

<b>Cabinet</b>  31 October 2017	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Debbie Jones, Corporate Director Children's Services	<b>Classification:</b> Unrestricted
<b>School Place Investment Planning, Children's Services Capital Programme</b>	

<b>Lead Member</b>	<b>Councillor Amy Whitelock Gibbs, Cabinet Member for Education, Children's Services and the Third Sector</b>
<b>Originating Officer(s)</b>	<b>Calvin Coughlan, Education &amp; Partnerships Capital &amp; Asset Management Manager</b>
<b>Wards affected</b>	All Wards
<b>Key Decision?</b>	No
<b>Community Plan Theme</b>	<b>A Fair and Prosperous Community</b>

**Reason for urgency:**

The report is being brought to Cabinet outside of the usual process as a consequence of recent redrafting to ensure decisions are informed by the most recent data so the Council meets its Best Value Duty with regard to significant capital investment.

**Executive Summary**

This report requests a range of capital and procedural approvals to support the delivery of projects key to the management of the supply of school places.

**Recommendations:**

The Mayor in Cabinet is recommended to:

To note the following recommendations proposed to be included in the proposed Cabinet report.

1. Note the contents of this report and the anticipated out-turn for the 2016/17 Children's Services Capital Programme and proposed allocation of the funding available in 2017/2020 as set out in Appendix A.1 and 2 (paragraph 3.2);
2. Note the deferral of the scheme to create a new primary school on the Bromley Hall School site (paragraph 3.5);

3. Note that discussions are ongoing regarding the future use of the former Bow Boys' School site to meet primary place needs in the area and wider high needs special provision requirements (paragraph 3.10)
4. Approve the adoption of a capital estimate of £5m for the opening of a primary school at Wood Wharf ( paragraph 4.3);
5. Agree that the Council should enter into an Agreement for Lease with Canary Wharf Group for the proposed school (paragraph 3.27) and authorise the Corporate Director, Governance to finalise the terms of the lease and agreement for lease ;
6. Approve the adoption of a capital estimate of £9m for works at Langdon Park and George Green's Schools to provide additional 6<sup>th</sup> Form accommodation and also the replacement of the temporary classroom block at George Green's School (paragraph 4.4);
7. Approve the adoption of a capital estimate of £3m for works at Bow School to provide additional accommodation (paragraph 4.5);
8. That authority is delegated to the Corporate Director, Children's Services, in consultation with the Corporate Director of Resources, to agree tenders for projects in respect of all proposed tenders referred to in this report, within the approved programmes and capital estimate;
9. That authority is delegated to the Corporate Director, Children's Services, in consultation with the Corporate Director of Resources, to prepare and carry out a Bill of Reductions for any scheme that exceeds the budget to ensure expenditure is contained within the agreed costs.

## **1. REASONS FOR THE DECISIONS**

These decisions are required to allow the progress of capital investment proposals to meet statutory requirements for school places and other high priority service improvements

## **2. ALTERNATIVE OPTIONS**

All options available have been considered in relation to the development of the proposals set out in this paper, in order to maximise the impact of capital investment and minimise impact of construction works on existing service users. Requirements for investment are reviewed at a number of stages during the development of the projects to ensure value for money and to reflect back on the delivery of the stated service objectives.

### **3. DETAILS OF REPORT**

- 3.1 In the report to Cabinet in February 2017, on the Council's Financial Plan for 2017/18 to 2019/20, Members confirmed approval to the capital programme for Children's Services.
- 3.2 The carry forward of funds from 2016/17 for Children's Services is anticipated to be £36.713m. Appendix A.1 sets out the total amount of funds available for 2017/18 to 2019/20. Appendix A.2 sets out the revised capital programme for 2017/18 to 2020/21.

#### **Deferral of the Proposed New Primary School on the former Bromley Hall School site.**

- 3.3 A scheme was developed for the conversion of the former Bromley Hall School site and adjoining land to create a 2FE primary school. The scheme was agreed and a capital estimate of £9m was adopted by Cabinet in May 2015. At that stage, the programme was not confirmed but it was anticipated that the school would be ready to open in September 2018.
- 3.4 The development of the school proposals continued and planning consent was obtained. The scheme was developed with the Council's strategic partner, Bouygues UK, and a tender was submitted.
- 3.5 As reported to Cabinet in September 2016, there has been a marked decrease in the trend of the rise in need for additional primary school places. It is therefore proposed to defer the new primary school on the former Bromley Hall School site until the demand for additional primary school places in the area rises sufficiently to justify the new school.

