Nursery and the Children's Centre, will also be leased back to the Council for 125 years less one day. Should at any point in the future it be decided that any of these areas are to be transferred over to the Academy Trust then it is proposed that surrenders can be negotiated and put in place at the relevant time.

The Mount Gilbert School

A single Head Lease of the whole site for 125 years from the Council to the Academy Trust is proposed. There is no third party use and no leaseback arrangements to be put in place.

There is a Restrictive Covenant affecting the Council's freehold title to the land in respect of which the Homes & Communities Agency (HCA) has the benefit and there are Clawback provisions affecting the land on disposal. The HCA have been approached regarding a Release or Variation of the Covenant or confirmation that there will be no clawback as the site will continue as an educational establishment.

Queensway School

There will be a Lease from the Council to the Academy Trust for 125 years. There is a part of the site to be retained by the Council and there will be shared access arrangements over the short entrance driveway which will need to be documented, together with responsibility for contribution to costs. There is no community use and no third party rights for this site, although it is part of the PFI scheme and will be subject to the existing PFI arrangements in the short term.

Charlton School

This site was part of the Building Schools for the Future Programme (BSF) and has a complex history as regards the land title. The new Charlton School has been built on the site of the old Blessed Robert Johnson (BRJ) Catholic College. The Council's external Solicitors are working closely with the Lawyers representing the Diocese in order to finalise the title issue so that the land necessary transfers can be completed and title can ultimately be transferred to the Academy Trust. (JM Legal)

8 IMPACT ASSESSMENT – ADDITIONAL INFORMATION

None

9 PREVIOUS MINUTES

None

10 BACKGROUND PAPERS

None

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