



## Cabinet

Date: 12<sup>th</sup> September 2018

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## Statutory Consultation Process – South Shields School

Report of the Corporate Director Children, Adults and Health

Cabinet Portfolio/Lead Member: Children, Young People and Families  
Cllr M Smith

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### Purpose of Report

1. The purpose of the report is to seek agreement to commence a statutory consultation process to cease to maintain South Shields School as a condition of the Secretary of State for Education's revocation of the Directive Academy Order.

## Introduction

2. South Shields School is a co-educational secondary school located in South Shields with 526 pupils aged 11-16 from September 2018. The school was formed from the amalgamation of Brinkburn School and King George V School in 2007 and was part of the South Tyneside Building Schools for the Future Programme. The new school, built under the Private Finance Initiative Contract, opened in 2011.
3. South Shields School was rated 'inadequate' by Ofsted in its full inspection visit in October 2017. The school had previously been rated as good in 2014. Under government legislation (Section 4 (A1) of the Academies Act 2010) the Secretary of State for Education must make a Directive Academy Order on any school judged to be inadequate by Ofsted and therefore eligible for intervention. The Academy Order for South Shields School was made in November 2017. The Regional Schools Commissioner (RSC), on behalf of the Department for Education, must then identify an organisation or individual to be the Academy sponsor for the school. Once a sponsor is identified and academy arrangements entered into, the school would no longer be maintained by the Local Authority.
4. As a key part of the due diligence that the RSC undertakes in identifying the sponsor, there is a requirement for the Local Authority to provide information in relation to current and predicted pupil numbers at the school, the financial sustainability of the school and the availability of alternative places in nearby schools. The request for information was made by the RSC in late November 2017 and was submitted in early December 2017. In brief, the Request for Information seeks data across a number of areas for the school including:
  - Historic and predicted numbers on roll and how these relate to the capacity of the school
  - Admissions patterns for children living in the catchment area for the school
  - Numbers on roll in nearby schools and the availability of alternative places
  - Current budget position, financial plans and forecasting
  - Land and property considerations and, in this case, information about the Private Finance Initiative (PFI) contract
5. The Request for Information identified a declining roll at the school from a high point of 781 when first opened to 551 in 2017/18. The roll is predicted to decline further and by 2020/21 where almost 50% of the 850 capacity will be unfilled. The appropriate level of surplus places, to ensure some flexibility in pupil numbers is recommended to be no greater than 10%.
6. It is clear that falling numbers will impact significantly upon any school budget in a relatively short space of time particularly where no action is taken to reduce costs. South Shields School has undertaken a previous programme of reviews to prevent a deficit budget up until this point and has managed financial challenges within its budget.

7. However there is a point at which maintaining a balanced budget cannot be sustained. In addition, the delivery of a full and broad curriculum is not possible once reductions reach a critical point. The school also has fixed costs of £400,000 in relation to the Private Finance Initiative (PFI) contract which were set at a time when the school had greater numbers on roll. This additional fixed cost accentuates the financial challenge for the school.
8. The Request for Information data also showed that the catchment areas for South Shields School, Boldon School and Mortimer Community College significantly overlap and an analysis of admission patterns from the South Shields catchment area identifies that some families are choosing to opt for Boldon, Mortimer or other secondary schools. Both Boldon and Mortimer Schools also have significant surplus places.
9. The Request for Information does not seek information about educational standards as its primary concern is with viability and sustainability for the future. However it should be noted that the school has responded positively to the Ofsted Inspection recommendations from October 2017 and this was recognised in the Ofsted Monitoring Inspection visit in May 2018. The Council is confident that leadership of the school are effectively addressing standards issues with the support provided, however this consultation is triggered by viability in relation to pupil numbers and not standards.

### **Current position**

10. On receipt of the data provided by the Local Authority the RSC considered this information and simultaneously sought appropriate sponsors. One local Academy Trust came forward initially as a preferred sponsor and discussions were held with the RSC, South Shields School and the Local Authority. However, following its own due diligence on pupil numbers and financial impact, this potential sponsor withdrew interest and did not proceed further.
11. The key reason the RSC has provided for being unable to find a sponsor is falling pupil numbers leading to concerns about the longer term financial viability of the school. Lead Members will be aware that school funding is in the main based on pupil numbers and therefore reducing numbers create significant financial difficulties. Financial risk is also increased by the requirements of the PFI contract.
12. The inability of the RSC to find a sponsor prompts a further legal process and consideration about the future of South Shields School. The school is under a Directive Academy Order but as no sponsor has been found it cannot be converted to academy status. It is for this reason that the Regional Head Teacher Board (the statutory body responsible for providing advice, support and challenge to the RSC) made the decision to request that the Secretary of State for Education exercise his statutory power to revoke the Directive Academy Order on South Shields School. However, under the current legislation, the school also cannot continue to be maintained by the Local Authority with an inadequate Ofsted rating and the Local Authority is required to begin a statutory consultation on closure of the school.
13. The local authority was notified in early August that the Secretary of State has agreed in principle to the revocation of the academy order on the condition that the local authority undertakes the statutory consultation process to cease to maintain the school.