#### **Proposed Primary School on Former Bow Boys' School Site**

- 3.6 In May 2015, Cabinet agreed to adopt a capital estimate of £11m to create a 3FE primary school on the former Bow Boys' School site. The former Bow Boys' School was located on two adjacent sites to the North and South of Paton Close, E3. The proposal was to provide the new primary school on the larger North site and to find an alternative use for the South site.
- 3.7 Since the initial estimate was adopted by Cabinet, the scheme has been developed further and a revised cost estimate of £15m has been established. This estimate is based on a detailed design and market tested scheme rather than the square metre rate of the initial estimate. Over the ensuing time period, however, the demand for primary places in the Borough as a whole has not grown as quickly as anticipated and the need for this additional provision is no longer certain.

- 3.8 In addition to the requirement to consider the short and longer term demand for primary places, there is a pressing need to develop capacity for additional pupils with high needs, both to meet short term pressures of pupils moving through the primary sector into secondary and the increases in demand arising from birth and improving PMLD survival rates. Capital funding for additional special needs provision is not forthcoming from central government through projection related 'Basic Need', but via a formulaic process which will generate grant of approximately £3.5m to the Borough over the next 3 years. Whilst this will go some way to funding the investment needs within the special sector, it is likely that additional capital resources will need to be found to supplement grant. The deployment of circa £15m at this time to meet an uncertain requirement for primary places, needs to be placed in the context of a potential shortfall to provide places for high needs pupils who are already in the primary system.
- 3.9 Alongside the capital implications of the primary expansion proposed and high needs investment requirement, it is prudent to take a more strategic view of the priorities for deployment of available assets to meet priority needs. With this in mind that it is not proposed not to promote the immediate movement to implementation of the Bow Primary School project, but to review the potential use of the former Bow Boys sites against all current and projected demands.
- 3.10 It is acknowledged that the timing of the availability of new provision is sensitive and an option is therefore being developed to ensure that cost effective provision can still be made for primary pupils on the North site, for September 2019, pending a decision on long term use of the site. Equally, detailed consideration is being given to options for securing both short and long term high needs provision across the two former Bow Boys' sites, whilst priorities for use of the sites are determined.
- 3.11 Cabinet is therefore asked to note the proposal to undertake a further options investigation on the use of the former Bow Boys site to meet primary and high needs investment requirements.

### **Proposed Primary School on Wood Wharf**

- 3.12 As part of the development of the Wood Wharf Site, the Canary Wharf Group (CWG) proposed to build a 2FE primary school. The s.106 agreement confirms that the developer will provide the shell and core. The Council will take a lease of the completed shell and core and then undertake the fit out. Under the terms of the s. 106 agreement, the Council has to confirm its acceptance of the proposal after receiving the details of the proposed scheme from the developer. The developer and Council officers have worked very closely on the design details of the school to ensure it is a good

design and that the Council is able to assess the details and costs of the fit out requirements.

- 3.13 If the Council decides not to proceed with the school, the developer will pay a S106 contribution instead.
- 3.14 To meet the requirements for external play space, the school will have access to a community play area in addition to play space provided as part of the school design.
- 3.15 The Council has been working closely with the CWG to ensure that the building can provide sufficient space for the accommodation needed for a 2FE primary school, including what the Council will have to provide as part of the fit-out arrangement once the core and shell of the building has been completed in 2020. This will enable the school to open in September 2022.
- 3.16 A schedule of fit-out items and other costs e.g. furniture and equipment, have now been agreed. These have been independently costed and amount to £5m.
- 3.17 The Council is required to make a decision on the school some time in advance of it being ready to open. The developer requires the certainty in order to proceed with the scheme. It has been reported to Cabinet that there is short to medium term excess of primary school places in the borough as a whole, but it is recognised that in the Isle of Dogs new residential development is continuing and families in this part of the borough are the least able to get a primary school place near their home. To confirm the agreement to proceed, the Council and Canary Wharf Group will enter into an Agreement for Lease for the school. The draft terms of the Lease and AFL are currently being finalised.

