

Cabinet – 18 March 2009

The Governance of Pool Hayes Arts and Community School

Portfolio: Councillor Zahid Ali, Children's Services

Service: Children's Services

Ward : Short Heath

Key decision: Yes

Forward plan: Yes

1. Summary of report

This report is to inform Cabinet of the formal consultation undertaken by Pool Hayes Arts and Community School to progress their move from community to Foundation status and to seek Cabinet's approval for the transfer of assets and staff to the Foundation on 1 April 2009.

2. Recommendations

- 2.1 That Cabinet agree the transfer of assets and staff to the Foundation at Pool Hayes Arts and Community School on 1 April 2009.

3. Background information

3.1 Previous report

On 4 February 2009, Cabinet considered a report about Building Schools for the Future that contained information about the strengthening of the governance of some of Walsall's mainstream secondary schools.

In this report, Cabinet was informed that Pool Hayes Arts and Community School were considering Foundation status. The report outlined the major differences between Foundation and community schools, these being:

- Foundations managing their own assets including lands and buildings;
- Foundations employing their own staff; and
- Foundations setting their own admission arrangements within the Schools Admission Code of Practice.

3.2 Informal consultation

On 3 November, the school informed the authority that they had started informal consultation on becoming a foundation school. A copy of this letter is attached (**Appendix 1**).

3.3 Formal consultation

In January, the school started formal consultation on the change of status. A copy of the consultation document is attached (**Appendix 2**).

4. Resource considerations

4.1 Financial:

Pool Hayes Arts and Community School will continue to be maintained by Walsall Council and will therefore continue to receive its funding directly from Walsall Council, using the locally agreed school funding formulae.

4.2 Legal:

It is inevitable that almost every issue that pertains to a schools change of status has the potential to have legal ramifications, should there be a failure to implement the changes correctly. Therefore a change in status must be effected in accordance with The Education (Change of Category of Maintained Schools) (Amendment) (England) Regulations 2006 and any other enabling regulations together with the published guidance.

Other pertinent considerations such as finance and staffing are already addressed in this report. Therefore focussing on the transfer of assets, when a school changes to Foundation status, any land held or used by the Local Authority for the purpose of that school is automatically transferred to the Governing Body on the implementation date (1st April 2009) without any payment or compensation to the Local Authority. The land is held 'on trust' for the purposes of the school. The governing body become responsible for ensuring adequate insurance cover is in place.

Land can be excluded from the transfer to the governing body by prior written agreement during the implementation period. For example, where a site is shared between a school and a community facility such as a library or sports centre intended for wider use, the school and LA may agree that freehold of that facility should remain with the LA. Any rights the school has held to use land or facilities owned by another party, such as a swimming pool or community sports hall, continue to apply after the change of category. If a Foundation school subsequently closes, the land and buildings (or their value) revert back to the Council.

If the Foundation wishes to consider disposal or change the use of a playing field they would require the consent of the Secretary of State.

Any Walsall Building Schools for the Future proposal for Pool Hayes that involved a site move would require negotiations over a land swap with the Foundation.

Legal implications relating to staff is set out in paragraphs 4.3 below.

4.3 Staffing:

The staff in Community Schools, such as Pool Hayes Arts and Community School, are employed by the Local Authority, although many of the responsibilities for staffing matters are delegated to the governing body. In a foundation school the staff are employed by the governing body, who must take on additional responsibilities, e.g. setting conditions of service, issuing contracts of employment, ensuring staff fitness to teach / work with children. The new governing body will need to make arrangements to fulfil these obligations. Like a Voluntary Aided school, the Local Authority remains the compensating authority.

It will be noted that the Governing Body of the school will technically be the employer of any staff, but the LA will retain legal responsibility for any costs arising from any employment dispute with the school.

However, this financial/legal safety net that the LA provides will not apply where there is a good reason (s37 (5) Education Act 2002), i.e. for example:

- (a) there is a failure to follow advice from the LA/ agents;
- (b) acting illegally;
- (c) acting in breach of procedures;
- (d) acting improperly/ unreasonably or otherwise perversely, etc. (This is not an exhaustive list).

