



**Executive
11 April 2011**

**Report from the Director of
Regeneration and Major Projects**

Wards Affected:
ALL

**Authority to allocate primary capital programme funding and
approve the award of a construction contract for the rebuild
of Islamia Primary School**

APPENDIX 1 IS NOT FOR PUBLICATION
APPENDIX 3 IS NOT FOR PUBLICATION

1.0 Summary

- 1.1 This report requests Executive approval to support the award of a contract for construction works at Islamia Primary School, which is currently costed to the value of £6,581,839. The contract is to be between Islamia Primary School/Trustees and the proposed contractor, Morgan Sindall, a contractor from the IESE (Improvement and Efficiency South East) Buildings Work-stream Construction Framework.
- 1.2 The total project cost, including consultancy costs, is estimated by the school's Cost Consultant at £8,855,672 (gross) of which £2,932,000 net (VAT reclaimable by LA) is proposed to be supported from a contribution of Brent Council's Primary Capital Programme (PCP) grant funding, subject to formal approval by the Executive. Other funding streams include Targeted Capital Fund (TCF), Local Authority Co-ordinated Voluntary Aided Programme (LCVAP) and a Governors' contribution as detailed in the table at paragraph 3.8.
- 1.3 The support of the Islamia Primary School build project by Brent Council is accompanied by a number of risks, which are outlined in paragraphs 3.19 to 3.25, with a suggested means of mitigating these eventualities in paragraph 3.25. A Risks Schedule provided by the School's Project Manager for the project is attached at Appendix 3.

2.0 Recommendations

The Executive is recommended:

- 2.1 To agree to the award of a contract by the Islamia School governing body to Morgan Sindall, with a maximum contract value of £6,581,839 for the construction works at Islamia Primary School, in order to provide a new-build 2FE primary school on the existing site. This approval is conditional upon:

- (a) the contract not being awarded until full planning permission having been granted for the scheme under Part 3 of the Town and Country Planning Act 1990; and
 - (b) formal agreement from Partnership for Schools to an extension of time for the Council to spend its proposed contribution to the scheme as set out in paragraph 2.3 below after August 2011.
- 2.2 To note the previous award of a contract between the school and Morgan Sindall for the pre-construction services in the sum of £17,000.
- 2.3 Approve the allocation of £2,932,000 to the scheme from the Council's Primary Capital Programme grant funding allocation, conditional upon the Islamia School governing body complying with the requirement referred to in paragraph 2.1 not to award the works contract until the two pre-conditions (a) and (b) in paragraph 2.1 have been satisfied, and entering into the funding agreement described in paragraph 2.5 below.
- 2.4 To note the risks attached to the allocation of funding to this scheme.
- 2.5 To agree that all Brent Council funding is subject to a funding agreement between the Council and the Governing Body of Islamia Primary School setting out:
- (i) The respective contributions of the two parties;
 - (ii) In the event of any project overspend or shortfall in funding (including due to the clawback of grants by the Department for Education), the governing body will assume full liability for obtaining further funding to complete the works without further recourse to Brent Council;
 - (iii) The works contract shall not be awarded by the governing body until the two pre-conditions described in paragraph 2.1 above have been satisfied;
 - (iv) Appropriate provisions to apply in the event that an application for judicial review is made;
 - (v) The Council funding contributions may only be spent on legitimate education facilities, as defined in government guidance, and not on ancillary facilities that form part of the project;
 - (vi) The spend of PCP monies is profiled against RIBA stages of Work, or against an alternate agreed timeline dependent upon what formal confirmation that Partnership for Schools (PfS) are able to give about when PCP monies need to be spent by;
 - (vii) The Council is not responsible for any shortfall in funding of the project, whether due to inability of the Council to hand over all of the PCP money according to the timeline because of PfS requirements as to when PCP money needs to be spent by, or otherwise. (For the avoidance of doubt, delays to the project such that the Council is not in a position to hand over all of the PCP money according to the timeline will mean that the governing body is liable to meet any resulting shortfall);

- (viii) Full and proper governance arrangements, approved by Brent Council, are established for the project to ensure it is delivered to time and budget and providing for a senior Brent Council officer representation on the project board;
- (ix) The Council reserves the right to review its financial support for the project if the resolution of any Judicial Review regarding the grant of planning permission for this scheme is not completed by an agreed date, or if in the Council's opinion, delays in commencing the project render Targeted Capital Funding at a high risk of clawback .

