

TITLE OF REPORT: Academy Conversion of the Behaviour Support Service

REPORT OF: **Sheena Ramsey, Chief Executive and Mike Barker, Strategic Director Corporate Services & Governance**

Purpose of the Report

1. To advise Cabinet of the implications of the Academy Order in respect of the Behavioural Support Service and to seek approval to the proposed property arrangements to support the conversion of the Behaviour Support Service to Academy Status.

Background

2. The Council has a statutory duty to make arrangements for the provision of suitable education at school, or otherwise than at school, for children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless such arrangements are made for them (section 19(1) Education Act 1996 (EA 1996)).
3. The Council currently fulfils this obligation for its secondary aged pupils (Key Stage 3 and 4) through the Gateshead Behaviour Support Service, known as the Pupil Referral Unit (PRU).
4. In 2016 the Service was assessed as 'inadequate' by Ofsted and, as a result, the Secretary of State approved an Academy Order in respect of the Behaviour Support Service in July 2017. An Academy Sponsor has now been identified and conversion to academy status is expected to take place in January 2018.
5. The Academy Sponsor is the River Tees Multi-Academy Trust (MAT) which currently operates across Teesside; however, unlike a standard academy conversion, the legal obligation to provide education will still sit with the Local Authority: the role of the Academy will be that of service delivery on behalf of the Authority.
6. The Academy will be governed by the Department for Education's model form funding agreement for an alternative provision academy, which will ensure that the Academy meets the specific requirements of the Academies Act 2010.
7. The Council will still be able to make referrals to the Academy as it currently does with the PRU pursuant to section 19 of the EA 1996, but the duty to make appropriate provision will remain with the Council. Therefore, as the numbers of pupils requiring such provision is increasing (especially due to increased exclusions from schools) it is anticipated that there could be difficulties in fulfilling that duty when the Academy is full: i.e. the Academy would be under no obligation to accept further admissions, and yet the Council will have transferred the PRU staff, facilities and resources.
8. Indeed, this is seen as a current problem for the Council as the PRU facility at Millway is full and alternative temporary arrangements have had to be made for 31

children with the provision of private tutoring for 1 hour a day. It is acknowledged that 1 hour a day is barely sufficient to meet the Council's duty under section 19 of the EA 1996.

Property Implications

9. The PRU currently has use of three buildings:

Millway (Carr Hill)
Heworth Welfare Hall
Nelson Street offices

10. In addition to Heworth Hall not being a suitable property for education purposes, having originally been built for community use, it is also held in trust rather than being owned by the Council which means it cannot be transferred to the MAT.
11. As the PRU is unable to accommodate any further pupils the Council had, prior to the issue of the Academy Order, acknowledged that additional or alternative accommodation was required to deliver the service and officers had therefore undertaken a review of the Council's property portfolio for that purpose. This work has continued since the Order was made, given the implications for the Council of the MAT not having sufficient space to accommodate current and increasing demand, as outlined above. Further, it is recognised that the pupils in need of this form of educational provision are some of the Borough's most vulnerable children, and therefore appropriate effort should be made to provide them with suitable school accommodation if the Council is able to do so.
12. The criteria for the search to identify possible options from within the Council's property portfolio to meet the Service requirements (i.e. providing a suitable learning environment in terms of accommodation and safeguarding) was as follows:
- For those children who are either medically not fit for school, temporarily physically incapacitated or who are school phobic, the accommodation needs to provide :
 - A location appropriate for the proposed use, with no general public access
 - Minimum of 6 distinct teaching spaces
 - Staff space
 - Dining Area
 - Appropriate toilet facilities
 - External play area and parking
 - For Key Stage 3 and Key Stage 4 pupils excluded from mainstream school due to their behaviour, the property needs to include:
 - A location appropriate for the proposed use, with no general public access
 - 5 general teaching spaces for each key stage group
 - Joint specialist teaching space for science, art and ICT/Digital design.
 - Vocational workshop space- practical area and teaching space
 - Staff space/ meeting room
 - Dining Area and kitchen able to serve 75 people
 - Catering/ hospitality space
 - Indoor PE space and changing facilities
 - MUGA or access to playing fields
 - Various small rooms for counselling, etc.
 - Student social spaces
 - Appropriate toilet facilities – i.e. single units distributed across the building

