

MAYOR'S EXECUTIVE DECISION MAKING

Wednesday, 27 March 2019

Mayor's Decision Log No. 186


1. **PHOENIX SCHOOL EXPANSION – AGREEMENT TO COMPLETE THE DEED VARIATION TO THE GROUPED SCHOOLS PFI CONTRACT (Pages 3 - 10)**

If you require any further information relating to this meeting, would like to request a large print, Braille or audio version of this document, or would like to discuss access arrangements or any other special requirements, please contact: Matthew Mannion, Committee Manager, Democratic Services

Tel: 0207 364 4651, e-mail: matthew.mannion@towerhamlets.gov.uk

This page is intentionally left blank

Agenda Item 1

Individual Mayoral Decision Proforma Decision Log No: <u>186</u>	 TOWER HAMLETS
Report of: Debbie Jones, Corporate Director, Children's and Culture	Classification: [Insert Unrestricted or Exempt]
Phoenix School Expansion – Agreement to Complete the Deed Variation to the Grouped Schools PFI Contract.	

Is this a Key Decision?	Yes
Decision Notice Publication Date:	(Report author to state date of decision notice – either individual notice or within the Forward Plan)
General Exception or Urgency Notice published?	Not required YES (Report author to delete as applicable)
Restrictions:	(If restricted state which of the exempt/confidential criteria applies)
Reason for seeking an Individual Mayoral Decision:	A decision is required by 28 th March 2019 to authorise the Corporate Director, Children's Culture to enter into all necessary agreements with Tower Hamlets Schools Ltd to complete the Deed of Variation to the Grouped Schools PFI contract for the works to expand Phoenix Special School.

EXECUTIVE SUMMARY

An urgent decision is required to authorise the Corporate Director, Children's and Culture to enter into all necessary agreements with Tower Hamlets Schools Ltd to complete the Deed of Variation to the Grouped Schools PFI contract for the works to expand Phoenix Special School. The agreement needs to be agreed before 30th March 2019, to meet the requirements of the Planning Approval and avoid the need for a new planning application to be submitted.

A recommendation is usually included within a report to Cabinet to authorise the Corporate Director, Children's and Culture to enter into the agreement. This was included in a draft report that was to go to Cabinet in 2017, when proposals to use the site for additional primary pupil places was being considered. This was subsequently deferred when the need to expand the number of special needs places was proposed. Unfortunately, the need to include the recommendation in the report to Cabinet on 28th November 2018 to authorise the completion of the Deed of Variation by officers was overlooked.

ONE TOWER HAMLETS CONSIDERATIONS

The LA has to plan for the overall social infrastructure to meet the needs of the rising local population. This informs the development of the Council's asset management and service planning to ensure that the required infrastructure is provided and that the competing needs are balanced.

RISK ASSESSMENT

The Planning Approval for the proposed works to the Bow Boy's School site was given on 30th March 2016. It required that the works had to be commenced within 3 years, otherwise a new application would need to be submitted. This would result in at least a 4 month delay and could delay the opening of the school in 2020 as well as the risk that the contractor could withdraw, requiring a re-tender.

DECISION

To authorise the Corporate Director, Children's and Culture to enter into all necessary agreements with Tower Hamlets Schools Ltd to complete the Deed of Variation to the Grouped Schools PFI contract for the works to expand Phoenix Special School.

APPROVALS

1. (If applicable) Corporate Director proposing the decision or his/her deputy

I approve the attached report and proposed decision above for submission to the Mayor. I confirm that the Mayor and/or Lead Member have agreed to this decision being taken using this process.

Signed  Date 26.3.19.

2. Chief Finance Officer or his/her deputy

I have been consulted on the content of the attached report which includes my comments.

Signed  Date 26/3/19.

3. Monitoring Officer or his/her deputy

I have been consulted on the content of the attached report which includes my comments.

(For Key Decision only – delete as applicable)
I confirm that this decision:-

(a) has been published in advance on the Council's Forward Plan OR
(b) is urgent and subject to the 'General Exception' or 'Special
Urgency' provision at paragraph 18 or 19 respectively of the Access to
Information Procedure Rules.


Signed  Date 20/3/19

4. **Mayor**

I agree the decision proposed in the recommendations above for the
reasons set out in paragraph 1 in the attached report.

Signed  Date 20/3/19

This page is intentionally left blank

Individual Mayoral Decision 27 th March 2019	 TOWER HAMLETS
Report of: Debbie Jones, Corporate Director, Children's and Culture	Classification: Unrestricted
Phoenix School Expansion – Agreement to Complete the Deed Variation to the Grouped Schools PFI Contract.	

Lead Member	Councillor Danny Hassell, Cabinet Member for Children, Schools and Young People
Originating Officer(s)	Calvin Coughlan, Building Development Manager
Wards affected	Bow East and West
Key Decision?	Yes
Forward Plan Notice Published	27 March 2019 (Special Urgency provision)
Reason for Key Decision	To agree the Deed of Variation so that the works to expand Phoenix Special School can commence before 30 th March 2018, to comply with the Planning Approval..
Strategic Plan Priority / Outcome	Children and young people are protected so they get the best start in life and can realise their potential

Executive Summary

At the Cabinet meeting in November 2018, agreement was given to the expansion of Phoenix Special School. This included the redevelopment of the former Bow Boys School at Fairfield Road, E3 to provide accommodation for its upper school for pupils aged 14 – 19. Cabinet also approved the adoption of a capital estimate of £17m for the redevelopment works.

