

Executive

26 January 2017

Report of the Corporate Director of Children, Education and Communities

Portfolio of the Executive Member for Education, Children and Young People

Developing the council's strategic relationship with academies and multi-academy trusts

Summary

1. This report outlines the implications of the accelerating pace of academisation in York which is requiring the local authority (LA) to review and develop its strategic working relationship with schools and other partners. In order to develop the council's strategic position it is important for the LA to retain an objective relationship with all schools and multi-academy trusts. This will allow the LA to work in partnership with all schools so that it can act effectively as the champion for children, families and communities.
2. In order to develop and maintain an objective working relationship with all academy trusts members are to review the council's current membership of the Southbank multi academy trust board. The Executive are asked to cease the council's involvement in the trust board.
3. The pace of academisation has required the LA to review the processes it has in place to support the academy conversion process. To date the LA has managed to resource this work within its existing capacity. However, as the number of academy conversions are now increasing this approach is no longer sustainable or affordable. The LA has published an Academy Toolkit which provides schools with information about the LA's role in the conversion process (Annex 1). The Executive are asked to note the introduction of requirement for a proportionate financial contribution towards the LA's costs.

4. As part of the conversion process the LA is required to agree a 125 year lease of land and property with the academy trust. Under the model land lease provided by the Department for Education (DfE) there is the expectation that all land and property currently occupied by a school would be included in the lease, unless it can be demonstrated that there are any reasons for not doing so. Due to the complexities of some school sites there have been delays in agreeing land leases. The Executive are asked to give delegated powers to the Corporate Director, Children, Education and Communities to negotiate and conclude the Commercial Transfer Agreements and Land Leases in future academy conversions where there are no proposals to change the designation of land currently used for educational purposes. In circumstances where the council intends to apply for a change of use for land formerly used for educational purposes the decision to apply for disposal will be taken by members of the Council's Executive.

5. This report provides information about the number of schools that have applied to convert during 2016-17. This includes one of the schools supported by a PFI agreement. York has three primary schools which were funded through PFI agreements. Currently, one of them, the Hob Moor Federation has an academy order in place. The conversion of PFI schools is a complex process and will involve additional costs for the LA as the legal processes and property matters linked to the conversion of PFI schools is complex. Specialist advice will be needed to ensure that the principal agreement and other legal documentation limits the future financial liability of the Council should the Academy trust default on any elements of the PFI agreement. This paper will inform the Executive about the process and costs of PFI conversion and will seek Members approval to delegate the PFI academy conversion process to officers and will ask them to indemnify the Chief Officer who signs the contracts on behalf of the LA.

Recommendations

6. The Executive are asked to:
 - i. support the development of a new strategic working relationship with all academies and multi-academy trusts and end the current council membership on the Southbank multi-academy trust board

Reason: this will allow the LA to have an objective working relationship with all schools and will ensure that it can effectively champion the needs of all children, young people and communities

- ii. consider the options related to the future of the Clifton Without Primary School site and agree whether the site should be included or excluded in the 125 year land lease with the Hope Learning Trust

Reason: this will allow the conversion of Canon Lee School to be completed as required by the Education and Adoption Act 2016

- iii. give delegated powers to the Corporate Director, Children, Education and Communities to negotiate and conclude the Commercial Transfer Agreements and Land Leases in future academy conversions where there are no proposals to change the designation of land currently used for educational purposes. In circumstances where the council intends to apply for a change of use for land formerly used for educational purposes the decision to apply for disposal will be taken by members of the council's Executive

Reason: the LA has a statutory duty to facilitate academisation under the terms of the Academies Act 2010 and the Education and Adoption Act 2016

- iv. delegate the PFI academy conversion process to officers and indemnify the Chief Officer who signs the principal agreement on behalf of the LA

Reason: this will allow the academy conversion process for PFI schools to be completed

Background

- 7. The introduction of the Academies Act in 2010 enabled more schools to become academies by opening the status to good and outstanding schools. The introduction of the Education and Adoption Act (March 2016) has refocused academisation on tackling under-performance with the introduction of the requirement for schools in an Ofsted category of concern to convert to academy status as a sponsored academy within a multi-academy trust. Under the terms of the act the LA has a statutory duty to facilitate the academisation of schools causing concern. The statutory framework is now in place following the passing of

the Education and Adoption Act has potentially increased the pace of academisation through the introduction of a new category of schools that could be subject to enforced academisation. The definition of coasting schools means that enforced academisation will no longer be only restricted to schools in an Ofsted category of concern but will apply to any school that falls below national performance thresholds for attainment and progress in a period of three consecutive years. The Act has also given new powers of intervention in maintained schools to the Secretary of State; these powers will be exercised by the Regional Schools Commissioners.

