

Meeting of the Cabinet – 26th October 2017

Plans for the former Coseley School site

Purpose

1. This report is to advise Cabinet on the anticipated plans for the former Coseley School site and to gain approval to lease land to the Collegiate Academy Trust for the establishment of a purpose-built primary free school.
2. If Cabinet approves this course of action, it is expected that this will increase educational choice in the authority and allow the Council to minimise its liabilities on the former Coseley site, whilst maximising the educational outcomes for pupils and families in this community.

Recommendations

3. It is recommended that Cabinet:
 - a) notes the content of this report
 - b) approves the granting of licences, leases and other agreements as required to the Collegiate Academy Trust, to enable the Coseley Technology Primary Free School to occupy part of the former Coseley School site
 - c) approves the continuing negotiations in regard to the provision of a secondary phase free school on the same site

Background

3. In May 2016, the Council took the decision to close The Coseley School, following a period of statutory consultation. During this consultation and decision making process, the following was committed to in respect of the school site:
 - a) Confirm the closure of The Coseley School in two phases; to be completed by August 31st 2017 as outlined in the consultation document and detailed as follows: no new pupils will be taken into Year 7 for September 2016, existing Year 7, 8 and 9 pupils to be transferred to other local secondary schools by September 2016, and current Year 10 pupils will be supported to remain at the school until they complete their external examinations and assessments, with the school closing in August 2017 after these existing Year 10 pupils have left.
 - b) Require officers to continue to negotiate with other providers and interested parties for the development of alternative provision on The Coseley School site on a date to be agreed following the closure of The Coseley School.

- c) Require officers to maintain community access to the leisure facilities on the school site until new educational provision opens.
4. From the period of May 2016 to the 31st August 2017, officers across all directorates worked with the Coseley Co-operative Trust, The Coseley School Governing Body, staff, pupils, parents, neighbouring schools and elected members in order to facilitate a full closedown of The Coseley School.
 5. Alternative school places were found for existing pupils on roll, with the exception of Year 10 pupils who remained on the school roll until the end of their GCSE courses in August 2017. Much support was given by the majority of neighbouring schools in this process.
 6. The Coseley Co-operative Trust and staff worked with officers to continue to provide an education for these Y11 pupils which was of a high standard. A high level of professionalism and care was shown by the staff and the Trust during this time, with this commitment resulted in some very pleasing academic results for these pupils, in addition to their fulfilling and enriching educational experience. This was assisted by the very low numbers of remaining staff leaving before the examination period contributing to stability.
 7. 61.3 % of pupils left with a grade 4 or higher in English (compared with 49.4 for the comparable standard last year), 47.5 % gained a grade 4 or better in mathematics (compared to 38.8% for the comparable standard last year). Achievement in English and mathematics is of the highest importance to students going on to further study post 16 but, most importantly, can be life changing achievements for students throughout their lives, both in the work place and their wider role as parents and members of their communities.
 8. The highest performing students at the school achieved the highest grades possible under the new examination system. It was very pleasing that, amongst the results that the students received, there were two grade 9's in English and one grade 9 in Mathematics (the new grading system for these core subjects) as well as 21 A*'s or A's in other subjects.
 9. Officers worked with the Trust through the process of redundancies that resulted from the closure of the school and all members of staff were made redundant by the 31st August 2017. 28 of these redundancies were compulsory and 14 were voluntary. One member of staff was redeployed.
 10. In order to honour the decision of the Council in regard to the continuation of the popular Leisure Centre, work was undertaken to transfer the financial responsibility and the TUPE of leisure staff from the Coseley Co-operative Trust to the employ of the Council. A decision to agree this was made by Councillor Anne Millward, Cabinet Member for Children's Services (in consultation with Tony Oakman, Strategic Director People) on the 17th August 2017.
 11. Corporate Landlord Services are currently working on maintaining and safeguarding the school site in line with the Council's Void Policy,

considering suitable options for caretaking, key-holding and maintenance.