2.6 To delegate authority to the Director of Regeneration and Major Projects to agree a different award of contract to that outlined in paragraph 2.1 in the event that the finalisation of contract sum by the contractor described in paragraph 2.1 above is not satisfactory.

3.0 Detail

The proposed scheme and its contribution for meeting school places in the borough is as follows:

Proposed Scheme

In September 2006 Islamia was a 1FE Primary School with capacity for 210 pupils. The nearby Avenue School closed in January 2007 with all children on the school roll at that date transferring to the Islamia School. Pupil numbers at Islamia School between 2006 and 2011 are given below:

School Census date	Islamia Pupil No's	Notes
January 2006	196	
January 2007	348	138 pupils transferred from The Avenue School
January 2008	345	
January 2009	338	
January 2010	345	
January 2011	390	'bulge' Reception Class accepted

3.1 In October 2006, Brent Council Executive approved the statutory proposal for the expansion of Islamia Primary School from 1.0 form of entry (FE) to 2FE from Year R to Year 6. This was not accompanied by any physical expansion of the school at the main school site. Effectively, this means that the school is operating as a 2FE in all but Year 3 class, which is currently 1FE; the school has accommodated the additional year classes by a combination of making use of specialist rooms at the main school site and by renting additional space at Winkworth Hall from Brent

Council. The school currently has 390 children across two buildings: the main school site with a capacity for only 210 children and 2 floors at the top of Winkworth Hall which was in 2006 a temporary arrangement. Upon completion of the project the new build Islamia School will have capacity for 420 pupils. From September 2010, to help provide more urgently-needed school places and, at Brent's request, Islamia accepted an additional Reception 'bulge' class, taking its intake to 390. This 'bulge' class was achieved by an additional Reception class being temporarily accommodated in the school's IT suite. At the Council's request and in order to alleviate the pressure on school places Islamia Primary School have recently amended their admission arrangements. For applications for September 2011 intake Islamia have agreed to give priority to Muslim children who live within their catchment area. The catchment area are streets within Brent which are south of the North Circular Road.

The proposed new-build will accommodate the newly created 'bulge' class, enabling it to progress through the school and provide the extra classrooms required for a 2FE school. It will also improve the quality of accommodation through additional SEN specialist provision and innovative landscaped play provision and outdoor learning spaces, a children's gym and the school will be DDA compliant. The Design Team suggests a completion date of May 2012.

- 3.2 As noted in paragraph 3.1, currently, the school operates on 2 sites; the main site and an annexe site at Winkworth Hall. The current accommodation does not provide a suitable learning environment for 390 children. There is a lack of classroom and play space. Some classrooms are of insufficient size for groups of 30 children. There is no play area on the annexe site and the playground on the main site is not large enough for all 390 children. Playtimes need to be staggered and much time is lost due to movement back and forth between the sites. There are also health and safety concerns from crossing busy roads on a daily basis. Staff need to be deployed in escorting children which reduces teaching and learning time. Toilet facilities on the main site are inadequate and the location is unsuitable as they are in the centre of the main building and are the only toilet facilities for children. Due to lack of space, lunch needs to be eaten in classrooms and children spend approximately 90% of the school day in their classroom. There is no ICT room as this has been converted into a reception classroom when the bulge class was established. The annexe is not disability compliant which impacts on the provision for special educational needs. On this basis, it is suggested by the Director of Children and Families that there is a strong educational case to progress the scheme. The scheme will address these serious concerns.

