

MAYOR'S EXECUTIVE DECISION MAKING

Thursday, 15 October 2015

Mayor's Decision Log No. 114


1. **ST PAUL'S WAY TRUST SCHOOL EXPANSION (Pages 1 - 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 Services 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>114</u>	 TOWER HAMLETS
Report of: Interim Corporate Director of Children's Services, Debbie Jones	Classification: Unrestricted
St Paul's Way Trust School Expansion	

Is this a Key Decision?	Yes
Decision Notice Publication Date:	11 September 2015
General Exception or Urgency Notice published?	Not required
Restrictions:	n/a

EXECUTIVE SUMMARY

The report seeks approval to a revised capital estimate to implement the expansion of St Paul's Way Trust School and for approval to enter into the legal documents with Poplar Housing and Regeneration Community Association Limited ("Poplar Harca") and the St Paul's Way Trust. School (Company registration number 07164863). The scheme was originally approved by Cabinet in September 2013.

Full details of the decision sought, including setting out the reasons for the recommendations and/or all the options put forward; other options considered; background information; the comments of the Chief Finance Officer; the concurrent report of the Head of Legal Services; implications for One Tower Hamlets; Risk Assessment; Background Documents; **and other relevant matters are set out in the attached report.**

DECISION

Recommendations:

The Mayor is recommended to:

1. Approve the adoption of a revised capital estimate of £13,406,675 for the implementation of the expansion of St Paul's Way Trust School;
2. Approve the proposal to enter into the Development Agreement and Agreement for Four Leases with Poplar Harca;

3. Approve, subject to decision by the Commissioners, entering into an Agreement for Four Sub-Leases with the St Paul's Way School Trust;
4. Authorise the Corporate Director of Development & Renewal after consultation with the Corporate Director Children's Services and the Corporate Director Law Probity and Governance to negotiate and agree the development agreement and leases with Poplar Harca and St Paul's Way Trust School

APPROVALS

1. Corporate Director proposing the decision or his/her deputy

I approve the attached report and proposed decision above for submission to the Mayor.

Signed *[Signature]* Date ..12.10.15.

2. Chief Finance Officer or his/her deputy

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

Signed *[Signature]* Date ..12/10/15

3. Monitoring Officer or his/her deputy

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

I confirm that this decision:-


(a) has been published in advance on the Council's Forward Plan

Signed *[Signature]* Date ..14/10/15 .

4. Mayor

I agree the decision proposed in paragraph above for the reasons set out in paragraph 1.1 – 1.3 in the attached report.

Signed *[Signature]* Date ..15/10/15

Individual Mayoral Decision	 TOWER HAMLETS
9 October 2015	
Report of: Interim Corporate Director of Children's Services, Debbie Jones	Classification: Unrestricted
St Paul's Way Trust School Expansion	

Lead Member	Councillor Rachael Saunders, Cabinet Member for Children's Services
Originating Officer(s)	Pat Watson, Head of Building Development
Wards affected	Mile End
Key Decision?	Yes
Community Plan Theme	A Fair and Prosperous Community

Executive Summary

The report seeks approval to a revised capital estimate to implement the expansion of St Paul's Way Trust School and for approval to enter into the legal documents with Poplar Housing and Regeneration Community Association Limited ("Poplar Harca") and the St Paul's Way Trust. School (Company registration number 07164863). The scheme was originally approved by Cabinet in September 2013.

Recommendations:

The Mayor is recommended to:

1. Approve the adoption of a revised capital estimate of £13,406,675 for the implementation of the expansion of St Paul's Way Trust School;
2. Approve the proposal to enter into the Development Agreement and Agreement for Four Leases with Poplar Harca;
3. Approve, subject to decision by the Commissioners, entering into an Agreement for Four Sub-Leases with the St Paul's Way School Trust;
4. Authorise the Corporate Director of Development & Renewal after consultation with the Corporate Director Children's Services and the Corporate Director Law Probity and Governance to negotiate and agree the development agreement and leases with Poplar Harca and St Paul's Way Trust School

