

Special Cabinet – 10 December 2008

Shelfield Sports and Community College: determination of statutory proposal

Portfolio:	Councillor Zahid Ali, Children's Services
Service:	Walsall Children's Services - Serco
Wards:	All Walsall wards but particularly Rushall/Shelfield
Key decision:	Yes
Forward plan:	Yes

1. Summary of report

- 1.1 This report provides information to enable Cabinet to decide whether it wishes to approve the statutory proposal to close Shelfield Sports and Community College on 31 December 2008 subject to the signing of a Funding Agreement by the Secretary of State for the opening of an academy on 1 January 2009. (For clarity this means that the closure would be followed immediately by the opening of the Academy with no disruption to the education of the students at the school. Should the Academy not be established, Shelfield would continue as a community school.)

2. Recommendations

- 2.1 That Cabinet approve the statutory proposal to close Shelfield Sports and Community College on 31 December 2008 subject to the signing of a Funding Agreement by the Secretary of State for the opening of an academy on 1 January 2009.
- 2.2 That Cabinet approve the allocation of £250,000 from the 2009/10 modernisation funding to cover the cost of works detailed in 4.1.8.
- 2.3 That Cabinet approves the grant, at peppercorn rents, of the required short term lease, occupational license and 125 year lease of the land shown edged red on plan EPMS 3075 (**Appendix A**) and extending to 7.56 hectares or thereabouts, and delegates approval of final terms to the Executive Director Children's Services in consultation with the portfolio holder.

3. Background information

- 3.1 On 16 July 2008, Cabinet approved the publication of a statutory proposal to close Sheffield Sports and Community College on 31 December 2008 subject to the signing of a Funding Agreement by the Secretary of State for the opening of an academy on 1 January 2009.
- 3.2 Details of previous reports on this matter are provided in the 'Background Papers' section.

4. Resource considerations

4.1 Financial:

Revenue

- 4.1.1 All education revenue funds (with the exception of money for statementing) and pupil-related grants for Walsall will be reduced if Sheffield becomes an academy; the new academy would receive these sums directly. The money removed from Council allocations and grants will be spread across a number of services provided by the Council and the education contractor. In addition to the traditionally traded services, the Council and education contractor could offer to sell more services to the new academy to reduce the impact of the lost revenue and grant allocation. The existing Walsall Academy does not buy any services from the Council or education contractor. LA supported 'community' academies will, however, have local authority representation on their governing bodies and this may result in them purchasing services from the Council and/or the education contractor.
- 4.1.2 Pupil-related grants and parts of grants would be reduced to reflect the change in pre-16 pupil numbers if Sheffield is established as an academy.
- 4.1.3 Sheffield's full year budget share (without grant) is £4.4 million.
- 4.1.4 Walsall's total Dedicated Schools Grant (DSG) is £172 million. This sum is split into money directed to schools through the Individual Schools Budget (ISB) (£157 million) and a centrally retained sum of £15 million. The centrally retained sum is used by the Council and the contractor to provide services to schools.
- 4.1.5 In addition, a sum would be removed from the centrally retained part of the DSG. For the period January to March 2009 this would be approximately £20k and in a full year this would increase to approximately £81k. These figures have been calculated using a central spend calculator provided by the DCSF.
- 4.1.6 In recent years there have been some issues with achieving a balanced budget at year-end at Sheffield. In order to assist in the process of achieving a balanced budget when the Sheffield account for the period April to December 2008 is closed down on 31 March 2009, steps have been taken to invoke a condition in Walsall's Scheme for Financing Schools whereby all orders in excess of £500 are being countersigned.

Capital

- 4.1.7 The DCSF will make a fixed sum available for the new academy and the Council will be required to either manage the capital project within that fixed sum or meet the additional costs from its own resources. Partnership for Schools has recently indicated that the capital allocation is likely to be in the region of £23.5 million. If the cost of the project were to exceed the £23.5m of capital allocation, a further report will be brought to cabinet.
- 4.1.8 The capital project would be taken forward through the national framework. Representatives from Partnerships for Schools have identified suitability issues in the extension to the school building which was completed in 2003/4 and have stated that the capital allocation for the proposed academy is dependent upon the Council addressing issues relating to fire retardant paint, a crack in the floor and various general items of work. These works would have to be done regardless of the academy proposal. The nature of the work to address the first of these issues is such that the work could only be undertaken during the summer holiday period in 2009; the estimated cost of this is £250,000 and it is proposed that this is progressed by Property Services and funded through the 2009/10 modernisation strand in the education capital programme. Minor general works will be funded through Shelfield's devolved formula capital.
- 4.1.9 Financial Considerations:

There are a number of financial risks for the Council and these are set out below together with a risk mitigation proposal:

