

CHARGING FOR ACADEMY CONVERSIONS

To: **Children and Young People Committee**

Meeting Date: **12 September 2017**

From: **Wendi Ogle-Welbourn, Executive Director, People and Communities**

Electoral division(s): **All**

Forward Plan ref: **n/a** *Key decision:* **No**

Purpose: To seek the Committee's approval to introduce a charging arrangement for the work the Council is required to undertake and the associated costs it incurs whenever a maintained school converts to an academy.

Recommendation: That the Committee endorse the proposals that:

- a) The Council should levy a charge for the work it is required to undertake and the costs it incurs whenever a maintained school chooses to convert to an academy using the formula set out in Section 2.4.
- b) Where a maintained school is required by the Secretary of State for Education to convert to an academy the Council will only charge for the actual legal costs incurred, up to but not exceeding the grant sponsors receive from the Department for Education (DfE) to cover conversion costs. The charge would exclude, where appropriate, those related to the statutory transfer in line with the requirements of the School Standards and Framework Act 1998.
- c) The charges should be levied in respect of those schools with Academy Orders dated on or after 1 September 2017.

<i>Officer contact:</i>		<i>Member contact:</i>	
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1. BACKGROUND

- 1.1 Academies are publicly-funded schools, operating independently of local authorities, held accountable to the Secretary of State for Education through a legally binding funding agreement with the Department for Education (DfE).
- 1.2 There are four different routes for maintained schools to become academies:
- Those deemed to be high performing schools by the Office for Standards in Education (Ofsted), that is those judged to be good or outstanding, can choose to become academies either by joining a multi-academy trust (MAT) or by converting as a stand-alone academy. The latter route is used less frequently than in the early years of the academy programme as the Government, local authorities and schools themselves increasingly recognise the importance and value of schools working together in formal partnerships in a self-supporting education system.
 - Those deemed to require improvement can choose to become academies by joining an established MAT.
 - Those deemed to be under-performing by Ofsted, that is those judged to have serious weaknesses or to require special measures, are required to become academies. These are termed sponsored academies.
 - Those deemed to require intervention by the Regional Schools Commissioner (RSC) in accordance with the Schools Causing Concern Guidance 2016.
- 1.3 The Council currently bears all the legal and associated costs irrespective of whether or not the decision to convert to an academy is made by a maintained school's governing body or because they are judged to be under-performing or require intervention. This is despite the fact that schools receive £25,000 to support them with the costs of the conversion process.
- 1.4 At its meeting on 12 June 2017, the Committee gave an in principle agreement to introduce a charging arrangement for maintained schools which convert to academies, but requested that further work be undertaken on the charging model to inform a decision by Committee in the autumn term of 2017.

2. PROPOSED CHARGING MODEL

- 2.1 In February 2017, the Council submitted an application for time-limited grant funding from the DfE to support it in its duty to facilitate the academy conversion process. The application identified the following order of costs for each academy conversion:
- £680 for Finance matters based on an average of 3.5 days' work by a Finance Officer per conversion
 - £680 for site visits, plans and lease arrangements based on an average of 3.5 days' work by an Officer from Strategic Assets
 - £240 for personnel matters based on an average of 0.5 days' work by an HR Officer

In addition, the application made reference to the fact that the Head of Service for the

Council's 0-19 Place Planning & Organisation Service spends, on average, 1 day on each academy conversion. This equates to a daily rate of around £700.

This gives a total order of the average cost per academy conversion of £2300 excluding the legal costs incurred by the Council. These costs vary considerably from one conversion to another. They can be easily quantified, however, based on the invoices submitted by LGSS Law Limited for the work undertaken.

2.2 In March 2017, the Council was awarded a grant of £50,000 as a one-off contribution towards the costs it incurs on facilitating academy conversions. A condition of the funding award was that Council would need to increase the number of academy conversions from two to three per month with immediate effect. The funding has been allocated as follows:

- £30,000 towards the cost of employing an Academies Projects Officer on a one year, fixed-term contract to undertake the coordination and communication role, reporting to the Head of Service for 0-19 Place Planning & Organisation.
- £3,000 for Finance
- £3,900 for Strategic Assets
- £1,100 for HR
- £12,000 for Legal

2.3 This funding is already fully committed. Some has already been spent on meeting the costs incurred by the Council on the four primary schools which have converted since March 2017. The remainder will be used to offset the costs the Council will incur as a result of the nine further academy conversions which are underway, for which Academy Orders have been issued.

2.4 It is proposed, therefore, to introduce the following charging formula to be applied to maintained schools (community, voluntary controlled, voluntary aided and foundation), converting to academies with Academy Orders dated on or after 1 September 2017:

- levy a flat rate fee per conversion of £2300; and
- recharge the Trust for the actual costs incurred as a result of the work required to be undertaken by LGSS Law Limited based on the invoices submitted, excluding where appropriate, those relating to the statutory land transfer in line with the requirements of Section 2(5) of Part 1 Schedule 3 of the School and Standards Framework Act 1998. This states that "the authority shall pay to the persons to whom the transfer is made their reasonable costs in connection with the transfer."

