

North Tyneside Council

Report to Council

Date: 17 July 2013

ITEM 3

Title: 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 Council with an update upon the Kings Priory academy proposals and enable members to express their views upon the decision of the Secretary of State for Education to approve those proposals.

1.2 Recommendation(s):

It is recommended that Council consider the content of the report and agree the following:

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.

1.3 Forward Plan:

This report does not appear on the Forward Plan. The decision of the Secretary of State was notified to the Authority during the evening of Friday 5 July 2013. An urgent report was presented to Cabinet on Monday 8 July. Due to the time sensitive nature of the issues and to avoid any unnecessary delays an extraordinary meeting of Council is necessary to provide all members with an update upon the Kings Priory academy proposals and enable members to express their views upon the decision of the Secretary of State for Education.

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:

Background

- 1.5.1 On 3 September 2012 the Authority first became aware of proposals to merge Priory Primary School, Tynemouth (currently a local authority maintained school) with Kings School, Tynemouth (currently an independent fee paying school). The proposals were put forward by the schools and the proposed sponsor, Woodard Academies Trust without any prior consultation with the Authority.
- 1.5.2 The Authority became aware of the proposals at the same time as the public and the press. It is apparent from notes and minutes of Priory's Governing Body meetings dated 5 March 2012 and 19 March 2012 that private discussions had taken place for several months, the parties were concerned that information about the plans would "leak" and the public announcement was carefully timed to avoid an impact on Kings School.
- 1.5.3 The making of an Academy Order is an initial procedural step in the process of creating an academy. The Academy Order made by the Secretary of State for Education in relation to Kings Priory is dated 12 July 2012. Under section 4(4) of The Academies Act 2010, where an Academy Order is made, the Secretary of State is required to provide a copy of that Order to the Local Authority. The Order was not provided to the Authority until 24 September 2012 following specific requests from the Authority.
- 1.5.4 Academy schools are publicly funded, independent schools which operate outside local authority maintenance and control and are directly responsible to the Department for Education (DfE). Most of the education legislation that applies to a maintained school does not apply to an academy. Areas which the DfE specifically wishes to control may be set out in a Funding Agreement entered into between an academy and the DfE. The Academies Act 2010 enables schools to convert to academy status without the agreement of the relevant local authority. The decision maker is the Secretary of State for Education who has the authority to approve the conversion and enter into a funding agreement.
- 1.5.5 The proposed merger of a maintained school and an independent school to create a new academy is the first of its kind. If approved, the academy will become a state funded independent school under the Woodard Academies Trust.

Current Stage – Secretary of State's Decision dated 5 July 2013

- 1.5.6 During the evening of Friday 5 July 2013 the Authority was notified by e-mail that the Secretary of State for Education had decided to enter into a funding agreement to create the Kings Priory Academy and indicated that a full decision letter would follow.
- 1.5.7 An urgent report was presented to Cabinet on Monday 8 July 2013. Cabinet agreed to consult with members via a meeting of Council. Due to the time sensitive nature of the issues, Cabinet requested that arrangements be made for an extraordinary meeting of Council to be convened to avoid any unnecessary delays. Cabinet will meet immediately following this meeting to consider the views expressed by Council and determine the Authority's response to the Secretary of State's decision.

1.5.8 The Department for Education's decision letter was received on Wednesday 10 July 2013 and is attached to this report (Appendix 1).

Impact Assessment

1.5.9 Prior to determining whether or not to enter into a funding agreement to create an academy the Secretary of State for Education was required by law to take into account the likely impact of entering into the arrangements upon maintained schools and academies in the area.

1.5.10 In September 2012 and October 2012 the Authority received assurances from the Department for Education that it would work in conjunction with the Authority to prepare an impact assessment. However, despite prompting by the Authority the DfE did not engage with the joint assessment work. In the absence of a joint approach, the Authority gathered impact assessment data to inform its own views upon the proposals. Requests to commence the work were not responded to and in March 2013 the DfE's position changed to one of agreeing to consider evidence provided by the Authority. In February 2013 the DfE Officer, indicated that the DfE's impact assessment was near completion (this was without the benefit of any data or other input from the Authority), when this was questioned and a copy of the document requested no response was received until 29 April 2013 when the position changed to that of indicating that although some work has been done on impact assessment documentation it was incomplete and the DfE was unwilling to share the "work in progress".

