


Commissioner Decision Report 15th April 2015	 TOWER HAMLETS
Report of: Robert McCulloch-Graham, Corporate Director ESCW	Classification: Unrestricted
Early Learning for Two-year Olds Capital Process	

Originating Officer(s)	Jo Green
Wards affected	All wards
Key Decision?	Yes
Community Plan Theme	A Prosperous Community

Executive Summary

Through the Early Learning for 2 year olds programme (EL2), all local authorities in England have a statutory duty to ensure the provision of free part-time early education for the 40% most disadvantaged two-year olds from September 2014.

There are insufficient childcare places in Tower Hamlets for the Local Authority to meet this duty. Therefore it has a capital programme to increase provision across the borough.

Recommendations:

The Commissioners are recommended to:

Agree the allocation of awards on the basis of the process set out in this report and to delegate to the responsible Corporate Director the authority to enter into agreements to give effect to that, and for a report to be sent to the Commissioners on a quarterly basis with details of the awards made.

1. REASONS FOR THE DECISIONS

The Local Authority has a statutory duty to ensure the provision of free part-time early education for the 40% most disadvantaged two-year olds. There is a low take-up in Tower Hamlets of the offer combined with insufficient places available in the borough.

The Local Authority has a duty to support the development of new childcare places and was awarded capital funding from the DfE for this purpose. In addition, Schools Forum has made a revenue contribution to capital to assist this development. Consequently, an agreed process for the allocation of this funding is required.

2. ALTERNATIVE OPTIONS

- 2.1 An alternative option is to do nothing. However, it is very likely that the Local authority will not meet its statutory duty if it does not support the development of new childcare provision.

3. DETAILS OF REPORT

3.1 Purpose of Proposed Funding

- 3.1.1 Through the Early Learning for 2 year olds programme (EL2), all local authorities in England have a statutory duty to ensure the provision of free part-time early education for the 20% most disadvantaged two-year olds from September 2013 and the 40% most disadvantaged two-year olds from September 2014.
- 3.1.2 The offer is for 570 hours of free early education for each eligible two year old. If taken over 38 weeks in a year, this represents 15 hours per week. The policy is an extension to the existing universal entitlement for three and four year olds.
- 3.1.3 In Tower Hamlets some 2,297 children are eligible for an Early Learning for Two Year Olds place. At the beginning of February 2015, 639 children are in placements. This level of take-up places Tower Hamlets as the lowest performing borough in the country in terms of percentage take-up. (Further detail available in background documents from the DfE: *Tower Hamlets.ppt* and *Letter to LAs on 2yoo March 2015.pdf*).
- 3.1.4 An allocation of £1.3m capital funding has been made to allow the borough to support childcare providers in adapting, extending and potentially opening new premises in order to increase the number of places available for funded two year olds.
- 3.1.5 The EL2 Capital Global Works Programme was approved by Cabinet on 10th of April 2013. The following is the relevant excerpt from the report:

6.25 *Early Education Provision*

6.26 *Free early education will become a statutory entitlement for eligible two year olds from 1 September 2013, with the local authority having a duty to secure provision. The Department for Education has awarded Tower Hamlets £1.3m of capital funding in 2012-13 as a contribution to local authorities' capital budgets. Revenue funding for free early education for two year olds will form part of the Dedicated Schools Grant (DSG) from 2013-14.*

6.27 *The Early Years Service will work closely with childcare providers to identify potential capital development projects that fit with the strategic aims of the funding programme. Once projects are identified, the providers will be supported in refining and developing their projects.*

6.28 *Once suitable projects have been identified formal approval will be requested either by delegated authority or Cabinet.*

- 3.1.6 As Councils had been block funded for the revenue they received from the DfE, and as many Councils were not meeting their placement targets, the DfE made it known that they would support revenue contributions to capital from revenue underspends. In light of this a £2.5m revenue contribution to capital from the Dedicated Schools Grant (DSG) was proposed to and approved by Schools' Forum. This was then ratified by the DfE in June 2014 (letter from Dfe available as background document *Tower Hamlets 286- capital approval.doc*). The DSG budget is included in the budget report which was sent to Cabinet on the 4th February 2015.
- 3.1.7 The EL2 Capital Programme Management Group has been working to develop potential capital projects with partners from the private and voluntary sector to increase the number of childcare places available for two-year olds funded through the EL2 programme.