- Separate external play space for each key stage group, outdoor work area for vocational skills training, and parking
 - For both sets of accommodation needs, availability was required at the earliest opportunity. Officers were subsequently advised that the accommodation would need to be available by January 2018.
13. The following buildings have been considered as they were initially considered as potentially meeting the above requirements:
- Ravensworth Terrace Primary, Birtley
 - Gibside School, Whickham
 - Eslington School
 - The Dryden Centre
 - The Former Brandling Community Centre

The option of identifying a site and constructing a new school was also considered

A summary of the analysis of suitability of each building is set out in Appendix 1.

14. Key Stage 3 and Key Stage 4 education for those 'Medically not fit for school' can be based in the same building as pupils who are either temporarily physically incapacitated or who are school phobic. It is, however, considered unsuitable for them to occupy the same premises as those excluded from mainstream school due to their behaviour unless the size of the facility enables the two pupil groups to be appropriately kept separate.
15. It should also be noted the MAT has a very different operating approach from the current PRU as it aims to create an academic and personalised curriculum for pupils as a basis for work or future learning. By adopting the MAT approach the number of vocational placements is expected to reduce significantly, resulting in the need to accommodate a greater number of pupils within the main PRU facility, should permanent exclusions continue on the present trend.
16. The MAT is also exploring a pre-exclusion provision for those pupils not succeeding in school, which would be purchased by schools with the aim of providing a more appropriate and personalised curriculum for those pupils which could reduce permanent exclusions.

Proposal

17. Having considered the options available to the Council to ensure the MAT has access to adequate buildings and facilities for the provision of the service from January 2018, it is proposed that:
- i. the Millway site is transferred to the MAT and appropriate arrangements are offered to enable it to occupy the building in the short term pending identification of more suitable accommodation.

- ii. the former Ravensworth Terrace Primary School be transferred to the MAT for such limited period as necessary to allow a more suitable long term site to be identified in agreement with the MAT, to be used for the 'Medically not fit for School' provision, as this building is considered suitable for this purpose with minimal adaptation. (Should a more suitable site be identified in time for delivery of the service in January 2018, the matter will be referred again to Cabinet for consideration.)
- iii. officers progress the discussion to replace the use by the PRU of Heworth Welfare Hall (which is a Trust Property and as such cannot be transferred to the MAT), with the former Brandling Community Centre with the intention of transferring the Community Centre to the MAT in the short term, to ensure it has sufficient accommodation to enable it to meet the service need
- iv. the excluded pupil provision, including the alternative education provision, be transferred to the current site of Gibside special school when it is expected to be vacated in 2020, or such other site deemed suitable, subject to satisfactory outcome of service delivery by the MAT which will enable the MAT to provide an enhanced service for the benefit of pupils in the borough. This option would release accommodation at Millway and the former Brandling Community Centre.
- v. subject to agreeing replacing the former Brandling Community Centre with Heworth Welfare Hall, the Welfare Hall will be transferred to Fighting Chance Foundation Community Interest Organisation pursuant to the Council's Community Asset Transfer Policy thereby helping to sustain the future of the organisation.

Recommendations

18. It is recommended that:

- (i) The Strategic Director, Corporate Services & Governance, be authorised to negotiate and agree with the River Tees Multi-Academy Trust the necessary legal documentation to implement the above proposal, following consultation with the Leader of the Council and portfolio holder for Children and Young People; and
- (ii) Cabinet receives a further report within twelve months on options for the transfer of alternative sites to the River Tees Multi-Academy Trust (such as Gibside school site, expected to be vacated in 2020) and release of some or all the sites initially transferred under recommendation (i) above.

For the following reasons:

- (i) To enable the Academy Order to be implemented in January 2018
- (ii) To enable the Council to meet its statutory obligation to provide suitable education at school or elsewhere for children of compulsory school age.