### **Commissioning school providers for Bow and Wood Wharf Primary Schools**

- 3.18 Where the need for a new school is identified, LAs are not able to open a new community school. The 2011 Education Act introduced the “free school presumption”. (NB. free schools and academies are legally the same type of school). The “free school presumption” process involves the LA setting the specification for the school. This includes the size and type of school and the community it is to serve. The selection of the school operator is based on the specification and so this is an important document.
- 3.19 The LA seeks expressions of interest from approved free school or academy providers, following a procedure set out by the DfE. The LA evaluates the bids and submits them to the Secretary of State. The decision on the appointment of a provider is taken by the Secretary of State, delegated to the Regional Schools Commissioner,

who will then enter a funding agreement with the appointed provider. Existing academies or free schools are able to bid to operate new schools, providing they have obtained approved provider status from the DfE.

- 3.20 The LA must set its specification for the new school before it seeks the expressions of interest. This is the key document to ensure that a provider is appointed who can deliver the specification. The specification will set some key matters in addition to the basic details such as the size of the school and opening date. These include the need for a strong education vision, engagement with the local community, providing inclusive education and support for all children and operating as the local school for the community. The Tower Hamlets specification will include a requirement to support THE Partnership. Consideration will also be given to the requirement for the service provider to offer facilities to support the delivery of sustainable, year round early education and care provision.
- 3.21 The DfE guidance on the free school presumption sets out the process in general terms but is not prescriptive about timescales and consultation for all stages. The LA can determine its preferred process.

### **Proposed consultation**

- 3.22 A Tower Hamlets generic school specification has been agreed which will form the basis of all future school commissioning. Each new school's specification will then include the details for that school in addition to the generic requirements.
- 3.23 Subject to agreement to the recommendation of this report, consultation on the proposed specification for the Bow Primary School will take place. The outcome will be reported back to Cabinet in February with recommendations to adopt the specification (as amended by consultation) and to seek Expressions of Interest (Eols) for providers. The bids for the Eols are publicised by the LA as well as the requirement for them to be available on the DfE website.
- 3.24 When the Eols have been received, the LA submits them to the DfE. The LA makes its own evaluation of the submissions and submits that to the DfE. The Regional Schools Commissioner, on behalf of the Secretary of State, takes account of the LA's evaluation in making its own evaluation and decision on appointment of the provider. The LA can ask the DfE to be represented on the evaluation process as observer or participant. It is proposed that the RSC should be invited to participate in the Council's evaluation process.
- 3.25 As the proposed opening date for Bow Primary School is under review a timetable for effecting this process for Bow will need to be agreed in due course. Due to the later proposed opening date for

Wood Wharf Primary School of September 2022, it is not proposed to commence the commissioning of the school provider until 2020.

### **Sixth Form Expansion**

- 3.26 With the increasing number of pupils staying on at school at 16, there is more pressure on secondary schools to provide sufficient facilities within their Sixth Form to provide the subjects required. To provide the range of subjects, it is considered that a Sixth Form should be able to accommodate up to 250 pupils.
- 3.27 Following a review of secondary schools with Sixth Forms, both The George Green's School and Langdon Park School did not currently have all the accommodation required for a 250 place Sixth Form as set out in the Government's Building Bulletin.
- 3.28 Schemes have been developed for both schools to provide the additional accommodation required. Where possible this will be provided by converting some existing rooms, for practical reasons, to provide specialist accommodation within the same subject areas i.e. science laboratories, with the remaining accommodation being new building.
- 3.29 At The George Green's School, there is also an existing 4 classroom block that was provided more than 20 years ago as the school did not have sufficient classrooms to provide the curriculum. At the time the building was only expected to be used until a permanent facility could be provided. The building is expensive to maintain, limited in size for the number of pupils that now use the building and does not provide suitable insulation in the winter and summer months. It is therefore recommended that the classrooms are included within the new Sixth Form accommodation so that the classroom block can be removed.

### **Bow School – Additional Accommodation**

- 3.30 In 2014, the Bow Boys School closed and re-opened as Bow School, a co-educational school, on its new site in Twelvetrees Crescent, E3.
- 3.31 The new school capacity increased to 9 FE, 1,350 (excluding the 6<sup>th</sup> Form), where Bow Boys had been reduced to 625 pupils. This meant that the school would have spare places in Year groups until it reached its maximum capacity.
- 3.32 To make use of the spare capacity, the school agreed to take two classes of students from Phoenix Special School as a satellite classes. Although these students are taught separately by teachers from Phoenix School and are on the role of Phoenix, they mix and socialise with the students at the school at break-times, etc. This has proved to be beneficial to both the students from Phoenix School and for the students of Bow School.

