

## London Borough of Hammersmith & Fulham

**Report to:** Cabinet

**Date:** 19/04/2021

**Subject:** Approval of Queensmill Special School academy conversion

**Report of:** Councillor Larry Culhane, Cabinet Member for Children and Education

**Report author:** Daryle Mathurin, Strategic Lead Education, Assets and Operations

**Responsible Director:** Jacqui McShannon, Director of Children's Services

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### Summary

Queensmill is a H&F maintained autism specific special school which has been judged outstanding by Ofsted in its last three inspections. At the time of its most recent Ofsted inspection, the school was found to be 'outstanding' in all areas.

The current government policy is to encourage the academy conversion of local authority-maintained schools. This was followed by Queensmill School and their request for academy conversion was approved by the Secretary of State for Education. The local authority supports this conversion and has worked constructively with Queensmill colleagues during this process to enable the orderly transfer to academy status, continued delivery of outstanding educational outcomes, value for public money and the overall public good. There is a strong and productive partnership between the local authority with all our schools regardless of their status and we hope that Queensmill will maintain this partnership ethos in the best interests of children and young people.

This report seeks approval to the conversion of Queensmill Special School to become an academy in accordance with the Academies Act 2010 ("the Academies Act").

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### Recommendations

1. To grant a 125-year lease of Queensmill Special School to Queen Charlotte Education Special School Trust.
2. To enter into a Commercial Transfer Agreement, transferring school assets, contracts and staff from Queensmill Special School to Queen Charlotte Education Special School Trust.
3. To delegate authority to the Interim Strategic Director for the Economy in consultation with the Head of Law to finalise and complete negotiations with

Queen Charlotte Education Special School Trust in order to give effect to the decisions in 1 and 2 above.

4. To delegate authority to the Director of Education in consultation with the Cabinet Member for Children and Education to make decisions to complete the outstanding works on the Queensmill Special School site.
5. To enter into a High Needs Funding SLA and Services agreement with the Queen Charlotte Education Special School Trust, delegating authority to the Director of Children's Services to finalise and complete negotiations in consultation with the Cabinet Member for Children and Education.
6. To delegate authority to the Director of Children's Services in consultation with the Cabinet Member for Children and Education to increase place funding arrangements with Queen Charlotte Education Special School Trust up to the number of learners on roll in the October 2020 census which shall be detailed in the High Needs Funding SLA.
7. To enter into a SLA with Queen Charlotte Education Special School Trust to formalise arrangements for the Post-19 college and Supported Internship delivered by the Q+ charity, delegating authority to the Director of Children's Services to finalise and complete negotiations, in consultation with the Cabinet Member for Children and Education.

**Wards Affected:** All

<b>Our Values</b>	<b>Summary of how this report aligns to the H&amp;F Values</b>
Building shared prosperity	Continue the delivery of outstanding specialist education for H&F children and young people with a diagnosis of autism.
Creating a compassionate council	Support the sustainability of the Queen Charlotte Education Special School Trust to continue the delivery of special education and support for H&F children and young people.
Doing things with local residents, not to them	The principles of the transfer and agreement was reached in consultation with Queensmill Special Schools governors and leadership.
Being ruthlessly financially efficient	Continued delivery of a robust specialist and complex autism offer to meet the learning needs of H&F children and young people locally.

Taking pride in H&F	Continued delivery of a robust specialist autism education pathway for H&F children and young people. The Queensmill school family in the converted Queen Charlotte Education Special School Trust will continue to support H&F children and young people to play and active part in their local community, achieving paid employment, independent living, good health and relationships.
Rising to the challenge of the climate and ecological emergency	Investment in remedial works to support the handover of the school in good condition to the academy trust and reduce the eco footprint.

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## Financial Impact

Under the terms of the Commercial Transfer Agreement (CTA) schools land and buildings transfer to the academy trust under a 125 year lease arrangement.

Academy schools receive funding directly from the Education and Skills Funding Agency (ESFA). This is recouped from the Local Authority (LA) Dedicated Schools Grant (DSG) based on commissioned place numbers agreed between the school and the LA. In the case of a special schools, this impacts commitments against High Needs Block DSG allocations.