The scheme will involve demolition of outbuildings and will also incorporate new-build works to provide additional capacity at Islamia Primary School to enable the school to accommodate a permanent expansion by 0.5 FE [currently 390 children over two sites from Year R to Year 6] to a 2FE [420 children] Primary School. Brent has sought assurances and evidence of proposed areas of spend from the Design Team that PCP monies and Governors' 10% contribution will fund the delivery of education spaces, as defined by Building Bulletin 99 and not the prayer hall, which is, nevertheless, an essential part of the new-build proposal.

- 3.3 It is anticipated that the building works will enable an enhanced level of the delivery of the curriculum, through the provision of the above mentioned additional

classrooms and facilities which are essentials in helping to raise educational standards for its pupils and staff. Raising standards and the provision of new accommodation and remodelling of existing accommodation at Islamia Primary School will be supported in a number of ways, some of which are listed below:

- Provision of a safe and secure environment
- Expansion of innovative outdoor play area and landscaped areas, which, within the tight site area is not an easy achievement
- Expansion of the school will assist in providing more school places for Brent pupils.
- Create a healthy environment - naturally ventilated, good sized classrooms with easy access to outside space, with shelter, for pupils
- scope for much improved interaction between the reception, Year 1 and Year 2 classes to create an integrated Key Stage One unit
- Provision of natural lighting where possible, good orientation of classrooms
- Environmentally friendly and efficient - the aim is to achieve BREEAM excellence rating
- Provision of minimal loss of 'down-time' i.e travel to core facilities, toilets and containing the school on one site (not currently the case)
- Allow a variety of learning experiences - individual, group, class, year group, quiet spaces internal and external
- Classrooms to support easy access to ICT provision
- Provision of easy access to sports facilities

- 3.4 Subject to necessary approvals being in place, the expansion of Islamia Primary School to a purpose-built 2FE is to be achieved by May 2012 by building a new school on the existing site, to be sited on the area that housed the school's outdated kitchen and dining facilities, car-parking spaces and tarmac playground.

Contribution of the scheme in delivering school places

- 3.5 A report to Executive in August 2010 stated that the Council delivered 120 additional temporary Reception places and 15 permanent Reception places by September 2010 to alleviate the significant shortfall in Reception classes. As noted in paragraph 3.1 Islamia Primary School contributed to that temporary class intake by accommodating 30 Reception places.
- 3.6 The proposed expansion scheme will result in the school accommodating, on a permanent basis, 2FE from Reception to Year 6 pupils.
- 3.7 Islamia Primary School is very popular Muslim school and, by physically expanding to 2FE will offer parents in Brent diversity in school choices and will assist the Council in meeting its statutory duty in providing school places for its children. Islamia Primary School is a voluntary aided maintained school; it owns its own land and is governed by its Governing Body.

Proposed Funding

- 3.8 The project cost is estimated by the school's Cost Consultant at £8,856,408 (gross) of which £2,932,000 net (VAT reclaimable by LA) is proposed to be supported from Brent Council's Primary Capital Programme (PCP) grant. The remaining funding streams include Targeted Capital Fund (TCF), Local Authority Co-ordinated

Voluntary Aided Programme (LCVAP) and a Governors' contribution as detailed in the table below:

Proposed Funding Source	Available Amount £ (gross)
Targeted Capital Fund (TCF)	£3,960,000
Primary Capital Programme (PCP)	£2,932,000
LCVAP	£340,000
LA VAT (reclaimable)	£326,000
Governors' 10% contribution (mandatory)	£755,800
Governors' additional contribution (voluntary)	£524, 608
	<u>£8,856,408</u>

This reflects additional project costs of £599,258 over and above the original scheme value as submitted to PfS. A majority of these costs are to be met from an additional Governors' contribution of £524,608. The school is yet to confirm in writing that this contribution has been secured and will be made available to the project.