1.5.11 On 1 May 2013 DfE officials met with Council officers to discuss the Kings Priory Academy proposal and commence work with a view to establishing a shared understanding of the impact of the proposal on the wider school system in North Tyneside.

1.5.12 On 9 May 2013 the Strategic Director for Children, Young People and Learning wrote to the DfE expressing concern that the impact assessment work was being progressed at a late stage in the process, at a point at which it appeared that the decision of the Secretary of State would be imminent. The Authority supplied impact assessment data to the DfE (attached as Appendix 2) and highlighted the following key points:

- “(i) The proposal will introduce 930 (105 primary and 825 Secondary) additional maintained places at a time of falling school rolls and increasing surplus capacity because of a lower birth rate feeding through into secondary school provision. Overall the Secondary surplus capacity across our school system is currently 14.1% which was forecast to rise to 18.1% by 2015/16 without the additional places being introduced by the new Academy. Having taken account of the North Tyneside student population already being educated at Kings we estimate that surplus capacity will rise to 20.1% as a result of the net additional maintained places being added to the system.
- (ii) The amalgamation of Priory Primary School with Kings School to create an all through 3 – 18 school will result in a disproportionate impact on neighbouring secondary schools and in particular Marden High School. The impact assessment (confirmed by the recent admissions data shared with the Authority by Woodard Academies Trust) indicates that this will result in a 35% decline in the roll of Marden.

- (iii) The Authority is also concerned to understand the impact of Kings Priory on Year 9 admissions at Monkseaton High School. We have been informed that Kings Priory will have 40 vacancies in Year 9 in the first two years of operation and will recruit to vacant places. There is a potential risk to Monkseaton High School that this will, in the first two years at least, result in a reduced intake in a school which is already vulnerable as a result of falling rolls.
- (iv) Our initial assessment of the impact on primary school places concluded that overall there would be a minimal impact. However given that the PAN of 75 has been breached with 83 provisional offers being made for September 2013 we are seeking clarification on how an admission of up to 90 can be prevented in this and future years, given the school's intention to operate three forms of entry into Reception. If the school is to consistently admit above the PAN then our assessment is that there will be a destabilising impact on some neighbouring primary schools.
- (v) Whilst it is clear that there is no intention to establish a nursery on the primary site until 2015 we wish to flag at this stage that this will have a significant impact on the local freestanding nursery school Sir James Knott.

The main issue for the Authority and local schools is that the proposed Academy will introduce a significant number of additional maintained places at a time when schools are vulnerable as a result of a declining population. Following a consultation meeting with local headteachers we believe that the approval of Kings Priory Academy would precipitate a strategic review of the 11 – 18 education system in North Tyneside.”

The Authority indicated that it was “crucial that the Secretary of State is aware of the full impact upon education in the Borough when considering the funding agreement for the proposed Kings Priory Academy” and asked that those issues be fully explored as part of the impact assessment.

- 1.5.13 On 20 June 2013 and 28 June 2013 the Authority asked for copies of the DfE's detailed impact assessment and supporting statistical analysis; this information has not been provided.
- 1.5.14 Assessment work undertaken by Council officers indicates that if the Kings Priory proposals proceed there will be a significant impact on the population in schools maintained by the Local Authority. Officers remain concerned at the significant impact the introduction of the proposed academy will have. It is estimated that Marden High School will face a material financial impact upon its budget for the academic year 2013/14 and future years. If any reorganisation for schools is required, as anticipated, due to the surplus places, there will be significant costs incurred in securing appropriate alterations to school premises and staffing structures.
- 1.5.15 The Director's Report and Financial Statements for the year ended 31 August 2012 for Kings School indicated that, at that point, the school had just over £1m in creditors falling due within one year (i.e. by August 2013), with a further £4m owed to creditors (bank loans and overdraft) falling due in more than one year. An assurance was sought from the Secretary of State on 19 June 2013 and 4 July 2013, that, should the academy proposals go ahead, public funds would not be utilised to pay the outstanding debts of Kings School. However, the decision letter (Appendix 1) states that the Secretary of State has agreed to fund the existing loan and overdraft of Kings School by securing a charge against the assets of the Woodard Corporation on land and buildings in Tynemouth, asserting that this represents “good value for money” as the proposals will provide “980

additional state sector places” (note – in assessing impact Council Officers have worked on a figure of 930 additional state funded places based on information provided about the Kings Priory proposal. The Secretary of State’s figure of 980 appears to take account of existing primary aged pupils in Priory Primary School and the Kings School. This does not change the impact assessment). In addition, the academy would receive per pupil funding and it is anticipated, capital funding. To put this into context, the Authority will receive from the DfE capital funding of £4.8 million in 2013-14 for its whole school estate (primary, middle and high schools).