- 3.33 The school is now reaching its maximum capacity and will need to take back the rooms being used by the Phoenix School students. Because of the success of the outreach arrangement, both schools would want to continue the arrangement, but this will require additional accommodation.
- 3.34 A scheme is being developed that will provide the additional accommodation that is required. To avoid moving the outreach students to the new accommodation which, because of the special needs, would be disruptive, the school (Bow School) have agreed to make use of the proposed new accommodation.

#### **4. COMMENTS OF THE CHIEF FINANCE OFFICER**

##### **4.1 Deferral of the Proposed New Primary School on the former Bromley Hall School site.**

The £9m allocated to the scheme in the Children's Services capital programme is funded from £4m of basic need capital grant and £5m of education s.106 contributions. Due to the reduction in the rise of primary school places required, these resources will be reallocated to other schemes.

##### **4.2 Proposed Primary School on Former Bow Boys' School Site**

The original estimated costs of £11m for the building works has increased to £13m. This is mainly due to increase in material and construction costs since 2015. Allowing for other costs including fees and furniture and equipment, the total estimated cost is £15m. It is proposed that the additional £4m will be funded from the allocation no longer required for the proposed new primary school at the former Bromley Hall School site.

Revenue Funding - Schools' contributions are based on roll so for Bow Primary School until its roll fills. There will initially be a gap between its contribution and the contract costs to the LA for the building. The Gap funding is supported by the DSG growth fund, which states that "Permanent expansions are generally implemented over time by admitting the additional pupils at Reception or Year 7 only until the additional capacity fills. Where a school has specific facilities management or ICT contract arrangements which provide services as though an expanding school were full, the contingency fund will provide proportionate support for individual schools on the basis of the year groups which are operating below full capacity"

##### **4.3 Proposed Primary School on Wood Wharf**

It is recommended that a capital estimate of £5m should be adopted for this scheme and that the Council enters into the Agreement for

Lease with Canary Wharf Group. An initial estimate of fit-out cost was included in the Infrastructure Delivery Framework Evidence Base as a priority (Appendix B)

On this basis, it is proposed to submit a PID for S106/CIL funding to cover £3m of the cost of the fit-out, during the next meeting cycle, with the balance coming from Basic Need grant.

#### **4.4 Sixth Form Expansion**

Langdon Park School and George Green's School both require expansion as currently they do not have a 250 place sixth form. The estimated cost for the works at Langdon Park School is £4m and the works at The George Green's School, including replacing the classroom block, is £5m.

It is recommended that a capital estimate of £9m is adopted to provide the additional 6th form accommodation at both schools. This will be funded from the available S106 contributions which have been received for improvements to education facilities in the borough. The cost of replacing the classroom block at The George Green's School will be funded from the Children's Services Capital Programme.

#### **4.5 Bow School – Additional Accommodation**

The estimated cost to provide the new accommodation required is £3m. It is recommended that a capital estimate of £3m is adopted to provide the additional accommodation at the school. This will be funded from the Basic Need Grant.

### **5.0 LEGAL COMMENTS**

- 5.1 It is one of the Council's statutory functions to ensure that there are sufficient primary and secondary education facilities in its area by virtue of section 14 of the Education Act 1996. Also by virtue of section 111 of the Local Government Act 1972 the Council has the power to do all things that are ancillary to the discharge of its functions. Therefore, the Council has the legal power to carry out the actions itemized in this report.
- 5.2 The Council has a duty to ensure that it has proper regard for economy efficiency and effectiveness in the delivery of its functions by virtue of section 3 of the Local Government Act 1999. This is known as the Council's Best Value duty.
- 5.3 Generally speaking the Council satisfies the requirements of its Best Value duty by subjecting its spend to competition with the winning bidder being chosen having been evaluated on a mixture of quality and price.