3.9 The table below summarises the scheme costs.

Scheme Costs	Amount £ (gross)
Construction Cost Estimate (Building contract not to exceed)	6,582,319
Demolitions/Service Diversions	86,080
Fees: Surveys, Statutory fees, Professional Fees	1,262,872 (tbc)
Furniture and Equipment (Loose F&E, ICT)	565,500
VAT	360,137
Estimated Total Project Cost	<u>8,856,408</u>

Appendix 1 sets out the current projected cashflow for the scheme. This takes into account a number of restrictions on the available funding streams, further details of which are provided below. The works contract for the development of the school will not exceed £6,582,319 subject to assessment of tendered sub-contractors packages that are to be considered, incorporated and recommended in a tender report prepared by its Design Team Project Leader, Turner & Townsend at the end of March 2011.

Target Capital Funding

- 3.10 In May 2009 the (then) DCSF approved a transfer of Target Capital Funding (TCF) of £3.960m to Islamia Primary School which was previously allocated to the former The Avenue School to support the governing body's proposal to build a new-build school on the existing site.
- 3.11 Originally the DFE required that all TCF resources must be spent by March 2011. More recently however DFE have decided in December 2010 that the timeline for expenditure of TCF resources can be extended to March 2012.

- 3.12 Whilst the spend timeline of TCF is now extended to March 2012, PfS has asked the school to confirm that the school will spend at least £1.2m of its TCF monies in by the end of March 2011.
- 3.13 The cash flow at Appendix 1 indicates a TCF spend of the full allocation of £3,960,000 by March 2012 of which £1.124m will be spent by the end of 2010/11. This means that the requirement to spend £1.2m of TCF funding by March 2011 as referred to in paragraph 3.12 will not quite be met. (There will be a shortfall of £0.076m). Turner & Townsend is yet to advise whether any monetary penalties will be placed on the school by PfS as a result of this.

PCP Funding

- 3.14 The scheme includes £2,932,000 of PCP monies. Under the provisions of the PCP grant allocation for 2009-10 to the Council, all PCP monies have to be expended by the end of August 2011. Any unspent allocation at this point would have had to be repaid to the funding body. The cash flow forecast at Appendix 1 indicates that expenditure of the total PCP monies will only be achieved by the end of March 2012. Therefore, until and unless PfS formally agree to an extension of PCP spend, the project has to be considered as unviable.
- 3.15 Turner & Townsend, Programme Managers for the scheme had previously suggested that, in order to avoid the repayment to PfS of PCP monies, additional TCF claims geared for submission in January through to March 2011 be replaced by PCP claims. As can be seen in Appendix 1, this would utilise expenditure of PCP instead of TCF funding from March to August 2011. However, PfS would need to approve the amendment to the timeline of spend on TCF and would need assurances from the school that no TCF monies would be lost as a result.
- 3.16 On this basis, the Executive is requested to approve an allocation of the PCP funding only if a formal extension of the deadline for expenditure can be secured from PfS, such that clawback arrangements would not be implemented. It should be noted that the Council's current capital programme does not include an allocation to Islamia school. If members agree to the recommendations contained within this report, the capital programme will be adjusted accordingly. The impact of this will be to switch funding allocated to other school expansion schemes to other budget heads.
- 3.17 It is likely that full expenditure of PCP monies could be achieved by May 2012.
- 3.18 If for whatever reason, the Islamia project was not to proceed, the Council would seek permission from PfS to allocate the £2.932m PCP grant to supplement its primary expansion programme, which is seeking to deliver 120 primary school pupil places by September 2011, principally funded by Basic Needs Safety Valve resources.

Risks in proceeding with the Project

- 3.19 On the assumption that the Executive agree to the use of Council PCP funding in a way that will secure delivery of this project, there are still a number of risks, as summarised in Appendix 2.