1.5.16 In addition to the concerns the Authority has raised with the Department for Education, the Longbenton Community College wrote to the Secretary of State on 26 June 2013 on behalf of the North Tyneside Academy, High, Middle and Special School Heads’ Group to request that he reconsider his support for the Academy (Appendix 7).

Grounds to take steps to secure that the Secretary of State reconsiders the decision to enter into the funding agreement to create the Kings Priory

1.5.17 There are a number of areas in the Secretary of State’s decision which raise concern and which the Authority may wish to formally raise. In summary, they are as follows:

(i) That there was procedural impropriety, in that the King’s School’s debts were not highlighted and consultees were not informed that the Secretary of State would or might take on those debts (subject only to a charge on the land and buildings).

(ii) That the Secretary of State made a material error of fact, in that he based his decision on his misunderstanding that Marden High School was “clearly oversubscribed”.

It appears that the Dfe have misunderstood admissions data when looking at the impact upon Marden High School. Marden High School is not ‘clearly oversubscribed’ as asserted, it is undersubscribed. The 304 applications referred to for 2012/13 includes first, second and third preference applications. The School’s published admission number was 181 and it received only 177 first preference applications. Ultimately 173 places were taken up in September 2012. This represented 171 1st preference places and 2 2nd preference places. In September 2010, 161 places were taken up and in September 2011, 176 places were taken up, which clearly demonstrate that the school is not oversubscribed.

(iii) That the Secretary of State failed to comply with his obligation in section 9(2) of the Academies Act 2010 in that he failed to take into account the realistic impact on Marden High School and other secondary schools in the Council’s area.

(iv) That the Secretary of State has failed to comply with his public sector equality duty under section 149 of the Equality Act 2010. In entering into the Funding Agreement, the Secretary of State was exercising his functions. As such, he was required to have due regard to specified equality matters, including the need to:

“(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.”

The Secretary of State is seeking to rely on generic equality impact assessments from several years ago about academies generally rather than engaging with the particular circumstances of the children who would be affected by the opening of the Academy. In particular, it is likely that the proportion of children at the local maintained schools with a protected characteristic (for example, BME or disability) is higher than the proportion of children with that protected characteristic at the fee-charging King's School. On the Secretary of State's case, the children at King's School will benefit from a guaranteed place at the Academy.

- 1.5.18 If the Authority was minded to challenge the Secretary of State's decision it would be necessary to issue a formal legal letter, commonly known as a pre action protocol letter). This letter would set out the Authority's concerns and the actions which it considers the Secretary of State must take, for example, (i) to take a fresh decision which properly and more clearly takes into account the issue of surplus places and demonstrates that impact has been properly assessed; and (ii) to obtain relevant equalities information and have due regard to the specified equality issues in reconsidering the decision. If a satisfactory response was not received the Authority would need to consider whether to issue judicial review proceedings to enable a court to review the decision making process followed by the Secretary of State with a view to the Court ordering the Secretary of State to address the deficiencies in the process.
- 1.5.19 In light of the impact of the proposed Academy upon education in the Borough, it is considered appropriate to seek reconsideration of the Secretary of State's decision making in relation to this matter, so that it is undertaken in a transparent and thorough manner and in the full knowledge of the likely impact.

Previous Stages

- 1.5.20 Since becoming aware of the proposals in September 2013 the Authority has been in regular correspondence with the Trust, the Governing Body of Priory Primary School and the DfE.
- 1.5.21 On 25 October 2012 a report was presented to Council providing information about the Kings Priory proposal and the assurances being sought by Council officers. On 7 February 2013 a further report was presented to Council which provided information about the concerns regarding the Governing Body's decision making and the Authority's initial assessment of impact. Council agreed that the Elected Mayor and cross party Group Leaders would work together to produce an all party response to the consultation exercise and representations in relation to the assessment of impact.
- 1.5.22 On 6 March 2013 the Authority's responses were submitted to the consultations carried out by the Woodard Trust and the Governing Body of Priory Primary School. The consultation response was prepared in consultation with the former Elected Mayor, Cabinet Members and cross Party Group leaders and took account of the views expressed by members during the discussion at the Council meeting. The consultation response supplied to the Governing Body is attached (Appendix 3). The Governing Body responded on 26 April, a copy is attached (Appendix 4)