1. REASONS FOR THE DECISIONS

- 1.1 The report seeks approval to increase the approved capital budget for the expansion of St Paul's Way Trust School and to enter into:
- A Development Agreement and an Agreement for four Leases with Poplar Harca for the development of the new school accommodation
 - An Agreement for Lease with the Trustees of St Paul's Way Trust School for four sub-leases of the school accommodation
- 1.2 The agreed capital budget is not sufficient to meet all the capital costs associated with the scheme which are to be shared with Poplar Harca.
- 1.3 This project has been developed in partnership by the Council, Poplar Harca and the school. It will provide space for the school to provide two forms of entry of primary school provision and a nursery class which is needed in the local area. The school accommodation is being provided on land owned by Poplar Harca in a mixed use development led by Poplar Harca. The Council is to contribute the capital costs of the new school accommodation and a pro-rata contribution to the costs of site assembly. The Development Agreement and Agreements for Lease are the agreements to be entered into for the project to proceed.
- 1.4 Consent is required from the Commissioners for the proposed sub-leases to the St Paul's Way Trust School, because they are a disposal of real property

2. ALTERNATIVE OPTIONS

- 2.1 There is no alternative to the form of agreements to be entered into for this project based on the procurement approach taken to date. The Council cannot directly procure the capital works for the school as the school accommodation forms part of a mixed use development on land owned by Poplar Harca.
- 2.2 The alternative would be for the Council not to proceed with the project. The impact of this would be that alternative accommodation would have to be secured for the school. The expansion of St Paul's Way Trust School from a secondary school to an all-through school has already been agreed and the first children already admitted.

3. DETAILS OF REPORT

- 3.1 In September 2013 Cabinet agreed to adopt a capital estimate of £5.5m for the expansion of St Paul's Way Trust School. A further decision was taken in April 2014 to increase the capital budget to £9.73m. This sum was to provide both the temporary and permanent accommodation for the school expansion.
- 3.2 The following paragraphs detail the various stages of the development of the project. The overall costs of the project have increased as the detailed development progressed. The costs were insufficiently developed at the time

of the initial decision and the capital estimate adopted in September 2013 was under-estimated. The revised estimate was adopted in April 2014 when costs were further developed but before tenders were obtained. The phasing of this project is complex which adds to the overall costs. Because of the requirement to provide sufficient primary school places, the expansion of the school to provide primary places was implemented in advance of the permanent scheme being confirmed. This has incurred costs to provide the temporary accommodation and adds to the complexity and costs of the phased programme by requiring sufficient capacity for the school throughout and to accommodate the school roll as it grows each year.

- 3.3 The proposal to expand St Paul's Way Trust School by adding primary places has been agreed through the formal process of consultation and decision for organisation changes to schools. The expansion was implemented from September 2014 when the first group of 60 Reception age children were admitted. The Council funded works to part of the Burdett Centre (owned by Poplar Harca) to allow its temporary use by the school pending the phased completion of the permanent accommodation. The Burdett Centre is to be leased to the Council by Poplar Harca and sub-let to the school.
- 3.4 The Council, Poplar Harca and the school have worked together on the project. The project includes the redevelopment of Printon and Linton Houses on the Burdett Estate to provide housing, new permanent school accommodation and a replacement mosque with associated enhancements to communal open space areas. The project has been developed on the basis that the Council contributes the capital costs associated with the school and, on completion of the school accommodation, the Council would take long leases (250 years) at nil rent from Poplar Harca and then sub-let to the school for the same term (less three days). The school is a trust school. The site of the existing school was let by the Council on a long lease to the trust when the school changed status from a community school.
- 3.5 The scheme obtained planning consent in March 2015.
- 3.6 After the project was initially scoped, the design development was progressed with further detailed consideration of the programme for implementation. Further work took place to develop details of the site assembly costs and programme risks. The site assembly costs for the project include the costs of decant of existing tenants and buy-back from leaseholders, as well as replacement of the existing mosque housed in the Burdett Centre. As a separate strand of work on the project, Poplar Harca sought the Council's support in obtaining vacant possession of Printon and Linton Houses by making a CPO (compulsory purchase order) in the event that negotiated agreements are not achieved. The CPO is subject to a separate Executive Decision.
- 3.7 The overall development will be completed in several phases over four years. This allows for the physical constraints of the site, the need to accommodate the school as the roll grows over time, the likely timescale for obtaining vacant possession from all leaseholders and the need to provide permanent

accommodation for the mosque before it can vacate its existing space in the Burdett Centre which is to be demolished. The phasing does add to the overall construction costs because of the length of time the contractor will be on site. The school will occupy the new accommodation in phases. There will be a separate lease and sub-lease of the four phases of accommodation.

- 3.8 The main risk to the overall programme is obtaining vacant possession of Printon and Linton Houses. Poplar Harca have been making progress in offering alternative accommodation to tenants and negotiating buy-backs with leaseholders. At present there are 4 leaseholders where agreement is outstanding. The works are programmed to start before vacant possession is completed but the programme shows Printon and Linton Houses demolition starting from August 2016. Delays to this milestone affect the overall programme and potentially lead to additional costs.