## The Statutory Process and Consultation

14. The Secretary of State retains the power to revoke a directive academy order in certain specific circumstances such as where the maintained school is no longer considered to be viable and it is most appropriate for the school to close. The academy order will only be revoked on the condition that the local authority undertakes the statutory consultation process to cease to maintain the school. If the local authority fails to do this, the RSC can use the Secretary of State's powers to direct the local authority to close the school.
15. The statutory process for a school closure is set out in Section 15 of the Education and Inspections Act 2006 and in the School Organisation (Establishment and Discontinuance of Schools) Regulations 2013. Reasons for closing a maintained school under the legislation include where the school is eligible for intervention and there is no viable sponsored academy solution. In the case of South Shields School this is the reason for proposing closure and why this is the only option being considered in the consultation. For the avoidance of doubt, there is no option in legislation for this school to become an academy without a sponsor or to continue as a school maintained by the local authority.
16. Should Cabinet agree to proceed to statutory consultation, a proposed timescale is set out below:

Stage	Description	Timescale	Comments
1	Consultation	No prescribed timescale but recommended to be a minimum of 6 weeks, taking into account and avoiding where possible school holiday periods (particularly the end of term breaks)	Cabinet consider and determine whether to commence Stage 1 informal consultation- <b>12th September 2018</b> .  Proposed consultation from <b>20<sup>th</sup> September 2018</b> to <b>2<sup>nd</sup> November 2018</b> (six weeks) This will include publication of consultation material and public meetings.  Following consultation, Cabinet approval will be required to publish a statutory notice. Proposed Cabinet to be held <b>14th November 2018</b> .
2	Publication of Statutory Notice	1 day	Propose to publish statutory notice on <b>21st November 2018</b> .  Publication of the statutory notice commences the statutory Representation Period.  Within 1 week of date of publication, the Proposer must send a copy of the full proposal to the governing body, Secretary of State, the CoE and RC Dioceses and any other body or person that the Proposer considers appropriate.
3	Representation Period	4 weeks from date of publication of Statutory Notice	Representation Period to end <b>19<sup>th</sup> December 2018</b>  Formal consultation of statutory and other stakeholders: - Governing body - Pupils at the school

			<ul style="list-style-type: none"> <li>- Parents of pupils at the school</li> <li>- Teachers and staff at the school</li> <li>- Any LA likely to be affected, including neighbouring authorities where there may be significant cross border movement of pupils</li> <li>- Governing bodies, teachers and staff of any other school that might be affected, including any feeder schools and schools to which pupils may be dispersed</li> <li>- Parents of pupils at any other school that might be affected, including any feeder schools and schools to which pupils may be dispersed</li> <li>- Trades Unions</li> <li>- MP's whose constituencies include the school that is the subject of the proposal or whose constituents may be affected by the proposal</li> <li>- Any other interested organisation/person that the proposer considers appropriate (PFI related organisations, etc.)</li> </ul> <p>During the Representation Period, any person or organisation can submit comments to the LA on the proposal to be taken into account by the Decision Maker. Any requests for a copy of the full Proposal must be sent out to the person requesting it within 1 week of receiving the request.</p>
4	Decision	LA should decide within 2 months, otherwise it must be referred to the Schools Adjudicator	<p><b>Key Decision</b>            Formal report to Cabinet setting out summary of representations received and any responses made, risks and opportunities, officers recommendations and decisions available to Cabinet (approve without modification, approve with modifications, approve (with or without modification) subject to conditions as specified in the Establishment and Discontinuance Regulations, or reject)</p> <p>The timescales for publication of the Notice and conclusion of the Representation Period will identify the 2 month decision making period. The decision is proposed to be taken at Cabinet on <b>23<sup>rd</sup> January 2019</b></p>

