


<b>Commissioner Decision Report</b> 30 <sup>th</sup> September 2015	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Corporate Director, Resources	<b>Classification:</b> Unrestricted
<b>Emergency Funding Application Account 3 – Additional Information</b>	

<b>Originating Officer(s)</b>	Zena Cooke
<b>Wards affected</b>	All
<b>Key Decision?</b>	No
<b>Community Plan Theme</b>	One Tower Hamlets

### Executive Summary

An application for emergency grant funding submitted by Account3, a local voluntary sector organisation was originally considered by the Commissioners at their meetings in June and July. Further information was requested, but the information provided was considered insufficient and the application was rejected.

A review of the time taken by the council to make decisions regarding capital funding to enable the expansion of early years' provision has been undertaken and confirms that the delay in decision making impacted on Account3's ability to generate sufficient income from their planned expanded early years' provision and contributed to a gap in their funding.

### Recommendations:

The Commissioners are recommended to:

1. Approve the award of £19,400 for Emergency Funding for Account3 on the basis of the additional information provided regarding the delay in the funding allocation for capital funding.
2. Council officer's work with Account3 to ensure the organisation has a sustainable business plan in place by the end of March 2016.

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

- 1.1 Account3 submitted an application for emergency funding that was originally considered by the Commissioners at their meeting on 3<sup>rd</sup> June 2015. The decision was deferred pending further information that was subsequently provided to the Commissioners at their meeting on 15<sup>th</sup> July 2015. The additional information provided was not considered sufficient to enable the emergency funding to be awarded.
- 1.2 Further review of the reasons for the emergency funding has highlighted the impact of a delay in decision making relating to the allocation of capital funding that resulted in the organisation's inability to generate additional revenue income that was intended to replace the reduction in Mainstream Grant funding.

## **2. ALTERNATIVE OPTIONS**

- 2.1 The additional information could be rejected as insufficient to enable the decision on emergency grant funding, however, the information regarding the timing and sequence of decision making and delays has been confirmed by officers as correct.

## **3. DETAILS OF REPORT**

- 3.1 Account3 has received Mainstream Grant funding for a number of years. The amount awarded for the 20012/15 MSG programme totalled £143k, with £50k per year awarded from the 2015/2018 MSG programme. The organisation has reviewed its operations to accommodate the reduction in funding, some of which funds its core activities, covering staffing and accommodation costs.
- 3.2 Account 3 provides a range of programmes and is funded by a number of agencies with match funding from fund raising activities. One of the core services provided by Account3 is early years' provision for 2 and 3 year olds. Early years' provision is in high demand in the borough and expanding the number of places for 2 and 3 year olds was considered a sustainable source of revenue income that would address the reduction in Mainstream Grant funding.
- 3.3 The Early Learning for Two Year Olds Capital Programme was approved by the Commissioners on 27<sup>th</sup> May 2015. Account3 were to receive £62,334 to undertake the necessary capital works to create a total of 60 sessional childcare places of which, a minimum of 36 are to be for Early Learning 2 year olds. Account3 were required to provide match capital funding of £20,000. The capital funding is being paid to Account3 in three tranches as the building works is undertaken, progressed and completed.

- 3.4 The decision regarding the capital funding was originally due to be made to enable Account3 to start operating the expanded early years' provision in September 2014. The delay in the decision to approve the capital funding has delayed Account3's ability to generate additional income from the expanded early years' provision, which has resulted in a funding gap for the organisation.
- 3.5 The funding gap primarily relates to the rent for the building Account3 occupies. The building is large and the delay in the decision regarding the capital funding has meant that the building has not been converted to provide the additional nursery provision. The rent per quarter is £14,500 which was expected to be covered by the additional income from September 2014.
- 3.6 The organisation's accounts are now overdrawn as a result of incurring costs that could not be offset and this is impacting on Account3's ability to fund raise as it needs to be able to evidence funds that can be used for match funding, both for capital and revenue purposes. £4,900 of the emergency funding will be used to clear the overdraft.
- 3.7 The original application for emergency funding is attached as Appendix 1 for information. The sum required is unchanged and will enable to organisation to cover its rent and overdraft.
- 3.8 The building works to expand the early years' provision have commenced and should be completed within the next few months. Once completed, the final tranche of capital funding will be paid and the places will be made available for 2 and 3 year olds. This will ensure Account3's financial position is secure and sustainable going forward.

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

- 4.1 The emergency grant funding payment of £19,400 to Account 3 can be met from the existing £161, 000 budget available for emergency funding for 2015/16.