2.5 Where schools are required to become academies because they have been judged inadequate by Ofsted, or requiring intervention by the RSC, it is proposed to charge only for the actual legal costs incurred by the Council, up to but not exceeding the DfE grant sponsors receive to cover conversion costs, in recognition that those schools have not chosen to convert to an academy, that is the flat rate charge of £2,300 will not be levied. In addition, where appropriate, the costs incurred which are directly related to the statutory land transfer would be excluded in line with the requirements of Section 2(5) of Part 1 Schedule 3 of the School and Standards Framework Act 1998.

3.0 ALIGNMENT WITH CORPORATE PRIORITIES

3.1 Developing the local economy for the benefit of all

There are no obvious points of alignment.

3.2 Helping people live healthy and independent lives

There are no obvious points of alignment.

3.3 Supporting and protecting vulnerable people

There are no obvious points of alignment.

4.0 SIGNIFICANT IMPLICATIONS

4.1 Resource Implications

4.1.1 The Council incurs significant costs as a result of the each academy conversion, the majority of which are for the work undertaken both by the Council's legal advisors (LGSS Law), and the solicitors employed by the academy trust necessary to secure the conversion. The total cost incurred by the Council in 2016/17 was £67,747. The cumulative total is £182,851 for the period 2010/11 to 2016/17.

4.1.2 Each academy conversion requires input from a range of Council officers (0-19 Place Planning & Organisation, HR, Finance, Strategic Assets, District teams), to a greater or lesser degree depending upon the status of a school prior to conversion, in addition to LGSS Law Limited. There is a financial cost to these.

4.1.3 The most complex and time-consuming conversions involve community and voluntary controlled schools. In all cases, officers seek to safeguard the Council's interests and enable it to continue to meet its statutory duties (for example, provision of sufficient of early years and childcare places) under the lease, statutory land transfer and Commercial Transfer agreements it has to negotiate and subsequently sign with the academy trusts.

4.1.4 The grant funding secured from the DfE is strictly time-limited and is fully committed to meeting the costs of conversions which have either taken place since March 2017 or are in process. The Council has already received notification of a further four primary schools which will be seeking approval to convert to academy status in the autumn term. It will have to cover the costs of these from its own resources unless agreement is reached to implement the charging arrangement proposed in sections 2.4 and 2.5.

4.2 Procurement/Contractual/Council Contract Procedure Rules Implications

4.2.1 As stated above, each conversion involves a legal process which results in a Commercial Transfer Agreement between the Council and the academy trust.

4.3 Statutory, Legal and Risk

4.3.1 The principal legislation governing the establishment of academies is the Academies Act 2010 (as amended by the Education Act 2011) which enables any educational institution to apply for conversion to an academy. The Council has a statutory duty under Section 5B of the 2010 Act to facilitate conversions to academy status within a specified time period. There is nothing in the legislation which prohibits a local authority from charging the school for the cost of the conversion. The charges should be reasonable and the local authority cannot be seen to make a profit from it.

4.3.2 Under Section 2(5) of Part 1 Schedule 3 of the School and Standards Framework Act 1998 it states that the authority shall pay to the persons to whom the transfer is made their reasonable costs in connection with the transfer. As a consequence, the Council would not be able to include these costs in its charges.

4.3.3 Officers consider that the proposed charging arrangements set out in Section 2.4 and 2.5 are reasonable and can be justified as legitimate reimbursement for the costs the Council incurs whenever a school converts to an academy.

4.4 Equality and Diversity

4.4.1 Should the Council introduce a charging system, it may have to respond to challenges from schools which choose to become academies that they are being treated differently to those which have already converted.

4.6 Engagement and Communications

4.6.1 Schools are required to undertake consultation prior to seeking approval from the Secretary of State to become academies. The Council seeks to work in partnership with schools and academy trusts and facilitate conversions as speedily as possible.

4.7 Localism and Local Member Involvement

4.7.1 The Council's policy is that it is for schools other than those who are required to become academies because they are judged to be under-performing and/or require intervention to determine whether or not they should convert to become academies. The relevant local members will be informed of any planned conversions.

4.8 Public Health Implications

4.8.1 There are no significant implications.

Implications	Officer Clearance
Have the resource implications been cleared by Finance?	Yes Name of Financial Officer: Martin Wade
Have the procurement/contractual/ Council Contract Procedure Rules	Yes Name of Financial Officer: Chris Malyon

implications been cleared by Finance?	
Has the impact on statutory, legal and risk implications been cleared by LGSS Law?	Yes Name of Legal Officer: Fiona McMillan
Have the equality and diversity implications been cleared by your Service Contact?	Yes Name of Officer: Keith Grimwade
Have any engagement and communication implications been cleared by Communications?	Name of Officer: Matthew Hall
Have any localism and Local Member involvement issues been cleared by your Service Contact?	Yes Name of Officer: Keith Grimwade
Have any Public Health implications been cleared by Public Health	Not Applicable Name of Officer:

Source Documents	Location
Academy conversion costs incurred to date. List of academies and maintained schools. Grant award letter March 2017. Schools Causing Concern Guidance 2016. Academies Act 2010 and 2011 School Standards and Framework Act 1998	Octagon second floor