Moving forward

12. Following the Council's decision on closure of The Coseley School, officers have been engaging in ongoing dialogue with the DfE and Collegiate Academy Trust (Shirelands). This resulted in an application being submitted to the Department for Education (DfE) by the Collegiate Academy Trust to open a primary free school on the Coseley site, expected to be called the Coseley Technology Primary.
13. Free schools, a type of academy, are non-profit-making, independent, state-funded schools which are free to attend but which are not controlled by a local authority. They have more freedoms and flexibilities, however, they are not able to use academic selection processes, such as those of a grammar school. They are subject to the same School Admissions Code as all other state-funded schools.
14. Like other types of academy, free schools are governed by non-profit charitable trusts that sign funding agreements with the Education Secretary, in this case the Collegiate Academy Trust.
15. Free schools are expected to offer a broad and balanced curriculum, are subject to the same Ofsted inspections as all other maintained schools and are expected to comply with standard performance measures.
16. The outcomes anticipated from the creation of the free school in Dudley are that it will: increase parental preference; offer a stimulating alternative approach to delivery of the curriculum based on Technology; offer excellent educational outcomes for pupils in the authority and meet the need for increasing school places in line with new residential developments in the locality.
17. The Collegiate Academy Trust was established in September 2007 and runs Shireland Collegiate Academy, Waterloo Road, Smethwick. It has an Executive Principal, Sir Mark Grundy, who is Principal of the academy. There is a Board, with 10 Trustees, which takes all the strategic decisions about the work of the Academy. The Collegiate Academy Trust became the sponsor for Thorns Community College, when it became an academy in September 2017, and has developed strong links with the Council in recent years. Appendix 1 contains further information about the work of the trust and its plans for Coseley Technology Primary.
18. In April 2017, the DfE approved the Coseley Technology Primary Free School application and has confirmed that its preferred location for this provision would be on the former Coseley School site. Officers have, therefore, met with the DfE, the Education and Skills Funding Agency (ESFA) and Collegiate Academy Trust in order to initialise a plan of action. The way in which this is to be enacted is detailed below.

Primary free school - temporary building

19. The Coseley Technology Primary Free School is anticipated to open in

temporary accommodation in September 2018. The temporary accommodation proposed is a small defined portion of the existing Coseley school building. (Appendix 2)

20. This portion of the existing school footprint will be leased to the Collegiate Academy Trust for a term of two years from September 2018, extendable for a further year in the event of unforeseen circumstances delaying the main build.
21. The opening of this provision in temporary accommodation in September 2017 will have some distinct advantages to the Council as it will:
 - a) Ensure that educational provision will be back on site at the earliest possible juncture.
 - b) Reduce the risk of vandalism/damage on site.
 - c) Reduce the Council's liabilities in respect of security and maintenance.
 - d) Reaffirm the Council's commitments to developing the site for education purposes and for the benefit of the local community.
22. The ESFA has proposed that, in order to open in the existing building, it would wish to take a licence on the building from April 2018 in order to undertake some enabling works, which would comprise of minor internal alterations, decoration and fitting out the provision ready for the school's first year intake.
23. This will enable the new Coseley Technology Primary Free School to open in 2018, whilst the proposed new school is built on the adjoining land. It is anticipated that it will initially open as a 2 form entry school, with Reception and Year 1 classes being available immediately, with plans to scale up year on year. As the Coseley Technology Primary will be situated on the border of two other Local Authorities, it is expected that pupils on roll at this school will be primarily from Dudley, Wolverhampton and Sandwell. Non-Dudley resident pupils currently account for nearly 20% of admissions in the four schools within a one mile radius of the former Coseley School site.
24. New residential developments are expected in this area in the coming years and new school places are required. Appendix 3 shows these expected developments. Primary places anticipated from these developments are 637 additional pupils in the area, in a phased manner between 2017 and 2026.
25. On completion of the new school building, the Academy Trust will relinquish the temporary lease, enter into a lease of 125 years for the purpose built provision and move into this property. At this time they will also develop a nursery provision on site.
26. In order to proceed with this development, the ESFA has asked the Council to agree terms for this lease. This will need to include arrangements for share of utilities and maintenance costs and rights of access.

27. Any temporary lease issued will take into account the need for leisure services to continue.

Primary Free School - new build.

28. In order for the new purpose built primary free school to be built, the ESFA would wish to enter into a lease with the Council for a portion of the School playing field land. (Appendix 4) Permissions from the Secretary of State will need to be sought in this regard and this will be undertaken by the ESFA.

29. The exact location of this is still to be agreed upon by the ESFA and discussions are still taking place in this regard.

30. The ESFA has requested a licence/Agreement to Lease, to use the land initially. This will enable the ESFA to proceed with the new build project. Once the new provision is completed, a lease will be granted on a 125 year peppercorn rent basis, in a similar way to the way in which Council land is currently transferred to academy trusts.

31. The ESFA will reimburse through the project the Council's reasonable legal costs in this matter.

32. In order to proceed in these matters, the Council will be required to agree Heads of Terms for the lease, which Legal Services will negotiate, on behalf of the Council, ensuring that the risk to the Council is diminished.

Plans for the remainder of the former Coseley School site.

33. Officers are continuing to explore options for the future of the remaining former school site. The Council requires 199 additional secondary places in this area by 2019/20 and expected residential planning applications push this up to 492 by 2026. This is, therefore, the focus of exploratory talks with the DfE and other interested parties. It is anticipated that the application cycle for Wave 13 of the Free School Programme will open during the autumn term 2017.

34. It is vital to the Council that these options are explored fully and in a timely manner to ensure that the site remains fully utilised, the Council's liabilities and risks are minimised and that the local community is reassured that the Council has honoured its commitments made at the time of the closure decision.

35. The Council has already committed to maintaining the popular community leisure facilities, and will ensure that the future of this provision is an integral part when considering the future options for the remainder of the school site.

36. The Council will maintain and safeguard the remainder of the school site in line with the Council's Void Policy in the intervening period.