8. Whilst the mandatory timeline to achieve a fully academised system by 2022 has been abandoned it is still the intention that all schools should consider conversion to academy status. In line with the changes taking place nationally an increasing number of schools in the York are now exploring academy status and are interested in forming or joining locally led multi-academy trusts. The LA continues to retain many of its statutory obligations with regards to education despite the significant changes in the school system. Central to the future role of the LA will be building and maintaining its relationships with schools and other partners eg Multi-Academy Trusts, Dioceses and the Regional Schools Commissioner to ensure close collaboration between partners to manage and shape the local education system so that it continues to be the champion for education outcomes for all children in York.
9. LAs are expected to work with constructively with academies. The relationship between LAs and academies has been set out in legislation introduced between 2010 and 2016 and is also articulated in statutory guidance issued by the DfE. LAs have specific responsibilities for educational performance in their area as set out in the Education Act 1996. LAs that champion educational excellence demonstrate this through working constructively with academies and raising any concerns about the performance of academies with the Regional Schools Commissioner and the DfE.

Academies in York

10. Since 2015 the pace of academisation in York has accelerated. Currently there are 13 schools that have converted to academy status (three secondary, ten primary). A further 12 academy conversions are planned to take place during the calendar year

2017, however, conversions timelines are subject to change given the complexities of certain parts of the conversion process.

11. The majority of York's academies (12 out of 13) are members of four locally led multi academy trusts (MATs). These MATs are as follows:
 - The Ebor Multi – Academy Trust
 - The Hope Learning Trust
 - The Pathfinder Multi Academy Trust
 - The Southbank Multi Academy Trust
12. The development of multi-academy trusts in York to date has largely built on the existing strong relationships between schools and has been motivated by a desire to build stronger capacity to sustain school improvement through formal school partnerships, which can gain maximum benefit from the use of share resources to strengthen leadership and the quality of teaching.
13. In York school to school support partnerships exist between academies and maintained schools and this has been central to the sector-led school improvement arrangements that have been in place since September 2015. These arrangements have seen academies and maintained schools working together to address improvement priorities in individual schools and across geographical clusters of schools. Building on these existing arrangements to sustain the city's capacity to achieve and maintain educational excellence will be increasingly important to ensure that all children and young people are able to achieve the best possible outcomes. Schools in the city are keen to build on their existing partnerships to ensure that they have the ability to more effectively use their shared resources to continue to drive school improvement.
14. The LA retains strong working relationships with all academies/multi- academy trusts in the city and further developing its future strategic working relationship with the chief executives of the multi-academy trusts will be crucially important as more schools leave the maintained sector over the next few years. Not least, in order for York to retain a successful and inclusive education system there needs to be a strong relationship between the LA and the MATs.

15. In order for the LA to discharge its statutory role in education and to effectively champion the interests of children and local communities it is important to develop a new strategic relationship with academies and multi-academy trusts. This can best be achieved by having an objective relationship with all trusts. The current arrangements with the Southbank multi-academy trust are therefore no longer appropriate as they create a potential conflict of interest. It is therefore proposed that the Executive should end the current council membership on the trust board.
16. Developing strong relationships with all schools in the local education system including academies and multi –academy trusts will be crucial to ensuring that the LA is able to meet certain retained roles with regards to school place planning, SEND and safeguarding. It will also be vitally important in ensuring that no child and no school in York are left behind as the new school system continues to develop.

