

1. Legal Comments

This report seeks authority to undertake the process to enable the Bluecoat Wollaton Academy to be expanded by two forms of entry/300 places. The project initially requires £200,000 of capital funding for design work and £250,000 of revenue funding for four temporary classrooms for the period September 2024 to September 2026.

The funding for the project comes from £242,022 of s106 funding and the balance is from the Basic Need Capital Grant. The author of the report has confirmed that the proposed use of these funds is in accordance with both the terms and conditions of the Basic Need Capital Grant and the relevant and identified s106 funds. The Council will need to ensure it continues to comply, and enters into contractual arrangements that allow it to continue to comply, with any other requirements imposed on the use of the Basic Need Capital Grant.

The Programme Manager has confirmed that the procurement of the temporary classrooms will be part of the contractual arrangements with the main contractor who will take on the obligations, and risks, connected with securing the required temporary classrooms. The contractual arrangements will need appropriate provisions to ensure the temporary classrooms are of the requisite standard, maintained/serviced as recommended and generally meet legislative requirements including health & safety, etc. Further, where possible, auditable evidence is to be provided by the main contractor to the Council to allow the Council to evidence that this arrangement is meeting the best value duty in the use of funds.

In respect of the legal contractual work, and potentially property access work, required to support this project, it is understood that this project will be included in a suite of 6 other projects for which external legal support is going to be procured. The procurement will be through a mini-competition using the EMLawshare arrangement. Legal Services are happy to support colleagues in undertaking that mini-competition and then generally in the Council's engagement with the identified external law firm.

Local Authorities have a duty to ensure a sufficiency of places under section 14 of the Education Act 1996. However, Councils have no powers to direct academies to expand. All secondary schools within Nottingham City are academies which constrains the Council when deciding on the location and types of accommodation to be provided. A key challenge is working in partnership with them to deliver the new secondary places needed. The successful completion of this project, within budget, appears to support the Council in meeting its section 14 duty.

It is understood from the author that, generally, the permanent enlargement of an academy's buildings requires the 'significant change' process to be followed. The process is set out in the following DfE guidance: Academies: making significant changes or closure by agreement - GOV.UK (www.gov.uk). Whilst the author has never known an application to not be approved by the DfE, particularly if it is supported by the LA as it would be here as there is a clear need for more secondary places to meet our statutory duties, the requirement to secure DfE approval needs to be factored into both the proposed timetable and the decision of the Council.

Anthony Heath - Senior Solicitor - Contracts and Commercial – 16 January 2024 (amended 9 February 2024)

In relation to the S106 Funding, as set out above, the Council is required by the S106 agreement in respect of the Former Melbury School Playing Fields, planning reference 20/00264/PFUL3 ('the Former Melbury School Playing Fields S106') "to use the Education Contribution towards the provision of secondary school places within the City of Nottingham to accommodate pupils generated by the Development."

Further, the Council is required by the S106 agreement in respect of Land adjacent to Gateway House, Beechdale Road, planning reference 21/02493/PFUL3 ('the Gateway House S106') "to use

the Education Contribution towards the provision of new and/or places within Nottingham City to accommodate secondary school pupils generated by the Development."

No alternative agreement(s) in relation to the spending of the Education Contributions which the Council has received pursuant to either the Gateway House or Former Melbury School Playing Fields S106 agreements have been brought to my attention, and, as identified in this Form, the Council may be liable to repay the Education Contribution received pursuant to the Gateway House S106 agreement if it is not spent or allocated for expenditure within 10 years or receipt (by 6 December 2033).

Bluecoat Wollaton Academy is a secondary school which I understand serves pupils from a broad area across the city and includes the Gateway House and Former Melbury School development areas. It is also noted that it is proposed that the S106 funding could be used towards temporary classrooms, which will enable the permanent work to take place that will deliver the extra secondary school places to be provided as required by the Council's obligations in respect to the Education Contributions received pursuant to the Gateway House and Former Melbury School Playing Fields S106 agreements. Both the above mentioned S106 agreements confirm that "the application or use of a financial contribution (or part thereof) by the Council towards a purpose pursuant to its obligations in the Second Schedule may include the payment of any fees charges and expenses connected to that purpose". The spending proposals in relation to the Education Contributions received pursuant to the Gateway House and Former Melbury School Playing Fields S106 agreements would therefore appear to fall within the Council's obligations on the use of those contributions.

Legal comments from Tamazin Wilson - Senior Solicitor in relation to S106 Funding – 17 January 2024