It is also worthy of note that despite the above, it is ultimately the LA that may have to intervene to assist the school in the event it has insufficient resources to satisfy any legal award made by a Court/ Tribunal arising from an employment dispute. Of course any assistance could be subject to conditions.

As a consequence of the change of status there will be a need for the employment of staff at the school to transfer to the Governing Body on 1 April 2009. Paragraphs 49 to 55 of Schedule 3 to The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 provide for all rights, powers, duties and liabilities to transfer from the LA to the governing body. The effect of these provisions is to protect an individual's employment rights on transfer. Any agreements entered into by the LA or governing body before this date, in respect of an individual's terms and contract of employment must therefore be honoured by the new employer. Equally, if any action is being taken by an employee against the former employer in respect of a liability, duty etc of that employer before a school changes category, the liability transfers to the new employer.

These provisions in effect mirror TUPE transfer obligations when transferring staff from one organisation to another, so it must be sensible best practise to follow the same approach as taken on staff transfers under a TUPE situation.

The position of Local Authority employed catering staff working on the school site will be unaffected by the change of status, but will be subject to any future decisions by the governing body in relation to school meals provision.

5. Citizen impact

The Local Community Association, that has charitable status, uses the school building extensively.

Under the Foundation proposals, the Community Association will continue to have full access to the school premises and are to be included in the Trust arrangements as one of the partners in the proposed Trust.

The Headteacher of Pool Hayes is one of the Community Association Directors.

6. Community safety

None directly as a result of this report.

7. Environmental impact

None directly as a result of this report.

8. Performance and risk management issues

8.1 Risk:

There are no risks to the Council resulting from this report.

8.2 Performance management:

Standards at the school remain the responsibility of the school supported by Walsall Council.

9. Equality implications

In a Foundation school, the school must continue to be part of the authorities' coordinated admissions arrangements and are bound by the Government's Code of Practice on School Admissions, providing equality of access to all pupils.

10. Consultation

The following people were consulted during the writing of this report

Bhupinder Gill
Dan Mortiboys
Kevin Kendall
Ward Councillors

Background papers

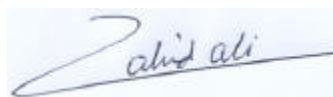
Author

Avril Walton
Assistant Managing Director – Management and Development
01922 686283
avril.walton@walsallcs.serco.com

(with contributions from Mark Freathy, Steve Law, Paul Green and Tim Challans)



Pauline Pilkington
Interim Executive Director
10 March 2009



Councillor Zahid Ali
Portfolio holder
10 March 2009



Headteacher:
J.P. Clarke, MA

Pool Hayes Arts and Community School

Castle Drive, Willenhall, West Midlands. WV12 4QZ

Telephone : (01902) 368147 • Fax : (01902) 609501

Email : postbox@poolhayesarts.com • Web : www.poolhayesarts.com

3 November 2008

APPENDIX I

Mr David Brown
Executive Director for Children's Services
Walsall Council

WALSALL COUNCIL
EXECUTIVE DIRECTOR
CHILDREN'S SERVICES

13 NOV 2008

RECEIVED

Dear Mr Brown

REFER TO ~~ACK - SUE~~ - 14/11/08
PASS TO IS (AD) - 14/11/08

Consultation on "Change of status to become a Foundation School"

The Governing Body of Pool Hayes Arts and Community School is considering a change of status to become a Foundation school. This is in line with the Government's plans for a reformed system of strong, autonomous schools and a modernised role for local authorities. The Governing Body also sees this as a possible first step towards Pool Hayes Arts and Community School becoming a Trust School, which will also be the subject of formal consultation in due course.

A foundation school has formal ownership of its assets (land and buildings) the governing body becomes the direct employer of the school's staff and will be responsible for setting admissions arrangements within the Local Authority's Admissions Code. Further, it has the power to publish statutory proposals for other changes.