Decision Making of Priory Primary School Governing Body

1.5.23 The Authority repeatedly raised concerns with the Governing Body regarding its decision making processes. On 26 September 2012 the Authority obtained copies of minutes of meetings of the Governing Body meeting which took place on 26 March 2012. On 28 September 2012 the Director of Children, Young People and Learning wrote to the Governing Body to request minutes and reports from other Governing Body meetings at which the proposals were discussed and raising a question about pecuniary interests as follows:

“The minutes record that members of the Governing Body did not declare any “additional interests”. You will be aware that where a governor has a pecuniary interest in any matter he or she should withdraw from the meeting and not participate in the vote (in accordance with regulation 14(2)(c) of The School Governance (Procedures) (England) Regulations 2003 (as amended)). To reassure the Council that the decision was taken on a lawful basis I would be grateful if you would confirm that none of the governors who participated in the discussion and vote on 26 March 2012, and the subsequent discussions and votes on the proposals, had children in King’s School on a fee paying basis.”

A response was received on 5 October 2012. It did not answer the question raised and refuted the assertion that pecuniary interests would arise. In correspondence, the Authority continued to express concern at this approach to decision making and also raised the issue at a meeting with the Governing Body on 4 February 2013 and in the Authority’s submission to the consultation. A copy of a letter circulated to all governors at the meeting of 4 February 2013 is attached as Appendix 5.

Due to the Governing Body’s unwillingness to address concerns regarding interests a formal pre action protocol letter was issued to the Governing Body on 24 May 2013 (Appendix 6).

On 12 June 2013, solicitors representing the Governing Body confirmed that the Governing Body agreed to put aside their decision of 25 March 2013 (as to whether to continue to pursue academy status) and to retake the decision without the participation of governors who may have pecuniary interests or other conflicts of interest. The Authority was later advised that the Governing Body met on 18 June 2013 to reconsider the decision; three governors, including the Chair of Governors, did not participate in the meeting in order to address the concerns raised regarding interests. At that meeting the Governing Body confirmed their earlier decision to pursue academy status.

As the Governing Body addressed the Authority’s concern regarding members with interests, it was not appropriate to pursue any formal legal action.

1.6 Decision options:

Option1

Council may express support for Cabinet taking action as follows:

To support Cabinet in taking 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; and

Option 2

Council may not express support for Cabinet or may put forward an alternative proposal.

Option1 is recommended.

1.7 Reasons for recommended option:

1.7.1 In light of the impact of the proposed Academy upon education in the Borough, it is considered appropriate to seek reconsideration of the Secretary of State's decision making in relation to this matter, so that it is undertaken in a transparent and thorough manner and in the full knowledge of the likely impact.

1.8 Appendices:

Appendix 1	Department for Education decision letter dated 10 July 2013
Appendix 2	Impact assessment data – May 2013
Appendix 3	North Tyneside Council's submission to Priory Primary School's consultation exercise – 6 March 2013
Appendix 4	Response from the Governing Body to the Council's submission to Priory Primary School's consultation exercise – 26 April 2013
Appendix 5	Letter circulated to all governors at meeting on 4 February 2013
Appendix 6	Legal pre action letter dated 24 May 2013
Appendix 7	Letter from Headteachers' Group to the Secretary of State dated 26 June 2013

1.9 Contact officers:

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

Viv Geary, Head of Law and Governance tel: 0191 643 5466

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 7 February 2013 regarding proposals for Kings Priory Academy:

http://www.northtyneside.gov.uk/pls/portal/NTC_PSCM.PSCM_Web.download?p_ID=542405

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.

It is estimated that Marden High School will face a material financial impact upon its budget for the academic year 2013/14 and future years due to a 35% decline in its pupil numbers. If any reorganisation for schools is required, as anticipated, due to the surplus places, there will be significant costs incurred in securing appropriate alterations to school premises and staffing structures.

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 Head of Law and Governance.

2.2 Legal

The legal implications are set out in the body of the report.

If a pre action letter is issued or if judicial review proceedings are pursued, the decision of the Secretary of State may be set aside and the flawed decision making process undertaken correctly.

2.3 Consultation/community engagement

The meeting of Council provides an opportunity to consult with all members prior to determining the Authority's next steps.

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. In section 1.5 concerns are set out regarding the Secretary of State's approach to undertaking equality impact assessments in relation to the academy proposals.

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 and Partnerships X