3.2 Application Process

- 3.2.1 An Information Day for the funding programme was held in June 2013. This was advertised in the local media and in the national trade press. Following this, the Council received grant applications for a number of projects. A further event is planned in the summer term of 2015, which is intended to initiate a further round of grant applications. There is a termly forum for Maintained, Private, Voluntary and Independent (MPVI) childcare providers, and the capital funding is discussed at every meeting.
- 3.2.2 All projects recommended for grant funding have been identified and developed by officers from the Early Years Service in conjunction with the applicant childcare provider in order to ensure their strategic fit with the EL2 Capital funding programme. Once the proposed project outline has been fully developed, potential projects are considered by the EL2 Capital Programme Management Group.
- 3.2.3 The EL2 Capital Programme Management Group is comprised of the Early Years Lead Officer, the Early Years Childcare Quality Manager, and the Early Years Childcare Sufficiency Manager. The Group reviews potential capital projects against their potential fulfilment of the programme criteria (refer to paragraph number).
- 3.2.4 If the EL2 Capital Programme Management Group agree that a proposed project sufficiently satisfies the criteria of the capital programme (see Section 3.3 below) they will make a recommended funding award along with any conditions attached to the recommended award; these conditions may including, for example, any financial contribution required from the childcare provider, the number of places they must provide, number of years the childcare must operate).

- 3.2.5 This recommendation is then taken to the EL2 Strategic Board, chaired by the Service Head for Learning and Achievement, for approval.
- 3.2.6 The childcare provider is required to accept the recommended award formally by signing an initial acceptance. Formal approval is then sought from the Service Head, the Directorate Finance Manager and the Corporate Director of Education, Social Care and Wellbeing.
- 3.2.7 The overall capital budget was approved by Cabinet on 10 April 2013. Members are not involved in the decision process for individual projects, unless the grant is greater than £250,000, in which case the project will be sent to the Commissioners for approval.

3.3 Capital grant criteria

3.3.1 Applications are assessed against the following criteria:

- The number of new childcare places, specifically new childcare places for children funded through the Early Learning for Two Year Olds programme that will be created as a result of the recommended grant award.
- The type of new childcare places to be created – i.e. full daycare/ sessional.
- Value for money – the cost per new childcare place for funded two year olds.
- The quality of the building being developed through the recommended capital funding award; as well as any issues which need to be resolved through the proposed capital project.
- Ownership/lease/ rental arrangements i.e. how many years is the childcare provider guaranteed to remain on the site?
- The location of the childcare provision in terms of: the local population; local transport links; how many 2,3 and 4 year olds live in the area; what other childcare provision exists in the local area.
- The impact that the proposed capital development project would have on neighbouring childcare provision.
- The evidence of need for the proposed capital development project.
- The transitional plans the childcare provider has for continuing operation of childcare provision while the capital development works are being carried out.

- The quality of the childcare provision, measured through: findings from the Early Childhood Environment Rating Scale (ECERS)/ Infant Toddler Environment Rating Scale (ITERS); the findings of the childcare provider's most recent Ofsted inspections; as well as feedback from Childcare Development Officers working with the childcare provider.
- The childcare provider's financial position and an assessment of their sustainability.
- Assessment of the childcare provider's business plan for the proposed childcare provision.
- The financial contribution that the childcare provider will make to the project costs.
- Whether the childcare provider is up to date with its returns to the Early Years Service / LBTH?
- Whether the childcare provider is administering the Nursery Education Fund – Free Entitlement for 3 and 4 year olds correctly and whether there have been any issues, difficulties or complaints with the way they are administering it.

3.4 Eligibility

3.4.1 Grant funding is only awarded to eligible childcare providers. A childcare provider is considered to be eligible if:

- their childcare provision is registered with Ofsted or as a new provider they are in the process of obtaining Ofsted registration;
- they will need to show how they will meet the Early Years Foundation Stage (link to *Statutory framework for the early years foundation stage* in Appendix 6)
- they are able to provide proof that they have appropriate premises (evidence would include: deeds, lease, rent agreement); if the childcare provider does not own the building they have the permission of the owner to carry out the proposed capital works.
- the childcare provision must be located within the London Borough of Tower Hamlets.

3.5 Award amount and payment

3.5.1 The amount of the recommended funding award is based on consideration of:

- the number of new childcare places that will be created through the project and ensuring that this is proportionate to the funding awarded

- the financial position of the childcare provider
- the value of their financial contribution to the project costs
- the scale and nature of works required
- the need for childcare places in the area

Projects are benchmarked against each other to ensure fairness in funding awards. The EL2 Capital Programme Management Group and the EL2 Strategic Board give professional challenge to projects recommended for funded.