Finance

37. The Council will reclaim from the ESFA reasonable legal costs incurred with regards to the primary free school project, therefore minimising the financial burden on the Council.
38. Regarding the licence for the period April to September 2018, discussions will be undertaken with the Collegiate Academy Trust, in the event that there are any costs arising as a result of granting access to the site, with regard to obtaining a financial contribution towards any such costs.
39. The Leisure Service will remain open and operated by the Council (Place Directorate) for the short term under the terms of the Service Level Agreement between People and Place Directorates. People Directorate will fund the current operating deficit estimated at a maximum of £20,000 per annum.
40. The temporary lease will be granted at a peppercorn rent, however, the Council will be requesting an appropriate financial contribution towards costs incurred in respect of a range of utilities on a pro-rata basis as defined within the terms of the lease to ensure that the Council is not subsidising this provision. This will assist in minimising the Council's financial commitment to the site.
41. The 125 year lease will be at peppercorn rent and the full costs of this provision will be met by the Collegiate Academy Trust.
42. The costs for the maintenance of the remainder of the pitches and ex-Coseley school buildings site will remain with the Council in the short term whilst appropriate plans are put into place to transfer the remainder appropriately for educational use. The cost of the maintaining the land and building is estimated at approximately £200,000 per annum. This will need to be funded from the Local Authority general fund budget, although there may be an opportunity to charge some of these costs to the Dedicated Schools Grant (DSG) subject to confirmation of proposed changes to the grant conditions by the Department for Education.
43. The revenue funding for the free school will be provided from the DSG.
44. The funding for maintained schools is currently received as part of the DSG on a lagged basis, however, from 2017/18, the funding for all mainstream free schools will be recouped from the local DSG in the first year of opening and each year thereafter until such time that pupils are present in all year groups. Funding will then be paid direct to the free school by the ESFA.

Law

45. Section 111 of the Local Government Act 1972 empowers the Council to take the action that it deems necessary facilitate, considers conducive to or views as incidental to, the discharge of any of its functions.
46. Local Authorities are under a statutory duty to ensure that there are sufficient school places in their area. The Place Planning Team fulfils this statutory duty

as set out in the Education Act 1996, added to by Section 2 of the Education and Inspections Act 2006 to secure sufficient primary and secondary schools (including having regard for the need to secure Special Education Needs Provision for pupils with SEN).

47. The Council is entitled to develop and implement a plan that enables it to secure those school places.

48. However, because Part II of Schedule 22 of the School Standards and Framework Act 1998 states that, when a Trust School closes, the consent of the Secretary of State is required in respect of the disposal of the school's land and section 77 of the same Act, requires the Secretary of State's consent to be obtained in connection with the disposal of playing fields, the ESFA is engaging with the DfE, on behalf of the Council, to obtain the necessary consents.

Equality Impact

49. This report does not conflict with the Council's Policy on equality.

Human Resources/Transformation

50. The decision to keep the leisure facility open has led to four employees of the Coseley School transferring their employment to Dudley MBC. The effective date of transfer was 1 October 2017, and they transferred to the People Directorate but managed by the Head of Leisure Services. The arrangements for line management/costs have been set out in a service level agreement between the parties. The transfer falls under TUPE legislation and the impact for Dudley MBC is that any risk and liability will transfer to Dudley upon transfer.

51. The employees have the legal right to have their terms and conditions of employment protected once transferred and Dudley declared no "measures" upon transfer. These employees are all employed under the collective agreement so have the same terms and conditions as other Dudley MBC employees, except the changes made in the April 2017 agreement. The differences are that the four employees will not be subject to mandatory unpaid leave and the non payment of a percentage pay increase for anyone grade 7 or above. The other difference in their terms and conditions is the need to protect the redundancy multiplier at the higher rate of 1.5.

52. Currently there is an ongoing negotiation with two members of staff in relation to an equal pay claim which was expected to be concluded via a settlement agreement and prior to the transfer by date. Should this not be achieved then the liability of the claim will transfer to Dudley MBC. As stated it is likely that the matter will be resolved locally and will not result in a claim to an Employment Tribunal but this cannot be guaranteed. Finance officers are fully aware of the likely costs in relation to claim, however, this does not include any potential legal costs.

53. The future of the leisure facility is unknown and depends on the future development of the site. The employees have been advised of this prior to and during consultation on the transfer. Any liability during any future TUPE, restructure and / or redundancy will transfer to Dudley MBC; this would include associated costs. Any future TUPE would require the new organisation to be able to provide either the Local Authority Pension Scheme (LGPS) or one similar, or to be successful in applying for admitted body status of the LGPS. This issue could be a significant constraint in regard to a TUPE to a private organisation unless issues with Pension can be overcome.



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Background Documents

Appendix 1: Collegiate Academy Trust information
Appendix 2: Areas for temporary lease.
Appendix 3: Residential planning applications
Appendix 4: Potential free school land for transfer