CONTACTS: Stephen Horne and Lesley Pringle

extension: 8604 and 3490

Policy Context

1. The proposal is in line with the Council Plan and Vision 2030 in giving children the best start in life and reducing levels of inequality for the disadvantaged and vulnerable. In addition, the proposal supports the implementation of the Council's statutory duty to make arrangements for the provision of suitable education at school, or otherwise than at school, for children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless arrangements are made for them (section 19(1)) Education Act 1996 (EA1996).
2. The proposal will also accord with the provisions of the Corporate Asset Strategy and Management Plan 2015 – 2020. In particular, using the Council's buildings to meet its statutory duty to make arrangements for the provision of suitable education at school or otherwise than at school for children of compulsory school age.

Background

3. The Academy will be governed by the Department for Education's model form funding agreement for an alternative provision academy. One of the many things this agreement sets out is the framework within which an academy operates. Clause 1.13 says that "*The Academy Trust must ensure that the Academy meets the requirements in section 1C of the Academies Act 2010*". Section 1C provides that an alternative provision academy:
 - is principally concerned with providing education for children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not otherwise receive suitable education;
 - provides education for children of different abilities; and
 - provides education for children who are wholly or mainly drawn from the area in which it is situated.
4. Therefore, it is considered that the Council will still be able to make referrals to the academy as it currently does with the PRU when the Council has a duty under section 19 EA1996.
5. The PRU currently has the use of three buildings:
 - Millway (Carr Hill),
 - Heworth Welfare Hall
 - Nelson Street offices
6. Notwithstanding that legally, the Council does not need to provide a converting school with alternative accommodation, consideration needs to be given as to whether the Council should seek to provide these vulnerable young people with suitable school accommodation if it is able to do so.
7. Key Stage 3 and Key Stage 4 education for those 'Medically not fit for school' can be based in the same building as pupils who are either temporarily physically incapacitated or who are school phobic. It is, however, considered unsuitable for them to occupy the same premises as those excluded from mainstream school due to their behaviour, unless the size of the facility enables the two pupil groups to be

appropriately kept separate. This is not currently the case at Millway, which has limited physical capacity and therefore limited flexibility for such separate provision.

Current Position

8. As detailed above the PRU currently has the use of three main sites and a number of rooms booked within council buildings.
9. The main school site at Millway accommodates the Excluded Pupil provision. The property is council owned and in the normal course of events would be transferred on Academy Conversion by way of a 125 year lease under the provisions of the academies legislation.
10. Medically not fit for School provision is currently located in Heworth Hall, which the Council holds in Trust. This building is therefore not able to be transferred to the MAT.
11. The alternative education provision has access to Nelson Street which is a former office owned by the Council. The School uses the property by way of an informal agreement and does not hold a legal interest which is capable of being transferred. Since its inspection the MAT has confirmed that it will not be taking this property on the basis that it is not fit for purpose.

Legal position in relation to properties where a school is the subject of an Academy Order

12. Section 8 of the Academies Act 2010 relates to the disposal of land to a school converting to academy status and states that the Secretary of State may make a scheme which provides for the transfer of property used or held for the purposes of a school for which an Academy Order has effect and the school is to be converted into an academy.
13. The DfE does appreciate that there are various different ways schools make use of land and expects the school and the authority to reach local agreements in order to preserve all rights the school enjoyed as a maintained school. Ultimately, if the school and authority fail to reach agreement the Secretary of State may impose a solution within the Academy Order.

Alternative accommodation options considered

14. Prior to the issue of the Academy Order the Council had acknowledged that additional or alternative accommodation was required to deliver the service and officers therefore undertook a review of the Council's property portfolio. This work has continued since the Order was made.
15. The following buildings have been considered:
 - Ravensworth Terrace Primary, Birtley
 - Gibside School, Whickham
 - Eslington School
 - The Dryden Centre
 - New Build/New Site
 - The Former Brandling Community Centre

16. Eslington School, the Dryden Centre, and the new build option have been discounted for the following reasons:
- Eslington Primary School
This is a 60 place school for children with social, emotional and mental health difficulties. It currently operates from two sites at Hazel Road and Rose Street. The option of consolidating the school on to one site freeing the existing site for use by the Pupil Referral Unit (PRU) was considered. This option would involve identifying a new site for the consolidated Eslington School and funding the capital costs of construction of the new School as well as the cost of any works to the current Eslington School for the purposes of the PRU.