- 3.5.2 Projects vary enormously: from the purchase of age specific equipment, to minor betterment of facilities, to major refurbishment which may or may not include significant structural works, to new builds. To date, given this diversity, no formula has been used to allocate funding awards. This will be revisited as part of a periodic review of processes as the programme develops.
- 3.5.3 Funding awards follow a two stage process. When the projects are advertised, a childcare provider is required to provide an estimate of costs in the first instance which it believes to be reasonable through an architect or quantity surveyor. At this point we will provisionally reserve the capital estimates provided by the childcare provider. We will then subject those estimates to competition in order to establish whether the childcare provider's estimates are value for money. The tender process is carried out by the proposed grant recipient and we seek evidence from them in this regard.
- 3.5.4 If the tender comes in lower than the childcare provider's estimates, the actual grant award will be reduced accordingly. If the tender comes in higher we would ask the childcare provider to revisit the scheme to see if savings could be made; if not, and more funding is requested, then the whole project would have to be reassessed if an increased amount of funding were to be awarded.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 The capital programme for 2015/16 includes £1.3m for the borough to support Early Learning childcare providers to fund capital works to their premises. The DSG budget for 2014/15 and 2015/16 also includes a revenue contribution to capital of £2.5m for the Early Learning for 2 Year Olds programme, the DSG budget is approved through the Tower Hamlets Schools Forum.

5. LEGAL COMMENTS

- 5.1. The power of the commissioners to make decisions in relation to grants arises from directions made by the Secretary of State on 17 December 2014 pursuant to powers under sections 15(5) and 15(6) of the Local Government Act 1999 (the Directions). Paragraph 4(ii) and Annex B of the Directions together provide that, until 31 March 2017, the Council's functions in relation to grants will be exercised by appointed Commissioners, acting jointly or severally. This is subject to an exception in relation to grants made under section 24 of the Housing Grants, Construction and Regeneration Act 1996, for the purposes of section 23 of that Act (disabled facilities grant).

- 5.2. The Council is required under the Childcare Act 2006 to secure, as far as reasonably practicable, that there is sufficient childcare provided in Tower Hamlets to meet the relevant needs of parents. This is for parents who require childcare in order to enable them to take up work or to undertake education or training which could assist them to obtain work. Childcare means any form of care for a child and includes education and other supervised activity.
- 5.3. In determining the sufficiency of childcare in Tower Hamlets, the Council may have regard to childcare available outside of Tower Hamlets and is required to have regard to: the provision of childcare in respect of which the childcare element of working tax credit is payable or for which childcare costs may be included in the calculation of universal credit; and the provision of childcare suitable for disabled children.
- 5.4. The Council is further required under the Childcare Act 2006 to secure that prescribed early years provision is available free of charge for specified categories of children under school age. Early years provision means the provision of childcare for a child under the age of five. The Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2014 (“the Free Provision Regulations”) provide that children entitled to free early years provision from the Council are two year olds who are eligible children and 3 year olds. A child is eligible if he or she falls within one of seven prescribed categories, which include children entitled to free school meals, looked after children and children with special educational needs.
- 5.5. The Childcare Act makes clear that although the Council’s obligation is to secure the provision of sufficient childcare in Tower Hamlets, this need not be actually provided by the Council. Pursuant to section 8 of the Childcare Act, the Council may assist any person who provides or proposes to provide childcare and may make arrangements with any person to provide childcare. The assistance which the Council may provide to a childcare provider and the arrangements which the Council may make for the provision of childcare include the giving of financial assistance.
- 5.6. In discharging its duties to provide childcare and free early years provision, the Council must have regard to guidance given by the Secretary of State, reference to which is made in the body of the report. When planning to meet these obligations, the Council must be mindful of its other obligations under the Childcare Act 2006, which include the following –
- The Council is required to improve the well-being of young children in Tower Hamlets and to reduce inequalities between young children in specified respects (which include education, training and recreation) (section 1(1)).
 - The Council is required to make arrangements to secure that early childhood services in Tower Hamlets (which include early years provision) are provided in an integrated manner which is calculated to

facilitate access to services and maximize the benefit of those services to parents, prospective parents and young children (section 3(2)).

- The Council's arrangements for securing early childhood services must, so far as is reasonably practicable, include arrangements for sufficient provision of children's centres to meet local need. A children's centre is a place managed by or on behalf of, or under arrangements made with, the Council through which early childhood services are made available and activities provided for young children.

5.7. The Council has a duty under 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. This is referred to as the Council's best value duty. The report states that value for money will be one of the considerations in determining whether to award a grant and, if so, the amount of the grant. This is to be tested by requiring applicants to submit their estimates to some form of competition and by an application of the criteria listed in paragraph 3.5.1 of the report.

5.8. The criteria listed in paragraph 3.5.1 of the report provide a broad framework within which to assess grant applications. This would leave a substantial area of discretion for the corporate director to determine whether a grant should be awarded and in what amount. This provides flexibility, which can be conducive to delivering value for money, but may have a reduced level of transparency which has the potential to impact the integrity of the decision-making process. This carries with it some risk, which is proposed to be addressed in part by the submission of reports to the Commissioners on awards made. In the absence of detailed guidance, issues of consistency may arise in relation to the exercise of discretion, which may provide a basis for complaint and challenge.