The LA's role in academy conversion

17. A range of LA services and officers are involved in the conversion process and work with the DfE, Education Funding Agency, Dioceses and other stakeholders to facilitate the conversion process. The LA's role in the conversion process is outlined in the Academy Conversion Toolkit (Annex 1). Prior to 2016 the LA has managed this process within its existing resources and this was possible given that the scale and pace of academisation was slow between 2010 and 2015. The increasing pace of academisation in York means that this position of absorbing the additional costs of supporting academy conversion is no longer sustainable.
18. The workload associated with each Academy conversion will vary according to the complexity of the conversion. The work and costs involved are significant for a standard transfer but much increased in transfers involving Private Funding Initiative (PFI) agreements or where there are complex land use issues eg multiple use of sites. The academy conversion process requires extra resource, for which schools are given a grant of £25,000 by the DfE to contribute to the costs of conversion. Typically the costs of conversion from an individual school's point of view tend not exceed £12,000 and the guidance produced by the DfE makes it clear that school's are unlikely to use all of the £25,000 they receive to fund the costs of conversion. In common with an

increasing number of LAs nationally, the LA proposes to secure a contribution of up to **£5,000** for each non-PFI conversion and of up to **£20,000** for each PFI conversion (due to the significantly more complex nature of conversion of a PFI school) from 1 September 2016. This would allow the LA to recoup a proportion of the costs of officer time and where necessary employ additional resources to facilitate the conversion process.

19. The Executive are asked to note the introduction of requirement for a proportionate financial contribution towards the LA's costs.

Academy conversions planned for 2017

20. Typically the academy conversion process takes between three to six months. In the case of complex conversions eg of PFI schools this timeline will be longer. The academy conversion process creates an additional workload for officers in the education, HR, legal and finance teams. Supporting schools through the academy conversion process requires the LA to work closely with multi-academy trusts, the Regional Schools Commissioner, Dioceses and the legal teams engaged by schools and academy trusts to enable a smooth transition to protect the interests of children and young people and ensure that the conversion process does not distract schools in York from their core business of delivering good outcomes for every child. Currently, the LA has the capacity to support three academy conversions in each three month period and as a result has the capacity to support 12 academy conversions during 2017.
21. As part of the conversion process the LA is required to agree a 125 year lease of land and property with the academy trust. Under the model land lease provided by the DfE there is the expectation that all land and property currently occupied by a school would be included in the lease, unless it can be demonstrated that there are any reasons for not doing so. Due to the complexities of some school sites there have been delays in agreeing land leases.
22. The Executive are asked to give delegated powers to the Corporate Director, Children, Education and Communities to negotiate and conclude the Commercial Transfer Agreements and Land Leases in future academy conversions where there are no proposals to change the designation of land currently used for educational purposes. In circumstances where the council intends

to apply for a change of use for land formerly used for educational purposes the decision to apply for disposal will be taken by members of the council's Executive.

The conversion of Canon Lee School

23. Canon Lee School is required to academise as it is in an Ofsted category of concern. The Hope Learning Trust has been assigned as the sponsor for Canon Lee School and it was hoped that the conversion process could be completed by 1 January 2017. However, the conversion has been delayed due to complexities encountered in agreeing the terms of the land lease which require a decision from the council's Executive to allow the land lease to be completed.
24. Since 2011 the school has used the site of the former Clifton Without Junior School following the building of the new Clifton with Rawcliffe Primary School. The project to build the Clifton with Rawcliffe Primary School involved situating the new school building on land formerly used as a school playing field by Canon Lee School. The governing body of Canon Lee School agreed to the use of the land for this purpose in exchange for the school being allowed to use the Clifton Without Junior School building to develop an arts block at Canon Lee to support the school's performing arts specialism. As part of this project Canon Lee was also provided with a multi-use games area to ensure that it had sufficient outdoor space. This was reported to the Cabinet Member for Education, Children and Young People's Services at a decision making session on 13 December 2011. As, at that time there was no proposal to apply to the Secretary of State for Education for disposal of the Clifton Without site, the decision did not go to council's Cabinet.
25. For the last two years the school has not used the teaching rooms in the Clifton Without building and currently the building is not in regular use by the school. As pupil numbers have fallen at Canon Lee the site has not been needed for additional teaching space and has proved difficult to maintain as the school's budget has fallen due to the decline in pupil numbers. Part of the site continues to host one of the children's social care teams, who lease space in the Clifton Without building.

26. The conversion of Canon Lee School as a sponsored academy in the Hope Learning Trust has created the need to review and agree what land and property will be included in the 125 year land lease to the academy trust. The school's governing body and Hope Learning Trust have expressed a preference to include the Clifton Without site in the land lease as the access over the site is currently part of the main route for pupils walking to the school. In order to complete the conversion process the terms of the land lease need to be agreed as a matter of urgency. The Executive are asked to consider and agree the options for the future use of the Clifton Without site.