### *Local authority commissioning arrangements with Queensmill school*

The Local Authority proposes to increase commissioned places at the main Queensmill School site to 169 places for the financial year 2021/22 to reflect places provided at the school at the October 2020 pupil census. An increase of 25 places from 2020/21 commissioned places of 144 at a cost of £1,440,000 will increase High Needs Block (HNB) costs to £1,690,000, an increase of £250,000 at £10,000 funding per place. These increased costs are included in the council's plans to manage high needs expenditure within the annual HNB grant allocation.

There is the potential to further increase commissioned places by 25 to 50 places to reflect an increase in pupils at the Queensmill satellite sites. This is affordable within the 2021/22 HNB budget if the proposal for special schools to deliver Speech and Language Therapy (SALT) can be contained within the school's budget.

The School Budget (DSG) 2021/22 was approved at Cabinet on 1 February 2021. This report detailed a proposal for commissioning 157 places at the Queensmill school site (169 places for the period April to August 2021 and 148 places from September 2021 to March 2022). The revised proposal in this report represents an increase in place costing of £120,000.

The LA is proposing to commission places in the satellite units for 2021/22 at 2020/21 levels. There will be further negotiation between the LA and Queensmill School to confirm satellite provision and funding for the 2021/22 financial year onwards. This will be subject to the outcome of the high needs place sufficiency review, a greater understanding by the LA of cost pressures at Queensmill school, the impact of centrally incurred high needs block expenditure to be met by schools top-up funding and other mitigating actions in the school budget.

Table 2 in paragraph 23 below details the proposed place commissioning.

#### *The financial position and assets of Queensmill school*

The school set a deficit budget for the 2020/21 financial year of £382,680 which it mitigated by planned use of reserves. Closing reserves of £112,325 were budgeted to carry forward to 2021/22 financial year.

The most recent forecast for 2020/21 provided by Queensmill School indicates an adverse position to budget with a reserve carry forward of £101,116.

The proposed additional place funding will provide £250,000 extra income to the school from 1 April 2021. This will improve the school's financial position for the financial year 2021/22 and should give the school the opportunity to set a balanced budget.

Assuming a Summer Term 2021 academy conversion, Queensmill School would have an expected reserve position of between £0 and £100,000 based on the school's submitted forecast. If a school has a surplus reserves balance when it converts to academy status, the 2013 Regulations provide that:

- i. the LA must determine and notify the amount of that surplus within four months of the date of conversion;
- ii. if that amount is agreed, pay it to the Academy Trust (AT) within one month following the AT's agreement to the determination;
- iii. the LA and AT must work together to reach an agreement on the determination within the four month timescale.

Following academisation, the maintained school's revenue balances, reserves and assets transferred will be written out of the LA's accounts and reflect the 125 year lease agreement at a peppercorn rent.

In the case that Queensmill School reports a deficit position on reserves at the point of academy conversion, DfE policy, is to treat deficits in a similar way, so the DfE reimburses the LA and recovers the money from the academy following agreement of the amount by both parties.

#### *Other implications*

Table 1 in section 10 below sets out the maintenance works for which the LA will have a shared responsibility including ventilation, an outstanding ceiling tile issue and fire stopping and doors. The costs are unknown at this time and require review. However, it is expected that any expenditure on the part of the LA will be contained

within the schools capital maintenance programme and funded from schools capital balances held.

It is assumed that all staff employed by Queensmill School will transfer to the Academy Trust, including all staff employed by Queensmill School on behalf of the Q+ charitable arm of the school. No financial implications of TUPE have been identified however in keeping with established convention, historic staff liabilities will remain with the Council. The quantification of potential liabilities are not known and the LA will temporarily withhold a portion of the school's surplus for up to 3 months following the date of conversion to cover the employment risks which may arise.

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## **Legal Implications**

### *Academy conversion*

1. Under the Academies Act the Secretary of State for Education may enter into Academy Funding Agreement with an Academy Trust for establishment of an independent school/academy. Local authorities are required to comply with such Secretary of State decisions to transfer land and assets to the Academy Trust. Further, the Academies Act gives the Secretary of State powers to make transfer schemes relating to land, property, rights or liabilities to the Academy where agreement cannot be reached between the Local Authority and the Academy Trust.
2. The Secretary of State for Education pursuant to his powers conferred under the Academies Act has exercised his powers to convert Queensmill Special School to Academy status. The Academies Act provides that on the conversion date the school closes and opens as a sponsored academy under the academy arrangements pursuant to section 1 of the Academies Act.