3.20 Firstly, the project does not yet have full planning permission. A resolution to grant planning permission was made by the Planning Committee on 15 December 2010, subject to the completion of a Section 106 Agreement. The benefits under the agreement will include:

- A Community Access Plan, enabling wider community use of school facilities
- Financial contribution towards Highways works to mitigate impact of development and street tree planting
- A requirement that BREEAM 'Excellent Construction Assessment and Certificate is obtained
- The approval and implementation of a School Travel Plan
- A requirement that 20% of the site's carbon emissions are offset through on-site renewable energy generation

The section 106 agreement remains unsigned, but all substantive issues are resolved.

3.21 Secondly and, more critically, there is a significant judicial review risk in respect of procedural issues associated with the planning application process itself. A Pre-action Notice has been received on behalf of a group of local residents, dated 11 March 2011. In the light of this and, on the basis of counsel advice, the resolution to grant planning permission made at the Planning Committee on 15th December 2010 will not be enacted. Rather the application will be re-considered by planning committee in April or May 2011.

3.22 This process will inevitably delay the start on site date for the project, such that expenditure of PCP monies within the expenditure deadline of August 2011 will manifestly not be achieved. To mitigate this risk formal agreement will be sought with PfS to an extension to the funding expenditure deadline, ideally to May 2012.

3.23 As with all capital projects of this scale there is a general risk of project overspend. In the case of this particular project, the Council is not the project owner or the project manager, but rather a funding partner. The Council therefore needs to re-assure itself that full and proper project management arrangements are in place to minimise the risk of project delays and/or overspends and needs to protect itself from any financial liability as a consequence of such delays.

3.24 In order to mitigate these risks it is therefore proposed that the Council enter into a funding agreement with the governing body of Islamia School, to include the following conditions before release of any grant funding:

- (i) The respective contributions of the two parties;
- (ii) In the event of any project overspend or shortfall in funding (including due to the clawback of grants by the Department for Education), the governing body will assume full liability for obtaining further funding to complete the works without further recourse to Brent Council;
- (iii) The works contract shall not be awarded by the governing body until the two pre-conditions described in paragraph 2.1 above have been satisfied;

- (iv) Appropriate provisions to apply in the event that an application for judicial review is made;
- (v) The Council funding contributions may only be spent on legitimate education facilities, as defined in government guidance and not on ancillary facilities that form part of the project;
- (vi) The spend of PCP monies is profiled against RIBA stages of Work, or against an alternate agreed timeline dependent upon what formal confirmation that Partnership for Schools (PfS) are able to give about when PCP monies need to be spent by;
- (vii) The Council is not responsible for any shortfall in funding of the project, whether due to inability of the Council to hand over all of the PCP money according to the timeline because of PfS requirements as to when PCP money needs to be spent by, or otherwise. (For the avoidance of doubt, delays to the project such that the Council is not in a position to hand over all of the PCP money according to the timeline will mean that the governing body is liable to meet any resulting shortfall);
- (viii) Full and proper governance arrangements, approved by Brent Council, are established for the project to ensure it is delivered to time and budget and providing for a senior Brent Council officer representation on the project board.
- (ix) The Council reserves the right to review its financial support for the project if the resolution of any Judicial Review regarding the grant of planning permission for this scheme is not completed by an agreed date, or if in the Council's opinion, delays in commencing the project render Targeted Capital Funding at a high risk of clawback .

3.25 In addition to these headline risks, the school's project management team maintain a detailed project risk register, incorporating Finance and Design issues. This is attached at Appendix 3.

Award of main works contract

3.26 Islamia Primary School's advisory team recommended that a contractor be appointed from an existing Framework Agreement that has already been tendered in accordance with the European Union procurement rules. The IESE Buildings Work-stream Framework for Major Projects (led by Hampshire County Council) is one such Agreement. Officers from the Regeneration and Major Projects department are satisfied that the school have carried out a robust, lawful and thorough procurement process with the assistance of IESE officers.