The school and Governing Body are committed to exercising this autonomy within the framework of fair funding and fair admissions. Our relationship and collaborative working with our feeder primary schools and other partnerships will continue as normal. We believe that we have the experience and expertise to use the additional autonomies of Foundation Status to continue the development of the school and raise standards further. Governors believe that the school will be able to work more closely and develop better links with the local community, and use the additional freedoms to strive for excellence amongst our young people and staff.

There is an expectation from Government that schools will take a lead in delivering the Every Child Matters agenda and the vision of Extended Schools. The additional freedoms open to us as a Foundation School and our commitment to cooperation with other agencies and educational facilities will, we believe, be an important component in our school's development within this framework.

This letter is part of our informal consultation. The next step will be a meeting of the Governing Body on Tuesday 9th December to consider any responses to this letter and make a decision about continuing with the process.

We welcome any comments you might wish to make in writing or by email, using the address at the top of this letter. Please let us have your comments by Wednesday 3rd December 2008. If you would like to find out more about what it means to become a Foundation school,

Continued

Please visit the school's website, <http://www.poolhayesarts.com> which has a Frequently Asked Questions (FAQ) section on Foundation Status, or visit –

The DCSF School Organisation website: www.dcsf.gov.uk/schoolorg

FASNA (Foundation and Aided Schools National Association) has expertise on the issues around Foundation status: www.fasna.org.uk

DTI advice on TUPE provisions: www.dti.go.uk/files/file20761.pdf

Schools' Adjudicator: www.schoolsadjudicator.gov.uk

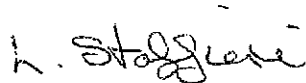
Alternatively, an information pack can either be collected from the school or mailed out on request. Should you wish a "face to face" meeting, please contact the school directly.

We will tell you about the formal consultation process when we have considered all the responses to this letter. The responses are used as the basis on which to make the decision about whether or not to continue into formal consultation, which is a process required by law.

Yours faithfully



Jim Clarke
Head Teacher



Lyn Staffiere
Chair of Governors



Headteacher:
J.P. Clarke, MA

Pool Hayes Arts and Community School

Castle Drive, Willenhall, West Midlands. WV12 4QZ

Telephone : (01902) 368147 • Fax : (01902) 609501

Email : postbox@poolhayesarts.com • Web : www.poolhayesarts.com

APPENDIX 2

Notice to change Pool Hayes Arts and Community School to Foundation Status

Notice is given in accordance with section 19(3) of the Education and Inspections Act 2006 that the Governing Body of Pool Hayes Arts and Community School intends to make a prescribed alteration to Pool Hayes Arts and Community School [Community School] Castle Drive, Willenhall, West Midlands, WV12 4QZ. The proposed alteration is to Change School Category from Community to Foundation from 01 April 2009.

The Governors see Foundation Status as the first step towards the formation of a Foundation Trust. As a Foundation School, we will be able to work more closely with potential Trust partners and the local community, with greater freedom and flexibility. The fundamental reason for this change is to improve the quality of education we are able to provide for our pupils and to raise standards. These additional freedoms in combination with the school's commitment to collaborative working arrangements with other educational partners and the community, will improve our ability to meet the five outcomes of Every Child Matters, enhance our commitment to promoting community cohesion and embrace the extended schools agenda. There is also a desire to create multi-agency facilities in close proximity to the school, for the benefit of the community.

This Notice is an extract from the complete proposal. Copies of the complete proposal can be obtained by contacting the school on 01902 368147, or by email to postbox@poolhayesarts.com. The complete proposal is also available on the school's website <http://www.poolhayesarts.com>

Within four weeks from the date of publication of this proposal, any person may object to or make comments on the proposal by sending them to Chair of Governors, Pool Hayes Arts and Community School, Castle Drive, Willenhall, West Midlands. WV12 4QZ

Signed:

J.P. Clarke

J P Clarke
Headteacher

L. Staffiere

L. Staffiere
Chair of Governors

Publication Date: 20 January 2009

MATTERS TO BE SPECIFIED IN FOUNDATION PROPOSALS

Insert the information asked for in the expandable box below each section.

