

North Tyneside Council

Report to Cabinet

Date: 5 August 2013

ITEM 3

Kings Priory Academy Proposals

Portfolio(s): Children, Young People and Learning

Cabinet Member(s): Councillor Ian Grayson

Report from Directorate: Children, Young People and Learning

Report Author: Gill Alexander, Strategic Director for Children, Young People and Learning (Tel: (0191) 643 8001)

Wards affected: All

PART 1

1.1 Purpose:

The purpose of this report is to provide an update upon the Kings Priory Academy proposals to enable Cabinet to determine what further action, if any, the Authority should now take.

A supplementary report will be provided as needed following receipt and consideration of further pre action correspondence with the Secretary of State.

1.2 Recommendation(s):

It is recommended that Cabinet:

Consider the response from the Secretary of State for Education and determine what action, if any, the Authority should now take, with reference to the options set out in paragraph 1.6 below.

1.3 Forward Plan:

This matter did not appear on the Forward Plan.

As the issue relates to an education matter, with the Academy scheduled to open in September 2013, there is a need to consider the report as an urgent item to avoid any unnecessary delays in addressing this matter.

1.4 Council Plan and Policy Framework

The report relates to Priority 2 of the Council Strategic Plan 2012 – 2015: Maintaining excellent education, training and employment opportunities, including apprenticeships and working in collaboration with partners.

The report relates to Priority 3 of the Sustainable Communities Strategy 2010 - 2013: Best Start in Life.

1.5 Information:

- 1.5.1 Background information is contained in the reports to Cabinet and Council dated 17 July 2013.

Decision making at Council and Cabinet on 17 July 2013

- 1.5.2 At the meeting on 17 July 2013 Council agreed that it was opposed to the Kings Priory Academy proposals because of the impact on education across the whole of the Borough. Council agreed to support Cabinet in taking all appropriate steps to secure that the Department for Education reconsiders the decision to enter into the funding agreement to create the Kings Priory Academy to ensure that errors are rectified and the impact upon other schools is properly considered.

- 1.5.3 Cabinet met immediately following the Council meeting on 17 July 2013. Cabinet considered the view expressed by the Council meeting and agreed:

(i) to take all appropriate steps to secure that the Department for Education reconsiders the decision to enter into the funding agreement to create the Kings Priory Academy to ensure that errors are rectified and the impact upon other schools is properly considered;

(ii) that the Authority should issue a pre action protocol letter to the Secretary of State for Education to challenge the decision making process with regard to his decision made on 5 July 2013 and detailed in his decision letter dated 10 July 2013;

and

(iii) consider the Secretary of State's response to pre action correspondence before determining whether any further action is appropriate.

Pre Action Correspondence

- 1.5.4 On Thursday 18 July 2013 the Authority sent a pre action protocol letter to the Secretary of State for Education (Appendix 1). A response was sought by 4pm on Thursday 25 July 2013.

- 1.5.5 On Thursday 25 July 2013 at 6.57pm a response was received from the Treasury Solicitor's Department on behalf of the Secretary of State (Appendix 2). It indicated that the decision to enter into a funding agreement to establish the Kings Priory Academy would be set aside and looked at afresh.

- 1.5.6 However, at 10.30am on Friday 26 July 2013 Department for Education e-mailed a letter to the Strategic Director for Children, Young People and Learning stating that the Secretary of State had considered the matter afresh and decided to enter into a funding

agreement to establish the Academy (Appendix 3). The reasons for the decision were not provided.

1.5.7 The Authority responded on 26 July 2013 expressing concern at the Department's conduct in making the further decision without first providing an opportunity for the Authority to comment (Appendix 4). The Authority sought the provision of the full reasons for the decision by 4pm that day.

1.5.8 At 5.59pm on Friday 26 July 2013 the Authority received the full reasons for the decision taken by the Secretary of State earlier that day (Appendix 5). The decision letter included an equality impact assessment (Appendix 6). The Department for Education has not provided a copy of its educational impact assessment.

1.5.9 The decision letter was considered and a further letter sent to the Treasury Solicitor (Appendix 7). The outstanding concerns are set out in the letter, in summary they are as follows:

- (i) the Secretary of State has acknowledged that the impact of the Academy will be lower pupil numbers and hence affect the finances and viability of neighbouring schools, particularly Marden High School. Pupils with special educational needs and non Christian pupils are likely to be "over-represented" in the other schools (or to put it another way, underrepresented in Kings Priory) and therefore there could be some adverse effect on those groups. Despite this, the Secretary of State has not gone on to consider the obvious mitigating step of providing additional funding to schools that will be negatively impacted to ensure that education standards do not fall as a result of the lower pupil numbers.
- (ii) the lateness of the Secretary of State's decision and the determination to implement the changes in September 2013 has left the other schools within North Tyneside with very little time to undertake and implement proper transition planning. The Authority's requests for the Department to engage with it to address concerns and explore mitigating factors have not been properly addressed. It appears that while every support is offered to the proposed academy, including a payment in the region of £5 million to cover the King's School loan and overdraft, maintained schools are being left to deal with the impact themselves, while being expected to raise standards.
- (iii) the Authority maintained its position as set out in the pre action letter (Appendix 1) that the decision to proceed is irrational. In particular, in circumstances where there is an anticipated surplus of 18.1% in secondary school places, it is difficult to see how any reasonable Secretary of State could find that funding the debt of a fee charging school in order to further the proposal for a new academy represents good value for money on one hand, yet on the other, provide no financial support to schools affected by the proposals.