The IESE Procurement and its Benefits

3.27 In essence, the IESE Framework Agreement was established following an EU-compliant process and any call-off is on the basis of most the economically advantageous tender. The IESE Framework is one to which a number of

contractors have been appointed after testing on minimum standards of economic standing and technical capacity. The framework is structured to provide for traditional procurement using a two-stage design and build contract (ie pre-construction services and then the main build contract). The added value of this IESE procurement route is that it allows for open book accounting with the main and sub-contractors, enabling the Council and appointed consultants to audit the cost management process during the pre-construction and construction phases. Under the IESE Framework rules, it is necessary to run a mini-competition process among the participating contractors to appoint a contractor for the pre-construction phase, and there is no contractual obligation to proceed to contract award until the contract proposals are offered at the end of the construction phase, although that is usually what happens.

3.28 Islamia Trustees therefore decided to proceed with using the IESE Framework.

The process required to be followed by the IESE Framework

3.29 Under the rules of the IESE Framework, the IESE team at Hampshire County Council run an Expression of Interest process to identify relevant contractors on behalf of the participating Authorities, in this case Brent Local Authority, in relation to the required construction works at Islamia Primary School.

3.30 Following an evaluation of the Expressions of Interest, the appointment of a preferred contractor using the IESE Procurement Framework is based on structuring the Mini-Competition Tender Documents around the specific stakeholder and project requirements. It enables the contractor to fully understand these requirements and prepare an initial Draft Execution Plan (DEP) identifying risk and issues within the project. The evaluation criteria scores the DEP in addition to their cost and ability submissions. The transparency of this approach allows the stakeholders and Design Team to fully assess the contractors' competence and suitability to deliver this complex project.

The Expression of Interest process

3.31 All ten IESE Framework Agreement contractors were invited to express their interest against outline project information including their preferred type of work, their relevant experience, capacity and their geographical presence. Seven contractors on the framework chose to express interest and were evaluated.

3.32 The evaluation carried out by Islamia Primary School's advisory team with guidance from IESE is based on the contractors' overall performance (KPIs on finance, quality, programme and satisfaction – information is managed and supplied by IESE managers, that information is provided direct by IESE and sourced from previous Framework projects), capacity and relevance to undertake the project.

3.33 The top four contractors following the Expressions of Interest stage were:

- Kier
- Morgan Sindall
- Willmott Dixon
- Volker Fitzpatrick

Tender process

- 3.34 Following the evaluation of Expressions of Interest, invitations to tender were issued on 14 October 2010 to the four contractors who scored highest and able to enter the mini-competition. The mini-competition was held to enable the selection of a contractor to deliver the pre construction contract.
- 3.35 A full breakdown of the criteria and requirements was issued to the four contractors.
- 3.36 The written tender submissions were evaluated by Islamia Primary School's advisory team; the contractors were awarded marks based on the agreed evaluation matrix, detailed in a tender report, which is to be shared with Brent Council, but précised below.
- 3.37 Interviews were carried out on 18 November 2010 with the top two contractors in accordance jointly evaluated by the Design Team, Project Manager and Islamia Primary School. The primary purpose of the interview was to seek clarification on the understanding of the scheme and the school's requirements based on an agreed schedule of questions applicable to both contractors. The interview confirmed Morgan Sindall's ability to deliver the project within the budget and programme constraints.
- Morgan Sindall 76.2%
 - Willmott Dixon 72.8%
 - Kier 71.5%
 - Volker Fitzpatrick 66.0%
- 3.38 Following completion of the IESE evaluation process, the evaluators recommended that the contract for Pre-Construction Services be awarded to Morgan Sindall who were also appointed as preferred bidder for the main contract. During the Pre-construction Services contract detailed cost information was worked up by Morgan Sindall and issued on 4 February 2011; however, the Design Team have advised that clarification of related documentation will be required before the contract sum is actually agreed, a period which will take until the end of March 2011. Turner & Townsend will duly issue a copy to Brent of the Tender Report incorporating the Q.S's- Appleyards DWB's evaluation of the commercial offer from Morgan Sindall.
- 3.39 Subject to Executive approval to support the appointment of Morgan Sindall as the main contractor it is anticipated that start on site commences on 3 May 2011 (to be confirmed by T&T), subject to closure of a Judicial Review, with delivery of the completed project by May 2012. Morgan Sindall will work with the Design and Client Team from Works Stage RIBA Stage F. In the event that Morgan Sindall are not appointed then the Executive are asked to delegate approval to award to another contractor who tendered as part of the IESE process, likely to be Willmott Dixon as second placed. However this will create further delay as they will then need to work up detailed cost information before award of the full works contract.
- 3.40 By the appointment of Morgan Sindall through the IESE Framework the project benefits from their early input into achieving BREEAM credits at the design stage,