5	Implementation	<p>No prescribed timescale however the date of implementation must be specified in the published notice, and is subject to any modifications imposed by the Decision Maker</p> <p>Consideration should be given in the Proposal for phased implementation plan for closure and impact upon pupils taking or due to take statutory examinations during the phases of implementation.</p>	<p>It is proposed to phase the implementation of the closure as follows:</p> <p><b><u>September 2018 – July 2019</u></b></p> <p><b>No changes: Years 7, 8, 9, 10, 11</b> to continue at South Shields School</p> <p><b><u>September 2019 – July 2020</u></b></p> <p><b>No year 7</b> (Parents wishing to express a preference for this year would need to be informed of the potential for closure in 2020 as part of the Autumn term admissions round 2018)</p> <p><b>Years 8, 9, 11</b> remain at South Shields School</p> <p><b>Year 10 pupils</b> allocated to receiving schools to begin GCSE courses for September 2019</p> <p><b><u>September 2020</u></b></p> <p>School is closed from 31<sup>st</sup> August 2020</p> <p><b>Years 9 and 10</b> allocated to receiving schools for September 2020</p>
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17. The options for consultation are necessarily limited to a single proposal for closure of the school. However, views expressed during the informal consultation will be reported back to Cabinet prior to publishing the statutory notice and will help to shape this. Cabinet may agree to the proposal as set out in the statutory notice or may choose to modify this based upon views expressed during the Representation Period. It is therefore essential that the consultation process is clear from the outset in relation to the scope of what can be changed as a result of consultation in order that expectations can be managed throughout. It should be noted that if the Cabinet decided to reject the proposal then the RSC, using the powers of the Secretary of State, can direct the closure of South Shields School.
18. The statutory consultation documentation will include further information about the following:
- The reasons for proposing to close the school (detailed in the body of this report);
  - The date on which it is proposed to close the school and information about the phasing of the implementation plan. This is set out briefly in the table at 12 above;
  - The numbers, age –range, gender and special educational needs of pupils for who provision is currently made at the school;
  - Information about alternative schools in the area with sufficient places to accommodate displaced pupils and any interim arrangements that may need to be made. As outlined in the report, there are sufficient places in both Mortimer Community College and Boldon School to

accommodate current South Shields School pupils. A number of pupils from the South Shields catchment area already choose these or other schools in the borough. Parents are also able to express a preference for other schools and will be accommodated where places are available;

- The impact of the community of the closure of the school and any measures proposed to address this;
- The proposed arrangements for travel of displaced pupils to other schools and an assessment of whether this will lead to increased private car use.

### **Financial or value for money implications**

19. The RSC's inability to find a sponsor confirms serious concerns about the future financial viability of the school given that the school budget is based upon pupil numbers. This will be exacerbated by a predicted further falling roll and the proposed introduction of the full national funding formula in schools from April 2020.
20. The school was built under the Private Finance Initiative (PFI) in September 2011 and therefore has a number of years remaining on the contract. Currently the local authority and the school fund the PFI costs and these will need to continue to be met for the remainder of the contract. No decision as to the future of the school site has been made and this will not be considered until the outcome of the consultation process is finalised.

### **Legal Implications**

21. Section 4(A1) of the Academies Act 2010, places a duty on the Secretary of State to make an academy order for any maintained school that is eligible for intervention because it has been found by Ofsted to be inadequate. This is a mandatory duty. The Secretary of State retains the power under the Academies Act 2010 (s.5D) to revoke an academy order where it had been made because the school was eligible for intervention. The exceptional circumstances in which this power is used includes where the maintained school is not considered to be viable and therefore it is most appropriate to close.
22. The academy order will only be revoked on the basis that the local authority goes on to consult on the statutory process to close the school. Consultation is the first step in the statutory process as set out in the Education and Inspections Act, and is a legal requirement. If the local authority fails to so implement the statutory process, the RSC can use the Secretary of State's power under section 68 of the Education and Inspections Act 2006 to direct the local authority to close the school.

### **Risk Implications**

23. The consultation process will be carefully managed and evaluated in line with statutory guidance and taking account the views of consultees in order to minimise and mitigate risks.

### **Equality and Diversity Implications**

24. The Equality Act 2010 requires public bodies to have due regard to eliminate discrimination, advance equality and to foster good relations.
25. The proposed consultation will involve a broad range of stakeholders and will ensure that equality and diversity issues are represented and considered to ensure fair and equal treatment of pupils and staff in South Tyneside Schools.

### **Environmental and Sustainability Implications**

26. There are no environmental or sustainability implications arising out of this report. Any environmental and sustainability implications arising from the consultation proposal will be duly considered.

### **Options to be considered**

27. Cabinet could reject the recommendation to consult on the closure of South Shields School. If this were the case the RSC can use the Secretary of State's power under section 68 of the Education and Inspections Act 2006 to direct the local authority to close the school.

### **Recommendations**

28. It is recommended that Cabinet:
  - (a) Agree to commence a statutory consultation on the proposal to close South Shields School as a condition of the Secretary of State's revocation of the Directive Academy Order.
  - (b) Agree to the proposed timetable for consultation at paragraph 14 of this report.

### **Reasons for Recommendations**

29. The recommendations are made in order to respond to the requirements of the Secretary of State for Education and RSC in relation to South Shields School.

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## South Shields School: Proposals for consultation

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**The following is a list of the background papers (excluding exempt papers) relied upon in the preparation of the above report:**

<b>Background Paper</b>	<b>File Ref:</b>	<b>File Location</b>