Options

27. **Option 1:** The Executive approve the disposal of the site as a capital asset and an application is made to the Secretary of State to dispose of the site under Schedule 1 of the Academies Act 2010.
28. **Option 2:** The Executive approve the lease of part of the site to the Hope Learning Trust as part of the academisation of Canon Lee and that an application is made to the Secretary of State to dispose of the remainder of the site. If this is approved Canon Lee School and the Hope Learning Trust will receive a proportion of the proceeds from the disposal of the remainder of the site for reinvestment into the Canon Lee site. If this option is agreed then it is recommended that the agreement of the detail of this arrangement be delegated to the Corporate Director for Children, Education and Communities in consultation with the Executive Member for Education, Children and Young People and the Section 151 Officer.
29. **Option 3:** The Executive agree that the Clifton Without site should be included in the 125 year lease to the Hope Learning Trust.
30. If option 3 was agreed the Hope Learning Trust would use the building to host the central offices of the Hope Learning Trust. Currently the playground area is being used to create a safe space for Year 7 students to allow them a transition period. The buildings, which are in various states of repair, have not been used by the school since 2015 and they are no longer used due to falling roles and the desire to save utility costs. The school has begun expanding its numbers again and the Hope Learning Trust

feel that use of the site is the only possible pathway to facilitate future expansion and development on the whole site. The Trust would also be interested in exploring whether a Studio School or a Through School could be developed on the site and that this would be impossible if the Clifton Without site was not included in the lease to the Hope Learning Trust.

31. The recommended option is **option 2**; that the Clifton Without building and site should be excluded from the lease and that permission is sought to dispose of the site as a capital asset. Discussions with the Hope Learning Trust and the governing body of Canon Lee indicate that they are willing to enter into further negotiations on this option.
32. The Executive are asked to agree option 2 and to delegate the detailed negotiation and sign off of the terms of option 2 to the Corporate Director for Children, Education and Communities in consultation with the Executive Member for Education, Children and Young People and the Section 151 Officer.
33. If option 2 is the agreed option then the City of York Council will need to apply to the Secretary of State of Education to apply for permission to dispose of the Clifton Without site. On 1 February 2012, Schedule 35A to the Education Act 1996 was repealed by section 63 (Schedule 14) of the Education Act 2011. The Act incorporates Schedule 1 of the Academies Act 2010 which extends the requirement to obtain Secretary of State consent to dispose of community school land to include all land in which a freehold or leasehold interest is held by the LA and which has been used for any school or academy in the last eight years.
34. Under Schedule 1 the Secretary of State will consider the suitability of all such land for use by an existing or potential academy (the legal term which includes Free Schools, University Technical Colleges and most Studio Schools). The guidance produced by the DfE makes it clear that LAs should not assume that applications for consent to dispose of education land will be approved. The Secretary of State will give consideration to whether any potential academy or existing multi-academy trust has approached the LA about using the land.

The conversion of the Hob Moor Federation

35. York has three primary schools which were funded through a Private Finance Initiative (PFI) agreements. Currently, one of them, the Hob Moor Federation has an academy order in place and wishes to convert to join the Ebor Multi-Academy Trust. The conversion of PFI schools is a complex process and will involve additional costs for the LA as it will increase the amount of work needed from the legal and finance teams to ensure that the principal agreement and other legal documentation limits the future financial liability of the council should the academy trust default on any elements of the PFI agreement. The DfE has developed additional legal agreements that will need to be negotiated which may cause the conversion process to be longer than for non-PFI schools.
36. Schools forming part of a PFI will have a governing body agreement or similar document with the LA. This is effectively part of the scheme of delegation under the PFI to the governing body. Most importantly, it allows the contractor access to the school and sets out how the school must contribute to the LA's PFI payments.
37. As part of the conversion process the PFI school will enter into a new 'school agreement' with the LA. This commits the academy to step in to the school's PFI obligations usually in the same way as provided for in the existing governing body agreement.
38. As well as the negotiation of the new 'school agreement' an important piece of work will be the development and signing of the 'principal agreement' This aims to ensure that the LA is not financially worse off as a result of the conversion – for example should the academy fail to make its PFI payments. The DfE will also require amendments to be made under the Articles of Association (the internal constitution of the academy) and the funding agreement to protect the position of the DfE if it has to compensate the LA due to the academy's failure.
39. The conversion process for PFI schools involves significant additional costs for the LA as it will demand more time from officers in the education, legal, property and finance teams to support the conversion process and also requires the LA to cover the costs of the PFI partners.