reducing financial pressures during the construction phase to reach the BREEAM requirement.

- 3.41 The form of build contract will be JCT D&B 2005. The indicative works contract sum is expected to be no higher than £6,581,839.

4.0 Financial Implications

- 4.1 It is proposed that a financial contribution from PCP monies be allocated to the Islamia Primary School new-build and expansion scheme up to a total of £2,932,000 plus VAT (reclaimable by LA) of total project costs of £8,856,408 (gross). The Council must ensure that all funding streams are in place, as outlined in the table in paragraph 3.8 and the Council must be satisfied that mitigating measures for associated risks are also in place as noted in paragraph 3.24.
- 4.2 Currently the requirement from PfS is for all PCP expenditure to be achieved by August 2011. It is currently expected that the PCP element is fully spent by March 2012, as per the current cash flow forecast. However, it is noted that the delay in the delivery of the project to date added to whatever time lost may accrue as a result of the Judicial Review, is detrimental to the spend profile. Therefore formal agreement will be sought with PfS for an extension of the expenditure deadline until May 2012. Financial risks are summarised in Appendix 2 and also at Appendix 3.
- 4.3 TCF grant allocated directly to the school is expected to be fully spent by March 2012, in line with the extension of time granted by DFE.
- 4.4 There is a risk that by allocating PCP monies to this scheme the required call on Council Main Programme funding to meet the costs of other ongoing expansion schemes will weaken the Council's ability to finance the delivery of further prioritised expansion schemes to provide a further additional 4FE by 2014.
- 4.5 The report notes that utilising the IESE Framework Agreement facilitates bringing on board a contractor at an early stage of the procurement process.
- 4.6 The Council's Contract Standing Orders state that works contracts exceeding £1,000,000 (High Value Contracts) shall be referred to the Executive for approval. Accordingly, as the indicative contract sum exceeds £1,000,000 and is to not exceed £6,581,839 and is an additional cost to the pre-construction stage management works cost of £17,000 the totals of which is to be funded by TCF monies, PCP monies and Governors' contribution and funding streams noted in para. 3.9, the Executive is hereby being requested to support the award of a construction contract to Morgan Sindall, thus enabling works to start, subject to full Planning Approval, in May 2011.

5.0 Legal Implications

- 5.1 Brent Council has a statutory duty to provide school places where needed; the proposal of the project to enable expansion of the Islamia Primary School's capacity will facilitate the Council in its duty. However, it is acknowledged that supporting the

school's project in terms of PCP monies and, by being a 'participatory' signatory in the award of contract does come with very real risks, as noted in paragraphs 3.19-3.25.