### *Lease*

3. Under the statutory provisions of the Academies Act, where the Council holds the school land and buildings as the freeholder, it is required to grant a lease of the land and buildings to the Academy, where it is used wholly or mainly for the purposes of the school. Accordingly, the Council is required to grant a 125 year lease to Queen Charlotte Education Special School Trust at a peppercorn rent.
4. Non-compliance with the provisions of the Academies Act would prompt the issue of a Direction and the required decisions under the Directions would be taken by the Secretary of State for Education.

### *Commercial Transfer Agreement*

5. Members of staff at the school that are currently employed by the Council are to transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006 to the Academy Trust as well as the assets of the school under a Commercial Transfer Agreement ("CTA"), which is a model form of agreement drawn up by DfE.

6. The CTA will include specific indemnities and warranties that protect the Council against certain future liabilities and provide clarity and certainty with regard to the obligations between the parties following the Transfer Date. The CTA documents will manage the transfer of non-land assets such as fixtures and fittings, equipment, contracts for services, and staff. The extent of transferring Assets and Excluded Assets has been determined by way of agreement between the parties.

#### *TUPE*

7. The statutory TUPE consultation process, which needs to take place prior to the proposed conversion date, is being managed and coordinated by the Council's Schools HR Team. A letter dated 6th January 2020 was issued to all staff advising them of the proposed conversion to a non-sponsored academy. Formal consultations for Queensmill Special School took place with Staff and Unions on 13th January 2020. Consultation ended on 7th February 2020. Both staff and unions have been kept updated. A 'final' letter will be sent to all staff confirming the transfer to Queen Charlotte Education Special School Trust approximately two weeks prior to the actual transfer date.

#### *High Needs Funding*

8. The report also requests the approval for the Council to enter into High Needs Funding SLA with the newly formed academy, the terms of which shall be drafted in accordance with the Operation Guidance note published by the Education and Skills Funding Agency. The report requests that the approval of specific terms is delegated to the Director of Children Services.

#### *Service Agreements*

9. Any services provided by the Council to the new formed academy and/or the Q+ charity shall be entered into in accordance with CSO 34.1 and the appropriate agreement shall be drafted to reflect the agreed provisions. The report requests that the approval of specific terms is delegated to the Director of Children Services.

#### *Charity Arrangements*

10. Legal will continue to advise officers on the legal agreements required to formalise the existing relationship with the Q+ Charity and any future arrangements required following the Transfer Date. The report requests that approval of such agreements is delegated to the Director of Children's Services.

*Implications completed by: Afshan Ali-Syed, Senior Solicitor, Property and Planning Team, 07887651197 and Radhika Devvesher, Associate at Sharpe Pritchard Solicitors on secondment to the Council rdevvesher@sharpepritchard.co.uk*

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## **Background Papers Used in Preparing This Report - None**

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### **DETAILED ANALYSIS**

#### **Background**

1. Queensmill School is a H&F maintained special school for children and young people with a diagnosis of autism from 3 to 19 years. The school caters for children and young people with complex learning needs. Queensmill is a well-established school, highly regarded and a core part of the H&F local offer. Ofsted have judged the school as 'Outstanding' in the past three inspections of 2007, 2010 and most recently in 2014.
2. H&F has made significant investment in Queensmill School over the years, culminating in the recent investment in a purpose-built, state-of-the art building for children and young people with autism in 2015.
3. The academy conversion process commenced when Queensmill School registered its interest in considering academy status with the Secretary of State for Education. The school then undertook the required steps under the process to consult with stakeholders and a decision by its governing body before making the final application to the Secretary of State.
4. Following consideration and approval of Queensmill's request for conversion to academy status by the Secretary of State, the following steps are required to complete the conversion process:
  - approval of a funding agreement between the Secretary of State and the academy;
  - a long-term lease (125 years) between the Council and the academy trust is required for the Secretary of State to enter into a funding agreement with the newly formed academy;

- to enable the continued delivery of education by the converting academy, the existing staff are TUPE'd to the new academy; and
  - the relevant contracts and assets shall be novated to the academy under an agreed Commercial Transfer Agreement.
5. H&F, the Governing Body of Queensmill School and the Queen Charlotte Education Special School Trust shall be co-signatories to the Commercial Transfer Agreement under the academy conversion process.
6. The Q+ charitable arm of the school operates a children's home within the school site and a specialist college for young adults from 19 to 25 years with complex autism. It is the intention of Queen Charlotte Education Special School Trust of subsume Q+ Charity as a wholly owned subsidiary of the Trust.