5.9. The Council must also have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who don't (the public sector equality duty). A proportionate level of equality analysis is required in order for the Council to comply with this duty.

6. ONE TOWER HAMLETS CONSIDERATIONS

6.1 The implementation of the EL2 capital strategy is part of the LA's strategy to improve achievement by improving outcomes for young children

6.2 The expansion of childcare provision under the capital programme is necessary to ensure the Council meets its legal obligation to secure sufficient places for eligible two-year olds in Tower Hamlets.

6.3 An independent study of the implementation of the EL2 programme was carried out by Cordis Bright at the end of 2014. The study involved with parent/carers, childcare settings, community groups and staff. The main

findings for the study were that the location of childcare was one of the biggest barriers to accessing a placement. This is being addressed through detailed mapping of supply and demand, and planning for future provision.

The study also noted that there is a need to ensure that there are sufficient EL2 spaces in locations in which parents require them, and that specialist provision is available which fulfils the language, cultural and religious needs of BME and/or EAL families. This is being addressed by working closely with providers from different community groups in the borough.

7. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 7.1 The proposed capital works aim to improve and preserve the quality of the building stock. Sustainability considerations are applied as far as possible to design and materials used.
- 7.2 Many of the projects in this programme will be bring back into use vacant buildings.

8. RISK MANAGEMENT IMPLICATIONS

- 8.1. The individual projects will be closely monitored to ensure that programmes are completed on time and within the budget provision.
- 8.2. All awards are subject to a clawback agreement. If recipients of grants close within the clawback period, they have a contractual obligation to pay back funding on a pro rata basis.
- 8.3. For awards of:
 - up to £25k 5 year clawback period
 - up to £50k 10 years
 - up to £100k 15 years
 - over £100k 20 years
- 8.4. The clawback period may be adjusted upwards where an organisation has had multiple awards.
- 8.5. Match-funding is a required element of the programme as it gives a much greater sense of ownership in the project by the grant recipients. In addition, it also provides an incentive to keep costs down. If costs come in under the estimate, the proportion of match-funding remains the same and so the grant recipient will contribute less. If costs come in over the estimate, then that is the responsibility of the grant recipient.
- 8.6 Our expectation is that around 25% will be necessary from the grant recipient. A greater contribution will be required if the organisation has significant unallocated reserves in relation to the amount of the proposed award and the on-going costs of the organisation. We would also expect groups to seek

funding from other bodies if they do not have the funds themselves. We would consider a combination of the following for a reduced contribution:

- a group having very limited reserves
- limited chances of funding being raised from other sources.
- the size of the project – a smaller project would have a lower financial risk
- a strong track record in the childcare business, therefore presenting lower risk
- a strong business plan
- ownership of building – an LBTH owned building is likely to present a lower risk

8.7 Payments are made in three tranches: one third up front, one third mid-project and with proof of expenditure, and final third on completion again with proof of expenditure. Grant is only paid for actual expenditure. If the project comes in under budget, then funding is reduced accordingly.

9. CRIME AND DISORDER REDUCTION IMPLICATIONS

9.1 Early Intervention breaks the cycle in which people who grow up with dysfunctional behaviours and lifestyles may transmit to their children, who, in turn, transmit them to their grandchildren and so on. Early Intervention offers a real chance to break this destructive pattern and helps raising children to become good parents and carers in turn.

10. EFFICIENCY STATEMENT

10.1 The capital works funded through this programme will seek to improve energy efficiency and reduce ongoing maintenance. A number of council buildings which are currently unoccupied will be brought back into use and generate income for the council.

11. Safeguarding Implications

11.1 Applicants have to make a declaration that they have not been disqualified from working with children.

11.2 The Local Authority reserves the right to undertake DBS at any time during contract period.

11.3 If Ofsted refuse registration on the grounds of unsuitable persons or disqualified persons the funding will be have to be repaid in full.

11.4 Each provision is allocated a Childcare Development Adviser to continue to help develop their provision, meet the necessary requirements and good practice.

- 11.5 All providers must have a safeguarding policy and procedure, this is checked for suitability and to ensure it complies with the Tower Hamlets Local Safeguarding Children Board (LSCB) procedures by the Early Years Childcare Development Adviser.
- 11.6 All early years providers must have a designated person for safeguarding, first aid and inclusion.
- 11.7 The designated safeguarding person for each provision must attend Tower Hamlets safeguarding training.
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Linked Reports, Appendices and Background Documents

Linked Report

- None

Appendices

None

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

- 1 Early learning for two-year olds - Tower Hamlets: *Tower Hamlets.ppt*
- 2 Ministerial letter: *Letter to LAs on 2yoo March 2015.pdf*
- 3 Letter from the DfE, June 2014: *Tower Hamlets 286- capital approval.doc*

Holder of background documents: Jo Green, Childcare Sufficiency Manager, Early Years

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