This option was therefore discounted due to the time constraints identifying a site and constructing one building and altering another means that the building could not be available within the necessary timescales. In addition there would be a substantial capital costs associated with this option which would require the use of additional borrowing.
 - Dryden
Dryden is a former secondary school which is currently used by Education Gateshead for office and training purposes. The building is also used as the Council's dedicated training facility. The facility has a large car park and playing fields. Dryden Special School sits within perimeter of the site. Dryden School is a special school for students between 11- 19 who have severe or profound and multiple learning difficulties as their primary area of need. A number of students may have a range of secondary difficulties e.g. communication, ASD, physical and mental.
The Dryden Centre has over recent years received minimal investment and as such the building would require a greater level of investment to bring it to a suitable standard. Alternative accommodation would need to be identified for both the training facilities and the State of the Art facility if this building was to be used by the PRU. The office users could be relocated to the Civic Centre. However, external grant funding was used to develop the State of the Art Facility and any significant change in use could result in the grant having to be repaid.
Due to the proximity of the building to the Dryden Special School, the time required to identify suitable alternative accommodation for the training and State of the Art facilities and the capital costs involved, including the possible repayment of grant, this option was also discounted.
 - New Build
This option was discounted due to the time required to identify a new site, assuming a suitable site could be identified, and build a new facility and the significant capital costs that would be involved
17. The former Ravensworth Terrace Primary School and Gibside School Whickham, whilst not immediately available, are expected to be in the foreseeable future and the buildings are considered to be suitable alternatives for the Millway building (used for accommodating the Excluded Pupil provision) and Heworth Hall (used to accommodate the Medically not fit for School provision) .
18. Ravensworth Terrace Primary School is a Victorian building and was vacated this summer, but would not be available for occupation until January 2018 at the earliest.

It is not large enough to accommodate the excluded pupil provision from Millway; however, with minimal adaptation which can be accommodated from existing resources it is considered to be suitable for the Medically not fit for School provision.

19. If the Medically not fit for School provision did move into Ravensworth Terrace Primary School, the building it currently uses, Heworth Hall, would still be required by the MAT, in place of Nelson Street, to be used as part of the accommodation to deliver the Exclude Pupil provision. In the normal course of events Heworth Hall would be transferred to the Academy by way of a 125 year lease. However, Heworth Hall cannot be transferred as it is held in Trust. Officers have therefore sought to find an alternative facility.
20. It is considered that the former Brandling Community Centre is a suitable alternative. The building is currently let to Fighting Chance Foundation Community Interest Organisation for a term of seven years with three years remaining. This short lease is preventing the organisation accessing funding to drive the project forward. A long term lease cannot be granted for the building as it sits within one of the Joint Venture sites which will at some future date come forward for housing development.
21. Discussions are currently ongoing with both Fighting Chance and the Behavioural Support Service regarding the proposal which has benefits to both parties; with a long term lease Fighting Chance can access funding and the option of being able to transfer the former Brandling Community Centre to the MAT ensures it has a range of buildings to deliver the service. It is therefore proposed, subject to agreement by all parties that Fighting Chance be offered Heworth Hall where a long term lease can be granted and the MAT be offered the former Brandling Community Centre on a short term basis.
22. Despite recent investment using £0.7m of Targeted Basic Need funding, a replacement school for Gibside School is regarded as necessary due to capacity issues and a scheme and estimate is being prepared which would potentially utilise the 2018/19 Basic Need funding allocation in full. Once these figures are obtained a report will be submitted to Cabinet seeking approval to proceed with the scheme. If approved, construction of the new building will begin with completion expected to occur in 2020. Once completed, the existing school will become available. To avoid potential clawback of Targeted Basic Need funding, it is likely that the site will need to be used for education purposes. Although too large for the Medically Not Fit for School provision, it would provide adequate space for excluded pupil provision Key Stage 3 and alternative education provision Key Stage 4.
23. This building would not be available until October 2020 so is not a short term option but a possibility in the medium to long term for the PRU.
24. If this option was considered suitable, the existing Gibside School would, in the normal course of events be transferred by way of a 125 year lease. It is envisaged that there would, however, be no capital funding available for adaptation from the Council and it would be the responsibility of the Academy to deliver any required works.