- 5.2 As a result of the Council part-funding the project, the award of the works contract by the school is treated as resulting from a procurement on behalf of the Council. Under Schools' Financial Regulations for procurements on behalf of the Council, the Executive needs to approve the award of contract in addition to the school governing body. However by approving the award by the governing body the Council does not become a party to the works contract and the governing body remain responsible for its delivery and for meeting the Contract Sum set out in the contract.
- 5.3 Should the decision be to support the Islamia School project, the position is that normally a works contract that is above the EU works threshold of £3,927,260 requires the use of an EU-compliant tender process. However there is no need to comply with this where a call-off is made from an EU-complaint framework. The use of framework agreements is permitted within Council Standing Order 86(d) and, provided that there is compliance with EU law and internal rules of the particular framework, individual call offs do not require the following of an individual tender process. However, because the procurement is on behalf of the Council, it is necessary for the Chief Officer, Borough Solicitor and Director of Finance and Corporate Resources to confirm that participation is legally permissible as per Standing Order 86 (d) (ii), each time a call off from another contracting authority's framework is proposed.
- 5.4 The IESE Framework is unusual in how financial evaluation occurs. Rather than a quantitative model, the cheapest tenderer is awarded the highest mark out of 5, with the most expensive tenderer awarded the lowest marks out of 5. While unusual, adopting a particular framework also means using the rules of that framework, so the Islamia Trustees/school had no other way open to it for evaluating price.
- 5.5 This report now seeks to support the award the final stage construction contract, as required under the Council's Contract Standing Orders, where estimated construction works exceed £1,000,000 (High Value Contracts). The indicative main works contract sum is estimated and as not exceeding £6,581,839.
- 5.6 As explained in the body of the report, the main risks in supporting this project are
- the potential for a judicial review of the planning consent, (JR) once this is issued on completion of the s.106 agreement,
 - project overspend, meaning that additional resources have to be found
 - general delay meaning that the various funding streams are not spent by the required draw-down dates.

By use of a funding agreement as described in recommendation 2.5 above, the Council will minimise its exposure to these risks, by both requiring that the works contract is not awarded until the JR issue is resolved and by making the governing body responsible for any shortfall, however caused.

6.0 Diversity Implications

- 6.1 Islamia Primary School is situated in a relatively socially advantaged area, but caters for pupils from a wide socio-economic mix.
- 6.2 Islamia Primary School is a very popular Muslim school and, by expansion to 2FE, will offer parents in Brent diversity in school accommodation available and thereby assist the Council in meeting its statutory duty in providing school places for its children.
- 6.3 An Impact Needs/Requirement Assessment Completion Form is attached at Appendix 4
- 6.4 A Consultation Statement is attached at Appendix 5.

7.0 Staffing/Accommodation Implications (if appropriate)

- 7.1 There are no staffing implications for the immediate purpose of this report.

Background Papers

- Executive reports: 27 May 2008, 23 June 2010, 15 November 2010
- Planning Committee report: 15 December 2010
- Islamia Primary School file

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APPENDICES

- Appendix 1 projected cashflow (not for publication)
- Appendix 2 Risks identified with Islamia Primary School expansion project by Brent Council
- Appendix 3 risk schedule (not for publication)
- Appendix 4 Impact Needs/Requirement Assessment Completion Form
- Appendix 5 Consultation Statement

APPENDIX 2

Risks identified with Islamia Primary School expansion project by Brent Council

Area of Risk	Risk to project	Time-Line	Comment in report
Planning issue	Not yet awarded, as s106 not signed	Subject to school agreeing terms and conditions	Paragraph 3.20
Judicial review	Possible delay of several months	A minimum of 3 months delay	Paragraphs 3.21 and 3.22
Spend of PCP monies	Possible clawback by PfS if not fully spent by a formally agreed timeline	Subject to formal agreement from PfS that PCP monies may be spent post August 2011	Paragraphs 3.14 to 3.18
Spend of TCF monies	PfS may clawback underspend of TCF monies	School to obtain confirmation by end of March 2011 that no monetary penalties are attached to underspend	Paragraphs 3.13 and 3.15
Construction start and completion	Judicial Review is a risk to start on site of main project, therefore endangering spend of all financial streams	Project Manager has profiled a completion date by May 2012, but is dependent on full Planning permission, Judicial review being resolved and availability of funding streams.	Paragraphs 3.20 to 3.23
Project overspend	Project will need to be re-scoped or additional monies secured to enable project to complete	Dependant on draw-down of funds available and timelines attached, in context of identified risks	Paragraphs 3.23 and 3.25