Construction costs

- 3.9 Poplar Harca obtained tenders for the works in February 2015. The Council was not a party to the procurement process. LA officers have been involved in the assessment of the tenders as the costs relate to the school. An independent cost consultant has confirmed that the capital costs are value for money based on benchmarking against comparable schemes and taking account of the extended programme for the implementation. In addition to the contractor's costs, the Council is paying a pro-rata share of all professional fees associated with the design and implementation. The apportionment is based on the school capital costs element of the total contractor costs for construction of the school, housing, mosque and associated landscape works. A project management fee to Poplar Harca is included in the overall costs.

Site assembly costs

- 3.10 As part of the total project costs, the Council is to fund a pro-rata share of the site assembly costs described in paragraph 3.5. The total cost provision for site assembly costs to the Council is as shown in the table below.
- 3.11 Some of the elements of site assembly costs are fixed and have been agreed with Poplar Harca (the apportionment of costs for the mosque replacement and for the landscape enhancements) and some will vary based on actual costs. The main risk of variance is the actual costs incurred in the leaseholder buy-backs and programme delays which may arise from that. A contingency margin is allowed for in the site assembly total shown below.

SDLT Liability

- 3.12 Advice was taken about the appropriate means of payment to Poplar Harca for this transaction where the Council is not party to the procurement. It was agreed that the transaction between the Council and Poplar Harca would be as the payment of lease premiums which will total approximately £12m; the total revised budget includes some professional fees, furniture and

equipment for the school which will be met outside of the arrangement with Poplar Harca. The payment of lease premiums does incur a liability for Stamp Duty Land Tax (SDLT) at a rate of 4%.

Total Costs of scheme

3.13 The breakdown of the costs of the scheme is:

Costs of works to temporary school accommodation in Burdett Centre, incl fees	£655,000
Capital build costs for permanent school accommodation, incl F&E and fees	£9,336,280
Site assembly costs (leaseholder buy backs, tenant relocation costs, mosque replacement, associated landscape works	£2,935,395
SDLT	£480,000
TOTAL	£13,406,675

3.14 The total budget current budget for the school scheme is £9.73m funded from Basic Need capital grant for additional school places. It is recommended that a revised capital estimate of £13,406,675 is adopted. The additional £3,678,037 is to be funded from Basic Need grant.

Comments of the Head of Asset Management

3.15 In considering the costs associated with the delivery of the proposed two form entry primary school, as part of an internal Value for Money exercise officers commissioned an external independent assessment/valuation of the proposed deal structure which demonstrates this to be favourable to LBTH when considered against the alternative of seeking another site on which to build a new school.

3.16 The Red Book RICS Valuation report was completed by Deloitte on 7th August 2015.

3.17 Deloitte have assessed that the costs associated with securing an alternative site and subsequently developing out a two form entry primary school are in excess of the total contribution that LBTH is making to Poplar Harca as part of the development of the subject site.

3.18 Whilst their assessment of the structure of the deal concentrated on the financial elements, it was also noted that there are a number of social and community benefits being delivered as part of the development of the subject site.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 The original estimate for the expansion of the St Paul's Way Trust School was £5.5m, which was subsequently increased to £9.73m in April 2014. This report is requesting an additional £3.67m of funding from the Basic Needs Grant to take the project funding to a total of £13.4m. The current balance of the Basic Needs Grant stands at £4.6m. Therefore there are sufficient monies available at present to cover the additional funding being requested.