- A. **Sprinkler system.** The capital funding envelope from Partnership for Schools (PfS) does not normally fund sprinkler systems. It is the Council's policy to install sprinkler systems in all new build schools within its property portfolio. However on status change the council will continue to own the school which will be leased to the sponsor. The estimated cost of installing sprinklers is circa £300k. The proposal is for sprinklers to form part of the tender package for the school build with a price for sprinklers separately identified. If tenders including sprinklers are lower than the PfS funding allocation, PfS have agreed in principle that sprinklers can be funded out of the funding envelope. If tenders come in higher than the funding envelope the sponsor will then be asked to make a decision on they wish to proceed. This of course may have insurance implications for the sponsor.
- B. **Ground conditions.** There is a risk that abnormal ground conditions will result in higher tender costs than the PfS affordability envelope. Commissioned site surveys will be required in order that an estimate of abnormal costs can be completed. If this results in estimated costs higher than the standard abnormal allowance, PfS have recently agreed that they will consider funding the estimated shortfall out of the FAM. PfS will not however, provide an unqualified agreement to fund all costs. However they have said that as long as the Council/Technical Advisor have done everything they can to mitigate these costs, they will consider the additional funding. There remains a risk that the council could still face substantial costs.

C. **A front end affordability gap** relating to the appointment of technical consultants and the ongoing project management of the build exists. Should the Academy build proceed, the Council is obliged to commission a Technical Adviser, project management and other ancillary services which are estimated to cost circa £0.550m. Grant funding is available from PfS, and would be £0.200-0.300m for one academy or £0.400m split for two. This would leave a c£0.350m affordability gap for Shelfield. This affordability gap can be closed in this financial year by using appropriate under spent funds from within education capital programmes. There is funding of potentially £0.3m available. Any further spend in this area (c£50k) can be covered through 2009/10 capital programme if approved.

D. **Potential deficit budget**

Actions have been taken to ensure the school is not in an over-spent situation at closure date (31 December 2008), although we are working with them to ensure this is reduced. The risk of a small shortfall needs to be considered.

E. **Compromise agreements**

DCSF would normally expect the Local Authority to contribute 50% of this total. Walsall Council has committed to engage in conversation regarding these costs.

4.1.10 As part of the work to develop the scheme for the proposed academy, a range of surveys will be commissioned and it is possible that other premises issues of an urgent nature may be identified. If this is the case, the Council would have to meet the cost of addressing them as it is considered by Partnership for Schools that these would be the responsibility of the Council as they relate to the condition of the accommodation for the existing Shelfield School. Details of any necessary works would be reported to Cabinet.

4.1.11 After achieving academy status, Shelfield would receive future capital monies directly from the DCSF.

Site and Property

4.1.12 The DCSF has advised that the following arrangements would need to be put in place:

- upon opening, the existing buildings and site would be leased to the academy;
- when work on the building commences, the site would become the Council's building site and an occupation licence would be put in place; this would last until the end of a 1 year snagging period; and
- at the end of the snagging period, there would be a lease for 125 years.

4.1.13 To enable the Academy to open in January, and to allow time for the detailed design work and funding package for the new buildings to be finalised, the council will initially grant a short lease. Under this lease, which shall be at a peppercorn rental, the Academy shall be responsible for maintaining the premises in no worse condition than at the commencement of the term.

- 4.1.14 Once the project has reached the construction phase, a Development Agreement will be entered into regulating the provision of the new school. Under this Agreement, the short lease shall be surrendered in favour of an occupational license to the Academy. This will enable the Council and its contractors to have control of the wider site for construction purposes whilst leaving the Academy with the ability to operate the school from the existing premises.
- 4.1.15 This license arrangement will continue until 1 year after completion of the construction contract to encompass the Defects Liability Period in the Design & Build Contract, at which point the license shall terminate and a 125 year lease shall be entered into between the Council and the Academy. This lease will again be at a peppercorn rent but will place full responsibility for repairs and insurance on the Academy.
- 4.1.16 The proposed license and 125 year lease shall be in the standard form agreed with the DCFS and the Academy Trust. The initial short lease is currently being negotiated between the Council and the Academy but will broadly reflect the conditions in the standard form documents.

4.2 Legal:

- 4.2.1 The closure of Sheffield Community and Sports College in order to enable the school to become an academy is subject to statutory procedures. A statutory proposal was published on 5 September 2008 and the 6 weeks representation period ended on 16 October 2008. No objections or other responses have been received during this period.
- 4.2.2 Cabinet must now 'determine' or decide the proposal by considering whether it wishes to proceed. A decision to close Sheffield would be subject to the signing of a Funding Agreement for the proposed academy by the Secretary of State.
- 4.2.3 The DCSF has advised Walsall of a judicial regarding OJEU processes and the matching of sponsors and schools in relation to the academy programme. The judicial review is scheduled for 5 – 11 November 2008 and it is understood that a speedy decision is expected. At the present time it is unclear what effect the outcome might have on the proposed Sheffield academy given that the statutory process is largely completed.

