



Cabinet
15 April 2019

**Report from the Strategic Director
of Resources**

**Expansion of Elsley Primary School – Termination of
Design and Build Contract**

Wards Affected:	Wembley Central
Key or Non-Key Decision:	Key Decision
Open or Part/Fully Exempt: <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Part Exempt - Appendix 1 is not for publication as it contains the following category of exempt information as specified in Paragraph 3, Schedule 12A of the Local Government Act 1972, namely: "Information relating to the financial or business affairs of any particular person (including the authority holding that information)."
No. of Appendices:	Appendix 1 – Exempt
Background Papers:	None
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1.0 Purpose of the Report

1.1 This report provides Cabinet with an update on the contractual position on the design and build contract for the expansion of Elsley Primary School and seeks authority to terminate the existing design and build contract.

2.0 Recommendation(s)

That Cabinet:

2.1 Note the current status and contractual position with Lakehouse Contracts Limited on the design and build contract for Elsley Primary School as set out in paragraphs 3.1 – 3.5 of the report.

- 2.2 Approve the termination of the High Value Works Contract with Lakehouse Contracts Limited for expansion of Elsley Primary School.
- 2.3 Note that subject to Recommendation 2.2 above, the Strategic Director of Resources would approve the award of one or more Low and/or Medium Value Works Contracts to enable outstanding works to be completed using powers delegated under the Constitution.
- 2.4 Note that the school is and will continue to be operational whilst the steps outlined in Recommendation 2.2 and 2.3 are taken.
- 2.5 Note that Officers will review options for the recovery of any wasted or additional costs against Lakehouse Contracts Limited as described in Appendix 1.

3.0 **Detail**

Current status and contractual position

- 3.1 The Council entered into a design and build contract with Lakehouse Contracts Limited (“Lakehouse”) for works at Elsley Primary School on 20 May 2016. The contract was subsequently executed on 15 January 2018 at a value of £7,204,089.
- 3.2 Practical completion (PC) of the construction works was certified in early July 2018, subject to the contractor completing a limited scope of outstanding works during the Summer holidays 2018. The majority of these works were not carried out as planned. The contractor cited financial issues as the reason it was unable to complete the works. These works are still outstanding. As PC was certified, no Liquidated and Ascertained Damages (LADs) could be imposed. At PC, some fees were withheld against a schedule of the incomplete works in addition to the retention monies being held by the Council.
- 3.3 Verbally on 20 January and in writing on 23 January 2019 the contractor advised that it was their intention to complete the outstanding works and to provide a programme during that week. Some scheduling information was provided and the work was expected to be completed in February around the half term holiday. Some minor works were completed however the majority remains outstanding.
- 3.4 On the 11 March 2019, there was a hearing at the High Court to determine an application by Lakehouse for administration. Judge Mullen made an administration order in respect of Lakehouse. An administrator for the company, Lane Gary Bednash of CMB Partners UK Limited has been appointed.
- 3.5 The Council is therefore able to terminate the Contract on the basis that Lakehouse is now Insolvent, as defined within the Contract, as it has entered into administration and an administrative receiver has been appointed to manage the company’s property. Cabinet is asked to note the current status and contractual position.

Termination of the high value works contract

- 3.6 The contract is classified as a “High Value Works Contract” under the Council’s Contract Standing Orders and therefore, in accordance with Contract Standing Orders, Cabinet approval is required to terminate. This applies regardless of the amount of work that has already been completed against it or the reason why termination is sought. Cabinet is asked to approve the termination of this High Value Works Contract for Elsley Primary School.

Completion of the outstanding works

- 3.7 The works that were listed as outstanding at practical completion must be completely finished to the satisfaction of the council’s technical advisers. In addition, any defects which have occurred since practical completion must also be rectified. In the context of this being a high value works contract, the remaining portion of works is relatively very small. Further financial detail is provided in Appendix 1.
- 3.8 In February 2019, in anticipation of a scenario where officers had to appoint an alternative contractor whilst the contract remained in place, Cabinet approved waiving Contract Standing Orders to permit a quote process (or a direct award) to select an alternative contractor should other procurement options not permit works to be completed by September 2019. Officers have been working with the project design team to work through the technical, legal and commercial matters associated with this.
- 3.9 The Council will need to enter into one or more “Low and/or Medium Value Works Contracts” to complete the works. Cabinet is asked to note that in accordance with the delegations within Part 3 of the Constitution, the Director of Resources would approve these awards.

Impact on the school

- 3.10 Whilst frustrating for the school that outstanding works have not been completed yet, it is not having an impact on the provision of school places or a significant impact on the day to day running of the school.
- 3.11 As the required works are within an operational school, as opposed to in a segregated construction site, it is necessary to work closely with the school to schedule the outstanding work so it does not negatively impact learning. In practice, this is likely to mean that the majority if not all works will need to take place in school holiday periods.

4.0 Financial Implications

- 4.1 The Council has withheld funds that were scheduled to be released on completion of the outstanding works in addition to the retention figure. These sums are therefore available to use to cover the costs of an alternative contractor completing the works and all other associated works.
- 4.2 The Council also has the benefit of a performance bond on this contract which can be called upon to meet any costs that exceed sums currently retained within the contract.

4.3 Further detail is provided in Appendix 1.

5.0 Legal Implications

5.1 The JCT 2011 Design and Build Contract offers the Council the opportunity to terminate the Elsley Primary School Contract under clause 8.5.1 of Contract, on the basis that Lakehouse is now Insolvent as defined in the Contract, as it has entered into administration within the meaning of Schedule B1 to the Insolvency Act 1986; and an administrative receiver has been appointed to manage the company's property.

5.2 In order to terminate the Contract, the Council must serve a notice on the Contractor. The termination of the Contract takes immediate effect and the Council is free to appoint another Contractor to carry out and complete the works.

5.3 In accordance with Contract Standing Order 113 and Part 3 of the Constitution, Cabinet must authorise termination of High Value Contracts i.e. works contracts worth more than £5 million. The construction contract in respect of Elsley Primary School is classified as a High Value Works Contract.

5.4 Part 3 of the Constitution details that the Strategic Director is authorised to approve the award of Low and Medium Value Works Contracts.

5.5 The Design and Build Contract places a responsibility upon the contractor to address defects that occur in design or workmanship in future years. Lakehouse will be unable to fulfil this obligation. The Council has the benefit of collateral warranties from a number of sub-contractors which can be called upon but it will not have the benefit of an overarching warranty to cover latent defects. As there is no Parent Company Guarantee, this position will not be covered by others. Officers are currently exploring insurance cover for defects liability; a cost which the council will seek to recover under the performance bond.

5.6 Further detail is provided in Appendix 1.

6.0 Equality Implications

6.1 Members are referred to the Equalities Impact Assessment from previous Cabinet reports as outlined below:

School	Cabinet Meeting date	Item	Appendix
Elsley Primary School	24 August 2015	5	13
Uxendon Manor Primary School	24 August 2015	5	4

6.2 The proposals in this report have been subject to screening and officers believe that there are no equality implications arising directly out of the proposals.

7.0 Consultation with Ward Members and Stakeholders

- 7.1 The school is a key stakeholder and has been kept regularly informed of the situation.
- 7.2 Ward members have been advised of the contractual position and that this report setting out the action being and to be undertaken would be presented to Cabinet.

Related Documents

Expansion of Uxendon Manor Primary School and Elsley Primary School – Update and Decisions regarding Design and Build Contracts (Cabinet Report – February 2019)

Report sign off:

ALTHEA LODERICK
Strategic Director of Resources