Consultation

25. In preparing this report consultation has taken place with the Leader, Deputy Leader, Portfolio Holder for Children and Young People, and Ward Councillors. While highlighting the need to continue to pursue alternative options for future provision of

these services, the Leader, Deputy Leader, Portfolio Holder and one of the ward councillors acknowledge the proposal is the most suitable arrangement for the Council and MAT in the short term. The other two ward councillors oppose the proposals and believe further efforts should be made to find additional alternative options; however, it has not been possible to identify such alternatives which would provide suitable provision for the PRU service within the necessary timescales.

Alternative Options

26. Alternative options to the proposals set out in this report, and the reasons for them not being pursued, are considered throughout.

Implications of Recommended Option

27. **Resources:**

- a. **Financial Implications** – The Strategic Director, Corporate Resources confirms that the assets will need to be transferred at nil consideration under the terms of the Academy Conversion.

The detailed financial implications associated with the long-term proposal will be considered in the future report to Cabinet following the outcome of the negotiations with the River Tees Multi-Academy Trust. It is considered that the long-term proposal may generate a capital receipt for the Council through the release of the Millway site, but may also mean that the Council forgoes a potential capital receipt relating to any assets that are ultimately transferred to the Trust, which may include Gibside School. At this stage, the proposal is not anticipated to require any additional resources from the Council to facilitate the adaptations.

An alternative provision academy revenue funding is provided directly by the DfE based on the number of places the home local authority commissions. The current agreed commissioned number of places for the PRU is 103, and are funded at £10,000 per place. Some pupils due to their additional needs with require additional top up payments. The current agreed top up arrangements are under review and may have financial implications, but this cannot be quantified as the outcome of the revenue funding review is not known and the financial implications have not yet been modelled

- b. **Human Resources Implications** – There will be an impact on staff employed within the PRU and full consultation will need to be undertaken with staff and trade unions. The transfer of the service to the MAT will mean that the provisions of TUPE will be engaged and staff will transfer on their existing terms and conditions of employment. The Council will to work with the MAT and staff to explore all possible solutions to any implications on employees
- c. **Property Implications** - Releasing buildings to enable the Council to fulfil its statutory obligations in terms of education provision accords with the provisions of the Corporate Asset Strategy and Management namely to use its assets to support service delivery.

28. **Risk Management Implication** - If the Council does not provide sufficient accommodation for excluded and medically unfit pupils there are a number of risk implications. The Council is likely to have a larger than would be expected number of

pupils on an 'off school' register and is open to challenge in regard to it not fulfilling its statutory responsibility to make arrangements for the provision of suitable education at school, or otherwise than at school, for children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless such arrangements are made for them (section 19(1) Education Act 1996 (EA 1996)). Additionally,

- This group of pupils are at significant risk of educational underperformance. This risk is made worse if they are not educated in a good school. Issues such as mental health and SEN are best catered for when these children are in the care of teachers and other professionals within a school environment;
- Ofsted are highly likely to criticise this situation due to the limited amount of education that the Council would be providing through tutoring arrangements and the related poor academic outcomes for this vulnerable group. Also, due to the relatively low contact time with a tutor or other appropriate adult, Ofsted are likely to identify potential but significant safeguarding issues;
- To provide an adequate level of education for the "off role pupils" the Council would need to increase staffing numbers of the team tasked to focus on this group in order to ensure safeguarding and educational robust are as strong as possible. Costs would also increase due to the need to significantly increase the number of tutoring sessions.

29. **Equality and Diversity Implications** - The Council has a statutory duty to make arrangements for the provision of suitable education at school, or otherwise than at school, for children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless such arrangements are made for them. This duty ensures that all children have access to the appropriate education to ensure that they have the opportunity to achieve their full potential. The proposals as set out in this report best ensures that the Council fulfils this duty and ensures the education of those pupils requiring the services of the Behavioural Support Service.

30. **Crime and Disorder Implications** – There are no crime and disorder implications arising directly from this report

31. **Health Implications** - There are no health implications arising directly from this report

32. **Sustainability Implications** - There are no sustainability implications arising directly from this report

33. **Human Rights Implications** - There are no human right implications arising directly from this report

34. **Area and Ward Implications** - South - Birtley, East - Felling, Central - Deckham

Background Information - None