4.3 Staffing:

- 4.3.1 The staff employed at Sheffield are employees of Walsall Council. In an academy, however, the staff are employed by the governors (trustees). In circumstances where a school closes and reopens as an academy, staff are 'TUPEd' across to the new employer on the same terms and conditions of service.
- 4.3.2 The sponsor has confirmed that the national terms and conditions of service would apply to staff employed at the proposed academy.
- 4.3.3 Existing staff would be 'TUPEd' to the new employer and there should not be any redundancies.

- 4.3.4 It is understood that the sponsors are considering compromise agreements with a small number of staff. The DCSF would make some funding available towards the cost of any compromise agreements. The final position regarding any implications of this for the Council are being confirmed.

5. Citizen impact

- 5.1 There is the potential to more rapidly improve secondary education provision in the Pelsall area and there is also the potential for greater levels of community engagement.
- 5.2 The sponsor for the proposed academy is the Ormiston Trust. In the Expression of Interest, the Trust states that it is 'committed to the transformation of learning and the regeneration of communities particularly through its focus on the development of extended school provision achieved with multi-agency cooperation.'

6. Community safety

- 6.1 There are no direct implications for community safety.

7. Environmental impact

- 7.1 If Sheffield Sports and Community College is closed and a successor academy opened, it is envisaged that a large part of the older building would be demolished and replacement accommodation be provided and much of the recent extensions would be refurbished. Any new building would be built to the latest building and environmental standards and would incorporate the use of sustainable resources wherever possible; designs would incorporate developments to reduce the impact on the environment.

8. Performance and risk management issues

8.1 Risk:

- 8.1.1 There is a loss of direct control by the Council of property in schools that become academies. This would apply for the life of the academy and there would be conditions in the agreement to ensure that the property would return to the Council if the academy closes and can ensure that the property can only be used for specified purposes.
- 8.1.2 The loss of direct control would be mitigated by the transfer of liabilities and by the influence of LA representatives on the board of governors.

8.2 Performance management:

- 8.2.1 Evidence from the DCSF and the Academies and Specialist Schools Trust suggests that there is likely to be a rapid and significant improvement in Key Stage 3 and GCSE results within three years.

9. Equality implications

Admissions

- 9.1 The sponsor has confirmed that the proposed academy would comply with admissions law, the School Admissions Code of Practice and the School Admissions Appeals Code of Practice as they apply to maintained schools. It has also been confirmed that the academy would have regard to and have an independent appeal panel which acts in accordance with the Secretary of State's guidance on exclusions.
- 9.2 The sponsor has confirmed that all students who have a place at Shelfield when the proposed academy opens would automatically be enrolled at the academy.
- 9.3 The sponsor has confirmed that the proposed admission arrangements for the proposed academy would be the same as the current arrangements for Shelfield and would continue to include admitting 10% of pupils on the basis of their aptitude for sport.
- 9.4 Discussions between Walsall Children's Services - Serco, Walsall LA, the Ormiston Trust and Shelfield have led to a clear agreement that the proposed academy would serve the same community as Shelfield College.
- 9.5 The admission arrangements for the 2009/10 school year for community and controlled schools in Walsall were determined by Cabinet on 19 March 2008. The 'Information for Parents' handbook and the 'Walsall Preference Form' for secondary admissions for September 2009 were issued to parents on 11 July 2008; the closing date for receipt of applications was 10 October 2008. These admission arrangements will apply to Shelfield or a successor academy as the final decision regarding the establishment of the proposed Shelfield academy will not have been taken until after these dates.
- 9.6 The sponsor has stated that the admission arrangements for the proposed academy would be the same as the current arrangements for Shelfield Sports and Community College.
- 9.7 The sponsor has confirmed that all students who have a place at Shelfield when the proposed academy opens would automatically be enrolled at the academy.

SEN

- 9.8 The sponsor has confirmed in the Expression of Interest that the proposed academy would meet the requirements of the SEN Code of Practice and would seek to be an inclusive school as part of the full LA provision for SEN.

10. Consultation

- 10.1 Consultation on the proposal to close Sheffield Sports and Community College in order to enable it to reopen as an academy, subject to the signing of a funding agreement by the Secretary of State commenced on 21 May and ended on 20 June 2008. A report on the outcome of this consultation was considered by Cabinet on 16 July 2008.
- 10.2 Following approval by Cabinet, this statutory proposal was published on 5 September 2008 and a 6-weeks representation followed. No responses have been received during this period.

Background papers

Cabinet Report 16 January 2008: Consideration of Academy Status Schools in Walsall.
Cabinet Report 16 April 2008: Sheffield Sports and Community College – Proposed Academy.
Cabinet Report 16 July 2008; Sheffield Sports and Community College: outcome of consultation on proposed academy.

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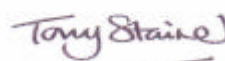
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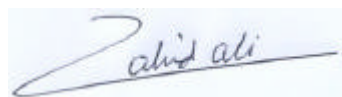


Executive Director: David Brown
Date: 1 December 2008

Signed:



Managing Director, Walsall Children's
Service - Serco
Date: 26 November 2008



Signed:

Portfolio Holder: Councillor Zahid Ali
Date: 26 November 2008