40. As a consequence of these complexities the conversion timeline for the Hob Moor Federation has been extended and is likely to take between six to 12 months to complete to ensure that the principal and school agreements protect the LA from finance risk.

Consultation

41. Ongoing consultation with headteachers and chief executives of multi-academy trusts is taking place to develop the new strategic working relationship with academies and multi-academy trusts. Governing bodies considering conversion are required to consult with stakeholders as part of the conversion process. Consultation has also taken place with the specific schools and multi academy trusts referenced in this report.

Council Plan

42. **A prosperous city for all** – developing and maintaining a strategic working relationship with all schools in the city demonstrates the council's commitment to putting children at the heart of all it does and to investing in partnerships which deliver the best possible outcomes for all children in the city.
43. **A council that listens to residents** – developing a new strategic working relationship with academies and multi-academy trusts will allow the LA to be the champion of children, families and communities through being able to continue to effectively meet statutory obligations eg for children with special educational needs and/or disabilities, co-ordinating admissions and ensuring sufficiency of school places.

Implications

Financial

44. Option 1 - If the Secretary of State approves the disposal of the site, then the Local Authority will receive a capital receipt upon disposal.
45. Option 2 - If the Secretary of State approves the disposal of the site, then the LA will receive will receive a capital receipt upon disposal, an agreed proportion of which will be passed to Hope Learning Trust, following deduction of the Local Authority's costs incurred in association with the disposal.

46. Option 3 – There are no direct financial implications to the LA arising from this option. The site will be included in the 125 year lease to the Hope Learning Trust.
47. Although there are no further direct financial implications arising from this report, it is important to note that, as more schools convert to academy status, there is likely to be an impact on the sections of the LA that currently provide services to schools, as the likelihood is that converting schools will withdraw from all or many of the services currently provided to maintained schools, especially if joining already established Multi-Academy Trusts.

Human Resources (HR)

48. The LA HR team will discharge the council's statutory obligations where appropriate in accordance with the Transfer of Undertakings (Protection of Employment) Regulations. Support will be provided in line with the LA's Academy Toolkit (Annex 1).

Equalities

49. The maintenance and development of strong strategic relationships with all schools is essential for delivering our ambitions to ensure every child is safe, resilient and achieving. Through these relationships, along with our ongoing responsibilities for school place planning, we seek to enhance the opportunities to further inclusivity and community relations and avoid or mitigate any negative impacts on communities of identify and those with protected characteristics. We judge that the strengthening the strategic relationship with Academies and Multi-Academy Trusts will have a positive equality impact. In respect of recommendation ii, related to the Clifton Without site, an Impact Assessment is in development to inform the negotiations of terms of disposal or lease depending on the option chosen by Executive.

Legal

50. All legal implications are identified in the main body of the report.

Property

51. All property implications are identified in the main body of the report.

Other

52. There are no specific Crime and Disorder or Information Technology implications arising from this report.

Risk Management

53. In order for the LA to discharge its statutory role in education and to effectively champion the interests of children and local communities it is important to develop a new strategic relationship with academies and multi-academy trusts. This can best be achieved by having an objective relationship with all trusts. The current arrangements with the Southbank multi-academy trust are therefore no longer appropriate as they create a potential conflict of interest. It is therefore proposed that the Executive should end the current council membership on the Southbank trust board.
54. Developing strong relationships with all schools in the local education system including academies and multi –academy trusts will be crucial to ensuring that the LA is able to meet certain retained roles with regards to school place planning, SEND and safeguarding. It will also be vitally important in ensuring that no child and no school in York are left behind as the new school system continues to develop.
55. To minimise the financial risks to the LA of the conversion of PFI schools specialist legal advice will be sought to ensure that the school and principal agreements do not expose the council to risk.

Contact Details

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Wards Affected:			All ✓
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Annexes

Annex 1: Academy Conversion Toolkit