## Proposals and Analysis of Options

### Lease

7. The standard length of lease for an academy is 125 years, with the term commencing on completion of the lease. The Council has negotiated terms in line with the Department for Education (DfE) form of lease and in keeping with requirements under the Academies Act 2010.
8. As Queensmill is a Special School the lease to Queen Charlotte Education Special School Trust will be subject to the following special provision: The Academy being designated as a special school for children with an EHC Plan and with a diagnosis of autism, any change of designation must be consulted with the Council and line with the local area special needs sufficiency plans.
9. Part of the School is also used by the charitable arm of the School known as Q + as residential children's home. Subject to the consent of the Secretary of State, the lease will allow for the grant of an underlease of the part of the School used by Q+. The underlease will be between the School and Q+, but the form of the underlease is to be approved by the Council.
10. The Council has agreed to undertake the following as "ongoing and future works":

**Table 1: outstanding and future works**

<b>Works</b>	<b>Responsibilities</b>
Playground Refurbishment	This was a school led project. The LA has however supported some remedial work that was completed in September 2020. All ongoing works will transfer to the Academy Trust.
Bird Scares	The LA completed remedial work in April 2020. The responsibility for ongoing maintenance will transfer to the Academy Trust.



Mechanical and Ventilation	LA will commission an independent assessment to inform required work and shared responsibility.
Ventilation Victoria Class	The independent mechanical and ventilation assessments will inform the required works and shared responsibility.
Problematic Ceiling Tiles	The school was involved in the specification, design and sign-off of the new build. The Academy Trust will assume responsibility for the resolution of this issue. The LA will however support a review of the options for resolution and where required undertake remedial work to support handover.
Fire Stopping – report and conclusion	The LA will commission a review of fire stopping at the school and undertake the required remedial fire stopping works.
Fire Doors – remedial works	Remedial works for the resolution of this issue was completed March 2020 and snagging works towards the end of 2020.  The LA's School Asset and Corporate Health & Safety teams will undertake a further review and complete the required remedial works to complete handover. The Academy Trust will then assume responsibility for the on-going maintenance.
External Cladding Solutions	The school was involved in the specification, design and sing-off of the new build. The Academy Trust will assume responsibility for the on-going maintenance.

11. The school premises subject to transfer are in a reasonably good condition and the Queen Charlotte Education Special School Trust will assume responsibility for all other repair works.

### **Staff, assets and contracts**

12. The CTA is the DfE's model form of contract for agreement of the commercial transfer between the Council and Queen Charlotte Education Special School Trust.

13. The transfer of the staff, contracts and assets to be transferred from Queensmill School to Queen Charlotte Education Special School Trust, as well as the respective rights, obligations and liabilities of the parties are set out in the Commercial Transfer Agreement.

14. A list of contracts to be novated from the Council to the Academy has been provided by the school and will be included in Schedule 2 of the CTA.

15. The definition of “staff” includes staff transferring under TUPE as well as staff that are not transferring under TUPE. The Academy Trust will accept all liability for claims in relation to the transfer of all staff (covered by the definition).
16. In keeping with established convention, the historic staff liabilities will remain with the Council. An agreement has been reached to temporarily withhold a portion of the school’s surplus budget before it is transferred for up to 3 months following the date of conversion to cover the employment risks which may arise.
17. The statutory TUPE consultation process, which needs to take place prior to the proposed conversion date, is being managed and co-ordinated by the Council’s Schools HR Team.
18. A letter dated 6 January 2020, was issued to all staff advising them of the proposed conversion to a non-sponsored academy. Formal consultation for Queensmill Special School took place with staff and unions on 13 January 2020. Formal consultation ended on 7 February 2020. Both staff and unions have been kept updated.
19. A ‘final’ letter will be sent to all staff confirming the transfer to Queen Charlotte Education Special School Trust approximately two weeks prior to the actual transfer date.