As the site at Fairfield Road is part of the Grouped Schools PFI contract, the Council needs to enter into a Deed of Variation to the Grouped Schools PFI contract for the works to be carried out. Agreement of the Deed of Variation is usually delegated to the Corporate Director, Children's Services and Culture, but was omitted from the report to Cabinet in November 2018.

An urgent decision is required to agree to enter into a Deed of Variation to the Group Schools PFI to enable the works to redevelop the site at Fairfield Road, to provide the accommodation for the proposed upper school for Phoenix Special School, to commence.

Recommendations:

The Mayor is recommended to:

1. Authorise the Corporate Director, Children's and Culture to enter into all necessary agreements with Tower Hamlets Schools Ltd to complete the Deed of Variation to the Grouped Schools PFI contract for the works to expand Phoenix Special School and any other associated agreements.

1 REASONS FOR THE DECISIONS

- 1.1 The Local Authority (LA) has a statutory responsibility to provide sufficient places for children and young people of school age.
- 1.2 The Deed of Variation to the Grouped Schools PFI contract is required to enable the works to be undertaken.
- 1.3 To prevent a significant delay in the proposed works at the Bow Boy's site and the risk of financial implications.

2 ALTERNATIVE OPTIONS

- 2.1 Where places in the Council's special schools cannot be offered because of lack of capacity, places in neighbouring authorities or private providers could be considered. However, this would mean increased costs in terms of transport and also take away young people with specialist needs away from their local neighbourhood.

3 DETAILS OF THE REPORT

- 3.1 The report to Cabinet in November 2018 explained that Tower Hamlets has high demand for provision for children with special educational needs as evidenced by it being the borough with the highest proportion of pupils with Education Health and Care (EHC) Plans in London, and the third highest in England. In 2018, 4.4% of pupils in Tower Hamlets have an EHC Plan compared with an average of 3.0% in Inner London, 3.0% in Greater London, and 2.9% in England.
- 3.2 A significant proportion of children with EHC Plans will have a complex special educational need or disability that require their needs be met in special schools or resourced provisions set up as dedicated environments within mainstream schools. There are currently 6 special schools, 7 resource bases within mainstream schools and two alternative provision centres. These provisions are now reaching capacity with few options remaining to create additional places in existing accommodation.
- 3.3 To meet some of the need for specialist places, it was proposed to expand Phoenix Special School across two sites. The current school site on Bow Road, E3 will operate as its lower school for children aged from 3 – 13, with the redevelopment of the former Bow Boys School at Fairfield Road, E3 to

provide accommodation for its upper school for pupils aged 14 – 19. Providing additional places for up to 144 pupils with Autistic Spectrum Disorder from Sept 2020.

- 3.4 The Bow Boy's site is included in the Grouped Schools PFI contract. The PFI contractor, Tower Hamlets Schools Ltd (THSL), is acting as the Council's agent to procure the construction contractor. The cooperation and consent of the PFI contractor and its funders is required in order to carry out the building works and so the PFI contractor will act as the Council's agent to procure works and appoint a construction contractor following a competitive tender. This ensures that the scheme is jointly developed. This approach has been adopted for other schemes at contract sites, for example the expansion of Olga School and the new Sixth Form block at Stepney Green School.
- 3.5 The Council and THSL will need to enter into a Deed of Variation to the contract for the terms of the works. THSL has undertaken a two stage tender process which has resulted in the contractor's final bid of £14.49m, which is within the agreed allocation agreed by Cabinet in November 2018.
- 3.6 To enable the Deed of Variation to the Grouped School PFI contract to be agreed once the final bid figure is provided, a recommendation is usually included within a report to Cabinet to authorise the Corporate Director, Children's and Culture to do this. This was included in a draft report that was to go to Cabinet in 2017, when proposals to use the site for additional primary pupil places were being considered. This was subsequently deferred when the need to expand the number of special needs places was proposed. Unfortunately, the need to include the recommendation in the report to Cabinet on 28th November 2018 to authorise the completion of the Deed of Variation by officers was overlooked.
- 3.7 The original Planning Approval was given on 30th March 2016, for a period of 3 years, but was for a 3 forms of entry Primary school that was originally proposed. Following a review of the need for primary school places in the area, the proposed scheme was changed to providing additional places for Phoenix Special School. Although the design of the buildings has not altered there have been significant changes to the internal requirements to meet the needs of the students. The Planning Approval is due to expire on the 30th March, so the Deed of Variation needs to be agreed before this date.

4 EQUALITIES IMPLICATIONS

- 4.1 Access to good quality school places is essential to raising achievement and addressing poverty and inequality in the long term. The expansion of existing school sites will have a positive impact on all groups by improving accessibility, increasing parental choice and promoting inclusive education.

5 COMMENTS OF THE CHIEF FINANCE OFFICER

- 5.1 The purpose of this IMD is to delegate authority, to the Corporate Director, Children and Culture for the production of the deed of variation to enable

approved works to proceed at Phoenix School. If this is not approved there may be financial implications consequent on delay. However, this authority does not change any of the original approvals for example in respect of approved the capital sum and as such has no additional financial implications

6 COMMENTS OF LEGAL SERVICES

- 6.1 Regulation 32 of the Public Contracts Regulations 2015 allows the Council to use the negotiated procedure with one contractor without the use of an advert where there is a technical reason for doing so. A technical reason is one which is germane to the subject matter of the contract.
- 6.2 Bow school is a PFI site and as such the lender who has a legal interest in the land is entitled to insist that any works are carried out by its own contractor, Tower Hamlets School Limited. This is a technical reason for the purposes of Regulation 32 and would render a competitive exercise to identify a building contractor impractical.

Linked Reports, Appendices and Background Documents

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

- Cabinet Report 28th November 2018

Officer contact details for documents:

n/a