1. All proposals must include the following information—

(a) **School Details**

The name, address and category of the school for which the governing body are publishing the proposals;

Pool Hayes Arts and Community School.
Castle Drive, Willenhall,
West Midlands
WV12 4QZ

(b) **Dates**

The proposed implementation date ("implementation date");

1st April 2009.

(c) **Objections and comments**

A statement explaining the procedure for making representations, including—

- (i) the date (4 weeks from the publication date) by which objections or comments should be sent to the governing body; and
- (ii) the address to which objections or comments should be sent;

Representations should be sent to the Chair of Governors, Pool Hayes Arts and Community School, Castle Drive, Willenhall, West Midlands. WV12 4QZ by 13th February 2009.

(d) **Consultation**

Evidence of the consultation before the proposals were published including—

- (i) a list of persons who were consulted;
- (ii) minutes of all public consultation meetings;
- (iii) the views of the persons consulted;
- (iv) a statement to the effect that all applicable statutory requirements in relation to the proposal to consult were complied with; and
- (v) copies of all consultation documents and a statement on how these documents were made available;
- (vi)

i) List of people/organisations to whom consultation letter was sent

- WALSALL Local Authority
- DCFS
- WOLVERHAMPTON Local Authority
- All parents/families of pupils at Pool Hayes Arts and Community School.
- All teaching and support staff at Pool Hayes Arts and Community School.
- All Walsall schools – Chair of Governors and Head Teacher of each establishment.
- Parents of Year 5 and 6 pupils at all Pool Hayes feeder primary schools.
- University of Wolverhampton
- **Unions:** NASUWT, NUT, ATL, GMB, UNISON, ASCL, NAH, T&G, VOICE
- Black Country Learning and Skills Council
- Members of Parliament, for the areas adjacent to Pool Hayes Arts and Community School.
- Local Councillors
- Community Groups of relevance to PHCS/Pool Hayes Community Association [religious and community based]
- PC Paul Fisher (School Based Police Officer)
- Walsall EBP
- Black Country Chamber of Commerce
- NHS Trust (Walsall and Wolverhampton)
- WALCAT
- Social Services [Walsall]
- Futures [Alternative Education Provision]
- NACRO
- The Vine Trust
- Nova Training
- Groundwork

- Peter Pyne [Training Provider]
- BST / CISS
- Shepwell Centre
- Connexions
- Black Country Training
- New Leaf Centre
- Ruiz Centre
- Platinum Training
- Juniper Training

ii) Minutes of public consultation meeting

In accordance with Paragraph 25 of the guidance "Changing School Category to Foundation – A Guide for Governing Bodies" it was not felt necessary to hold a public consultation meeting. However, the consultation notification letter offered a "face to face" meeting to anyone who requested a meeting.

iii) Views of the persons consulted

Removed for DCSF as requested

iv) All statutory requirements in relation to the proposal to consult have been complied with

v) Consultation letter that was sent to those listed under i) above

Change of status to a foundation school.

3 November 2008

Dear

Consultation on "Change of status to become a Foundation School"

The Governing Body of Pool Hayes Arts and Community School is considering a change of status to become a Foundation school. This is in line with the Government's plans for a reformed system of strong, autonomous schools and a modernised role for local authorities. The Governing Body also sees this as a possible first step towards Pool Hayes Arts and Community School becoming a Trust School, which will also be the subject of formal consultation in due course.

A foundation school has formal ownership of its assets (land and buildings)

the governing body becomes the direct employer of the school's staff and will be responsible for setting admissions arrangements within the Local Authority's Admissions Code. Further, it has the power to publish statutory proposals for other changes.