#### **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 There are a number of similarities between the mainstream grants process and procurement of public contracts within the meaning of the Public

Contracts Regulations 2015. The key features which separate the grants process from the need to comply with the requirements of those Regulations are as follows. First, the payment of money by the Council is to reimburse actual costs incurred by the recipient and not profits. Secondly, the Council pays the amount that it deems appropriate from the funds available rather than paying the most economically advantageous bid price. Thirdly, grants typically proceed from an application process rather than a procurement procedure. A feature of the application process is that the applicant requests funding for a project that it has developed, rather than developing a proposal to the Council's technical specification. When implementing the grants programme, the Council must take care to maintain these points of distinction.

- 5.3 To the extent that the Commissioners are exercising powers which would otherwise have been the Council's, there is a need to ensure the Council would have had power to make the grants in question but for the directions. The proposed grant may be supported under a variety of the Council's statutory powers, depending upon the outcomes achieved and the activities supported, and the relevant powers are summarised below.
- 5.4 Section 1 of the Localism Act 2011 gives the Council a general power of competence to do anything that individuals generally may do, subject to specified restrictions and limitations imposed by other statutes. As individuals may provide financial support to community organisations, the general power may support the giving of grants to those organisations, provided there is a good reason to do so and provided there is no statutory prohibition on doing so (which generally there is not). There may be a good reason for giving a grant if it is likely to further the Council's objectives as set out in the Community Plan, or one of the Council's related strategies. Information is set out in the report as to the connection between the proposed theme specifications and the Council's relevant strategies.
- 5.5 The target outcomes of the Children and Young People and Families theme may be supportive of a number of the Council's functions. Without seeking to specify these in a comprehensive way, the following of the Council's general duties seem particularly relevant:
- to safeguard and promote the welfare of children in need in Tower Hamlets and, so far as consistent with that duty, to promote the upbringing of such children by their families, by providing a range and level of services appropriate to those children's needs (Children Act 1989).
  - To make arrangements to ensure that Council functions are discharged having regard to the need to safeguard and promote the welfare of children (Children Act 2004).
  - To provide facilities for recreation and social and physical training and sufficient educational and recreational leisure-time activities for qualifying young people in Tower Hamlets (Education Act 1996).

- 5.6 By virtue of section 111 of the Local Government Act 1972, the Council has power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions. This may involve expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights. This incidental power may support some grants in relation to development of the third sector.
- 5.7 The Council is a best value authority within the meaning of section 1 of the Local Government Act 1999. Pursuant to section 3 of the Local Government Act 1999 the Council is required 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 (the best value duty). When considering whether or not to make funds available for the purposes specified, the Council should consider whether or not this will be consistent with its best value arrangements.
- 5.8 Part of complying with the Council's Best Value duty is ensuring that the Council obtains value for money. The report outlines that the grants process was subject to publication and competition. The evaluation criteria were pre-defined and directed to ensuring that the Council achieves benefits for Tower Hamlets in line with its objectives. Value for money was a specific evaluation criterion. The programmes are to be actively monitored and payments made in line with results. These elements are all designed to achieve compliance with the best value duty. Grants should be supported by agreements that include the requirement for delivery of agreed objectives, monitoring and payment in line with results.
- 5.9 As set out above, the grant should not include a profit element. Grant agreements should reinforce that payments are made on an "as cost" basis and do not include profit. The terms of each grant agreement should provide for open accounting and claw-back of unspent monies.
- 5.10 When determining what support to provide to community organisations, the Council must 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). The Council must undertake an equality analysis to determine the effect on persons due to a change in the grant themes and may need to consult such that it obtains a proper understanding of the nature of the needs of those affected by the changes. The report addresses this in paragraph 6.

## **6. ONE TOWER HAMLETS CONSIDERATIONS**

- 6.1. Awarding emergency funding to local voluntary sector organisations to enable the provision of early year's provision supports the council's One Tower Hamlets community plan theme.

## **7. BEST VALUE (BV) IMPLICATIONS**

- 7.1 The award of emergency grant funding will support the council's priorities in relation to the provision of affordable early year's provision.

## **8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

- 8.1 There are no direct SAGE implications arising from this report.

## **9. RISK MANAGEMENT IMPLICATIONS**

- 9.1 There is a risk that Account3 will be unable to continue without the emergency grant funding. Awarding the funding will enable Account3 to meet their financial obligations, complete the building works and provide an expanded nursery provision that generates additional income that covers its costs.
- 9.2 In order to ensure Account3 avoids the need to secure emergency funding in the future the council will require a sustainable business plan to be in place by March 2016.

## **10. CRIME AND DISORDER REDUCTION IMPLICATIONS**

- 10.1 There are no direct crime and disorder implications arising from this report.

## **11. SAFEGUARDING IMPLICATIONS**

- 11.1 Awarding emergency funding supports the council's safeguarding obligations by enabling the provision of early year's nursery provision.

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

#### **Linked Report**

- None

#### **Appendices**

- Appendix 1 – Account3 Funding Application

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

- Commissioners Meetings 3<sup>rd</sup> June 2015, 15<sup>th</sup> July 2015

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

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