5. LEGAL COMMENTS

- 5.1 The report to Cabinet dated 11th September 2013 explained both the legal duty to provide school places which is imposed on the council and the proposals to expand St Paul's Way Trust School. The Council has a duty to secure that sufficient school places are available for primary and secondary education in Tower Hamlets. This obligation arises under section 14 of the Education Act 1996 and the Council proposes to meet the capital costs of the expanded school from the Basic Needs Grant. This school facility is to be built on land belonging to Poplar HARCA and thereafter leased to the Council by way of 4 leases at nil rent for a term of 250 years. It is proposed that the Council will enter subleases with St Paul's Way Trust School for the same term (less three days) for the purposes of providing school places.
- 5.2 The statutory power which enables the council to acquire a long lease of this land is that conferred on it by section 120 of the Local Government Act 1972 and section 123 of the same Act gives the council the statutory power to dispose of the land (in this case by sub-lease) subject to council obtaining the best consideration reasonably obtainable. In the circumstances of this matter the best consideration is nil consideration having regard to the arrangements between the respective parties. The Council is providing a capital sum for the purposes of enabling more school places to be provided. It is proposed that leases will be granted by Poplar HARCA to the Council, and thereafter sub leases granted to the St Paul's Way Trust School on the basis that the site be used for the purpose of a school and that the Council's school admission criteria will be applied. Having regard to the nature of and constraints upon the use of the building under the sub leases it is considered that best consideration for those subleases is nil consideration.
- 5.3 It is proposed that there be 4 separate leases with Poplar Harca since the building of the school will be in phases. There will be a lease premium for each based on the net internal area of each of the buildings., the total of which will be approximately £12M. Poplar Harca have opted to tax the development for VAT purposes therefore each lease will attract VAT payable by the Council. Also Stamp Duty Land Tax will be payable on the VAT inclusive amount of each premium and the probable rate of SDLT is 4%.
- 5.4 The Council is obliged under section 3 of the Local Government Act 1999 to "make arrangements to secure continuous improvement in the way in which its functions are exercised having regard to a combination of economy efficiency and effectiveness. As has been said earlier in this report, these arrangements enable the Council to expand an existing school on land which does not belong to it and which would not therefore ordinarily be available to

the Council. Comments are also made elsewhere in this report, including paragraph 7, about the cost of these proposals compared to the cost of acquiring a new site.

5.5 The consent of the Commissioners to the sub-leases to the School is required because the Secretary of State for Communities and Local Government made Directions on 17th December 2014 pursuant to powers vested in him by Section 15(5) and(b) of the Local Government Act 1999 ("the Directions"). The Directions, at paragraph 4(i) provide that the Council must "take the actions set out in Annex A....". Paragraph 5 of Annex A requires that the Council, until 31 March 2017 "obtain the prior written agreement of the Commissioners before entering into any commitment to dispose of, or otherwise transfer to third parties, any real property other than existing single dwellings for the purposes of residential occupation.

5.6 In the exercise of its functions the Council is required under section 149 of the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination and advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not. The proposal is part of the Council's policy of the expansion of school places, which is beneficial to young people. The public sector equality duty is further considered in paragraph 6 below.

6. ONE TOWER HAMLETS CONSIDERATIONS

6.1 The expansion of St Paul's Way Trust School is part of the LA's strategy to provide sufficient school places for the local population and to provide good quality education for all. Strategies to raise educational attainment, including providing high quality school buildings, support students moving into employment.

6.2 The expansion of schools 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 have been taken into account in the planning of the project.

7. BEST VALUE (BV) IMPLICATIONS

7.1 The construction costs of the new school building have been obtained via a competitive tender process. The comments of the Head of Asset Management above refer to the actions the Council has taken to seek independent advice on the costs attributable to the site acquisition.

7.2 The agreement with Poplar Harca allows the expansion of the school on land which would not otherwise be available to the Council for this purpose. The scheme is part of a wider development to benefit the community.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

8.1 The overall development is subject to an energy and sustainability strategy included with the planning application. The development is to be constructed to current sustainability standards and includes a combined heat and power (CHP) source for all the development including the school, effective water and energy management and gardens areas to support biodiversity. The school accommodation is designed to meet BREEAM excellent standard.

9. RISK MANAGEMENT IMPLICATIONS

9.1 The overall project will be managed by Poplar Harca. The Council and the school will remain closely involved in the project progress review during implementation.

9.2 The risk of potential delays to the programme by failure to secure vacant possession is being addressed by the proposed CPO referred to above and which is subject to a separate Executive Decision.

9.3 Recent Government legislation has placed severe pressures on the business plans of Registered Housing providers. The combination of the removal of the rent convergence mechanism from 2015-16, the 1% per annum rent reduction that must be implemented for each of the four years from 2016-17, and the extension of the Right to Buy to all social housing tenants means that providers are facing significant uncertainty in relation to future resources. It is therefore essential that the Council's interests are protected as part of any agreements entered into with external partners.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

10.1 There are no specific implications arising.

11. SAFEGUARDING IMPLICATIONS

11.1 Ensuring the supply of good quality accommodation for school places contributes to the safeguarding of children.

Linked Reports, Appendices and Background Documents

Linked Report

- NONE

Appendices

- NONE

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

- NONE

Officer contact details for documents:

N/A