The school and Governing Body are committed to exercising this autonomy within the framework of fair funding and fair admissions. Our relationship and collaborative working with our feeder primary schools and other partnerships will continue as normal. We believe that we have the experience and expertise to use the additional autonomies of Foundation Status to continue the development of the school and raise standards further. Governors believe that the school will be able to work more closely and develop better links with the local community, and use the additional freedoms to strive for excellence amongst our young people and staff.

There is an expectation from Government that schools will take a lead in delivering the Every Child Matters agenda and the vision of Extended Schools. The additional freedoms open to us as a Foundation School and our commitment to cooperation with other agencies and educational facilities will, we believe, be an important component in our school's development within this framework.

This letter is part of our informal consultation. The next step will be a meeting of the Governing Body on Tuesday 9th December to consider any responses to this letter and make a decision about continuing with the process.

We welcome any comments you might wish to make in writing or by email, using the address at the top of this letter. Please let us have your comments by Wednesday 3rd December 2008. If you would like to find out more about what it means to become a Foundation school,

please visit the school's website, <http://www.poolhayesarts.com> which has a Frequently Asked Questions (FAQ) section on Foundation Status, or visit –

The DCSF School Organisation website: www.dcsf.gov.uk/schoolorg

FASNA (Foundation and Aided Schools National Association) has expertise on the issues around Foundation status: www.fasna.org.uk

DTI advice on TUPE provisions: www.dti.go.uk/files/file20761.pdf

Schools' Adjudicator: www.schoolsadjudicator.gov.uk

Alternatively, an information pack can either be collected from the school or mailed out on request. Should you wish a "face to face" meeting, please contact the school directly.

We will tell you about the formal consultation process when we have considered all the responses to this letter. The responses are used as the

basis on which to make the decision about whether or not to continue into formal consultation, which is a process required by law.

Yours faithfully

Jim Clarke
Head Teacher

Lyn Stafflere
Chair of Governors

Letter sent by direct mail to those listed above with the following exceptions:

- **pupils at the school were given letters to take home to their parents**
- **teaching/support staff were given letters in school**
- **letter also on school website**

(e) Alteration description

A statement of which one of, or combinations of, the alterations prescribed in regulation 3 of the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 comprise the proposals.

These proposals comprise a change of category from a community school to a foundation school.

2. Where the prescribed alteration is a change of category to foundation, the proposals must contain the following information—

(a) the rationale for the proposals;

The proposal is in line with the Government's plans for a reformed system of strong, autonomous schools and a modernised role for local authorities. The governing body also views this as the first step towards Pool Hayes Arts and Community School becoming a Trust School which will also be the subject of formal consultation in due course.

The school and governing body are committed to exercising this autonomy within the framework of fair funding and fair admissions. The school's relationship and collaborative working with feeder primary schools and other partnerships will continue in the same way but may additionally be strengthened further by the acquisition of Trust Status. Governors believe that they have the experience and expertise to use the additional autonomies of Foundation status to continue the development of the school and raise standards further. Governors believe that the school will be able to work more closely and develop better links with the local community and to use the additional freedoms to provide excellence for young people and staff. It is further envisaged that essential material improvements to the fabric of the school will be more readily attainable.

There is an expectation from government that schools will take a lead in delivering the Every Child Matters agenda, be instrumental in promoting Social Cohesion and

facilitating the vision of Extended Schools. The additional freedoms open to Pool Hayes Arts and Community School as a foundation school and the school's commitment to co-operation with other agencies will, governors believe, be an important component in the school's development of such initiatives. The fundamental reason for this change, and its guiding principal, is to improve the quality of education we are able to provide for our pupils in our desire to raise standards.

(b) a statement that the school will—

- (i) have a foundation established otherwise than under SSFA 1998; or
- (ii) belong to a group of schools for which a foundation body acts; or
- (iii) be a foundation school not falling within either of sub-paragraphs (i) or (ii);

Under these proposals the school will be a foundation school without a foundation.

(c) where it is a change of category to foundation from a voluntary aided school or voluntary controlled school, a statement that in accordance with section 20 of the EIA 2006, the consent of the trustees and the persons by whom the foundation governors are appointed has been obtained.

N/A