1.5.10 The Authority has continued to indicate that it remains willing to explore the options available with the Secretary of State and the Department for Education. Confirmation of the support the Secretary of State is proposing to offer to the schools affected by the proposed academy has been sought by 4pm on Thursday 1 August 2013.

Current Position

1.5.11 The substantive response from the Secretary of State is awaited. A supplementary report will be provided upon receipt of the response to enable Cabinet to consider the Authority's position.

1.6 Decision options:

The following decision options are available for consideration by Cabinet.

Option 1

Cabinet may consider the response from the Secretary of State for Education and determine that judicial review proceedings should be commenced.

Option 2

Cabinet may consider the response from the Secretary of State for Education and determine that the Authority will not commence judicial review proceedings.

1.7 Reasons for recommended option:

Cabinet is asked to consider both options.

1.8 Appendices:

Appendix 1 – Letter to the Secretary of State 18 July 2013

Appendix 2 – Letter from the Treasury Solicitor 25 July 2013

Appendix 3 – Letter from Lord Nash on behalf of the Secretary of State 26 July 2013

Appendix 4 – Letter to the Treasury Solicitor 26 July 2013

Appendix 5 - Letter from Lord Nash on behalf of the Secretary of State 26 July 2013

Appendix 6 – Department for Education's Equality Analysis

Appendix 7 – Letter to the Treasury Solicitor 30 July 2013

1.9 Contact officers:

Gill Alexander, Strategic Director for Children, Young People and Learning tel: 0191 643 8001

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Louise Watson, Senior Manager Legal Services, tel: 0191 643 5325

Anthony Gollings, Financial Business Manager, tel: 0191 643 8071

1.10 Background information:

The following background papers/information have been used in the compilation of this report and are available at the office of the author:

(1) Academies Act 2010

(2) Report to Council dated 17 July 2013 regarding proposals for Kings Priory Academy:

http://www.northtyneside.gov.uk/browsedisplay.shtml?p_ID=546105&p_subjectCategory=40

(3) Report to Cabinet dated 17 July 2013 regarding proposals for Kings Priory Academy:

PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING

2.1 Finance and other resources

The wider financial impact upon other schools in North Tyneside will depend upon the precise admission arrangements of the proposed new school and how successful it is in attracting pupils. The 2013/14 mainstream school funding formula allocations allocates over 88% of the available funds to schools based upon pupil number factors. This means that if any school suffers a reduction in pupil numbers it has a direct impact upon the funding it receives and ultimately its financial stability.

In addition to the impact on schools budgets and the Dedicated Schools Grant (DSG), when pupils move out of the maintained schools sector and into the Academy or free school provision, the Local Authority will experience a proportionate reduction in its Education Services Grant.

If the Authority enters into litigation on this matter, existing general fund budgets will be utilised where possible. Any impact on the overall 2013/14 General Fund budget envelope being monitored and reported to Cabinet as part of the normal Financial Management Process. Throughout any proceedings the cost of litigation will be monitored by Finance in conjunction with the legal advisors.

2.2 Legal

If judicial review proceedings are successfully pursued, the decision of the Secretary of State may be set aside and the Secretary of State required to undertake the flawed decision making process correctly.

2.3 Consultation/community engagement

The issue under consideration has been the subject of consultation with all members via a meeting of Council on 17 July 2013.

2.4 Human rights

There are no human rights implications directly arising from this report.

2.5 Equalities and diversity

There are no equality and diversity implications directly arising from this report.

The equality issues in connection with the decision of the Secretary of State for Education's decision making regarding the Kings Priory Academy proposals are referred to in the various appendices to this report.

2.6 Risk management

Any risks to the provision of education in the Borough identified as part of the impact assessment will be monitored and appropriate steps will be taken to safeguard against those risks.

2.7 Crime and disorder

There are no crime and disorder implications directly arising from this report.

2.8 Environment and sustainability

There are no environment and sustainability implications directly arising from this report.

PART 3 - SIGN OFF

- Chief Executive x
- Strategic Director(s) x
- Mayor/Cabinet Member(s) x
- Chief Finance Officer X
- Monitoring Officer X
- Strategic Manager Policy, Partnerships, Performance and Communication X