### **Commissioning arrangements**

20. A high needs funding SLA will need to be agreed with the Queen Charlotte Education Special School Trust for the delivery of 3 to 19 special education provision.
21. The School Budget (Dedicated Schools Grant) 2021/22 report was approved by Cabinet on 1 February 2021, delegating authority to the Director of Children’s Services to increase high needs place funding to special provision in Hammersmith & Fulham up to the levels indicated in the report.
22. This report seeks authority for the Director of Children’s Services to agree a high needs funding SLA with Queen Charlotte Education Special School Trust and increase the place funding at the school up to the number on roll in the October 2020 school census.
23. The current commissioning intentions for the school is outlined below:

**Table 2: LA commissioning intentions**

<b>Setting</b>	<b>2020/21 commissioned numbers</b>	<b>2020/21 at point of conversion</b>	<b>2021/22 proposed commissioning numbers</b>
Queensmill School	144	169	169
QM at Fulham Primary	30	30	30
QM at Fulham Cross Girls	7	7	7
QM at Fulham College Boys	15	15	15

24. The current commissioning intentions are based on the following assumptions:

- An increase in the number of places at the main school to request the numbers on roll at October 2020 census
- The October 2020 census data shows 199 pupils solely registered at Queensmill school, but this includes pupils at the Fulham Primary satellite. The numbers at the main school have been adjusted to reflect the 30 Queensmill placements at Fulham Primary
- Maintain the 2020/21 commissioning numbers at the satellite provision pending completion of the SEN sufficiency and agreement of the future delivery model for H&F units and additionally resourced provision. This will be completed in 2021/22
- K&C and WCC account for 12% and 22% of the current numbers on roll, respectively. K&C plans for its new special school for the 2021/22 academic year have been considered and it is not expected that this will result in spare specialist ASD places in the local area. Commissioned numbers at the main school will be maintained at 169 for the 2021/22 academic year. A further review will take place to assess the impact of the new K&C provision on the local and regional special ASD school place economy in 2022/23.
- The delivery of speech and language support within the school resources and the withdrawal of the CLCH contract for H&F maintained schools

### **Services delivered by Q+ charity**

25. The Q+ charity operates a children's home (Q House) and a Post-19 specialist ASD college.

26. The charity will become a subsidiary of the Queen Charlotte Education Special School Trust.

27. A separate high needs funding SLA will be undertaken between H&F and Queen Charlotte Education Special School Trust to regularise the arrangements for the services commissioned by the Council from the charity.

28. Subject to the consent of the Secretary of State, the lease will allow for the grant of an underlease of the part of the School used by Q+ as residential children's home.

### **Reasons for Decision**

29. The decisions are required to comply with the Council's obligations under the Academies Act 2010 to complete the process to give effect to the conversion of Queensmill Special School. The Council cannot decline the Secretary of State Order to convert the school to an academy.

### **Equality Implications**

30. There are no direct negative equality implications for groups with protected characteristics, under the Equality Act 2010, by the approval of the academy conversion of Queensmill Special School.
31. Officers have assessed that there will be a neutral impact resulting in the change of school status. The CTA will support the orderly transfer of Queensmill School to the Queen Charlotte Education Special Trust and maintain the delivery of special education provision to the H&F residents and the local region.
32. The place funding arrangement will be negotiated with Queensmill School, accounting for the needs of the school population and to ensure a budget for the efficient and effective running of the school. In addition to place funding, individual learners also attract top-up funding to deliver to the provision specified in their Education, Health and Care Plans.

## **Risk Management Implications**

### **Insurance**

- I. Property and Liability insurances are currently arranged via the Shared Insurance Service. The current cover arrangements for Queensmill School will operate until 31 May 2021. The cover can then transfer automatically from the school to the new academy from 1 June 2021.
- II. The Academies Act 2010 gave all maintained schools the opportunity to become academies. Academies are independent of Local Authority control and are able to buy in private services should they wish and elect to buy back services in from the Local Authority should they wish. This means that an Academy would require a review of their own local business continuity and contingency planning arrangements as service suppliers may eventually but increasingly are procured independently. Such risks in the supply chain would therefore be the Academies to self-manage.
- III. We have been informed by the service that the staff acting for the charity are currently employed by Queensmill school, the council already insure the school, consequently there are no issues in this area. The current insurance arrangements in place will continue and any incidents which the council is liable for would be covered under the existing cover. This includes the three 'known' incidents, providing they are found to be insured events, which are currently being investigated but no claim has yet been made on the insurance.
- IV. The Insurance Team will need to be informed once the school transfers to an Academy to update the insurers accordingly.

*Implications verified by Michael Sloniowski, Risk Manager, tel: 020 8753 2587 and completed by Beverly Mills, Assistant Head of Insurance.*

### **List of appendices:**

None