- 5.4 Most if not all the expenditure referred to in this report will result in Public Works contracts for the purposes of the Public Contracts Regulations 2015. This means that where the estimated contract value is expected to exceed the current monetary threshold of £4,104,394 the procurement exercise must be advertised in Europe and the whole of the 2015 regulations followed.
- 5.5 The Council may elect to use a previously procured framework in order to satisfy the Council's requirement to tender as stated above provided that:
- 5.5.1 the Council is clearly identified in the European Advert as a potential user of the framework and
- 5.5.2 the estimated value of the Council's works when added to the total value of works already procured under the framework (regardless of which authority purchased the works) does not then significantly exceed the estimated value of contract stated in the advert.
- 5.6 However, it is notable that the site at the former Bow Boys school is part of the grouped schools PFI project which limits the Council's ability to tender and will therefore require the delivery of works by the PFI contractor (Tower Hamlets Schools Limited). In particular the PFI contractor would have to consent to the quality and workmanship of any works undertaken at the site and then take responsibility for the quality of works. They also potentially have contractual rights of nomination of contractors at the school. However, regulation 32 allows the Council to negotiate a contract with the PFI contractor without advertising in Europe as there appears to be strong technical reasons why competition would be absent in the event of tendering.
- 5.7 However, notwithstanding the comments at paragraph 5.6 the Council is still legally obligated to demonstrate that any negotiated contract represents Best Value.
- 5.8 It is notable that the Council make require further clarification of certain tenders referred to in the report in order to ensure that the ascertained budget is met. However, where the clarifications lead to a change in price then such clarifications amount to post tender negotiation for the purposes of European law and is also generally prohibited.
- 5.9 Therefore, the Council should consider electing to follow one of the procurement regimes detailed in the 2015 Regulations (such as the Negotiated procedure) which allows for such post tender discussions. However, this is most likely not permissible in the event that the Council elects to use an externally procured framework and

therefore, the Council should allow for the extra time required to run its own procurement from the start.

- 5.10 These schemes should be considered in accordance with the public sector equalities duty under the Equalities Act 2010, which requires the Council when exercising its functions to have 'due regard' to the need to eliminate discrimination (both direct and indirect discrimination), harassment and victimisation and other conduct prohibited under the Act, and to advance equality of opportunity and foster good relations between those who share a 'protected characteristic' and those who do not share that protected characteristic. The Council should perform a proportionate equality analysis before determining its preferred procurement options and prior to any changes being made.
- 5.11 Any consultation carried out for the purposes of assessing the impact of service changes should comply with the following criteria: (1) it should be at a time when proposals are still at a formative stage; (2) the Council must give sufficient reasons for any proposal to permit intelligent consideration and response; (3) adequate time must be given for consideration and response; and (4) the product of consultation must be conscientiously taken into account. The duty to act fairly applies and this may require a greater deal of specificity when consulting people who are economically disadvantaged. It may require inviting and considering views about possible alternatives.

## **6.0 ONE TOWER HAMLETS CONSIDERATIONS**

- 6.1 The implementation of the Children's Services capital programme is part of the LA's strategy to improve achievement by improving the teaching and learning environment.
- 6.2 The provision of additional pupil places is necessary to ensure the Council meets its legal obligation to secure sufficient schools for Tower Hamlets, but will also promote equality of opportunity for children and young people (including within the meaning of the Equality Act 2010). Equality considerations will be further taken into account in the planning, procurement and delivery of individual projects.

## **7.0 BEST VALUE (BV) IMPLICATIONS**

- 7.1 Implementation of capital schemes will be subject to competitive procurement. Proposals will be subject to consultation as they are developed and before implementation.

## **8.0 SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

8.1 Sustainability considerations are applied as far as possible to design and materials used. Major projects included are expected to obtain a minimum rating of Very Good in the BREEAM Assessment.

## **9.0 RISK MANAGEMENT IMPLICATIONS**

9.1 The individual projects will be closely monitored to ensure that programmes are completed on time and within the budget provision.

## **10.0 CRIME AND DISORDER REDUCTION IMPLICATIONS**

10.1 There are no specific implications arising.

## **11.0 SAFEGUARDING IMPLICATIONS**

11.1 Safeguarding consideration are always considered as part of the development of the physical environment.

### **Linked Reports, Appendices and Background Documents**

#### **Linked Report**

None

#### **Appendices**

- A Children's Services and Health, Adult's & Community Services Capital Programme 2017/18 TO 2020/1
- B Infrastructure Delivery Framework Evidence Base

#### **Background Documents – Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2012**

None

#### **Officer contact details for documents:**

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