



Cabinet
11 February 2019

**Report from the Strategic Director
of Resources**

Expansion of Uxendon Manor Primary School and Elsley Primary School – Update and Decisions regarding Design and Build Contracts

Wards Affected:	Kenton, 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	Part Exempt - Appendix 1 is not for publication as it contains the following category of exempt information as specified in Paragraph 3, Schedule 12A of the Local Government Act 1972, namely: "Information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 – Supporting Information
Background Papers:	None
Contact Officer(s): <small>(Name, Title, Contact Details)</small>	Tunde Awofolaju, Capital Project Manager Email: tunde.awofolaju@brent.gov.uk Tel: 020 8937 1318 Cheryl Andani, Capital Programme Manager Email: Cheryl.andani@brent.gov.uk Tel: 020 8937 3227 Nick Ljustina, Operational Director Property and Assets Email: nick.ljustina@brent.gov.uk Tel: 0208 937 5025

1.0 Purpose of the Report

1.1 This report provides Cabinet with an update on the contractual position on the design and build contracts for the expansions of Uxendon Manor and Elsley Primary Schools and seeks authority to undertake certain actions to ensure completion of those works.

2.0 Recommendation(s)

That Cabinet:

- 2.1 Note the current status and contractual position with Lakehouse Contracts Ltd on the two design and build contracts for Uxendon Manor Primary School and for Elsley Primary School.
- 2.2 Note the activities being undertaken to secure completion of the works at Uxendon Manor Primary School under the Parent Company Guarantee.
- 2.3 Delegate authority to the Strategic Director of Resources in consultation with the Director of Legal and HR Services and Chief Finance Officer to terminate the high value works contract for Uxendon Manor Primary School in the event that reliance on the Parent Company Guarantee is not practicable or Officers conclude reliance on the Parent Company Guarantee/s is not in the Council's interest.
- 2.4 Note that Officers are reviewing procurement options for the outstanding works at both schools should it not be practicable or appropriate to secure further works under the Parent Company Guarantee at Uxendon Manor Primary School or under the existing contract at Elsley Primary School.
- 2.5 Approve waiving contract standing orders to permit a quote process or direct award to select an alternative contractor for Uxendon Manor Primary School and for Elsley Primary School should other procurement options not permit works to be completed by September 2019.
- 2.6 Note that subject to Recommendation 2.5 above, the Strategic Director of Resources would approve the award of one or more Low and/or Medium Value Works Contracts should it be required using powers delegated under the Constitution.
- 2.7 Note that Officers will review options for the recovery of any wasted or additional costs against Lakehouse Contracts Limited and/or parent company as described in Appendix 1.

3.0 **Detail**

3.1 **Status of Works and Contractual Position**

Uxendon Manor Primary School

- 3.2 The Council entered into a design and build contract with Lakehouse Contracts Limited ("Lakehouse Contracts") for Uxendon Manor Primary School as part of the Phase 3 Primary School Expansion Programme on 26 January 2017. The contract was subsequently executed on 15 January 2018 at a value of £6,548,332.83.
- 3.3 Completion of the new buildings was due to be delivered under the contract for 10 August 2018 with project practical completion on 26 October 2018. Extension of time claims presented by the contractor (and approved by the Council's Employers Agent) revised these dates to 8 October 2018 and 8 February 2019 respectively.
- 3.4 There has since been significant contractor delay in completion of the works at the site. The sectional completion has not been achieved and the Council has

been deducting Liquidated and Ascertained Damages ('LADs') from sums due to the contractor since the 9 October 2018. Resources on site have been very low and the Council with its Employers Agent has been seeking assurances from Lakehouse Contracts on a range of matters. This has included director level communication and meetings.

- 3.5 The Contractor has attributed the delays it has been experiencing on the project to severe financial difficulties and cash flow problems associated with the recent sale of the construction arm of the company, which has led to non-payment of its sub-contractors. The Contractor's parent company, Sureserve Group plc ("Sureserve") (previously Lakehouse PLC) sold Lakehouse Contracts to a newly registered entity 'Mapps Group Limited' in August 2018.
- 3.6 On 20 January 2019 Mapps Group and Lakehouse Contracts advised that Lakehouse Contracts would be unable to complete the outstanding works on the project.
- 3.7 It is estimated that between 7 and 13 weeks is required to complete the work on the school buildings, with an additional 11 weeks to complete the external works.
- 3.8 The contingency arrangements agreed and implemented with the school have enabled it to function without any impact on educational delivery since the construction delays started. However, the new school buildings would need to be complete prior to the start of Autumn term in September 2019 to prevent further impacts for the school primarily there being insufficient accommodation for the new children to start school.

Elsley Primary School

- 3.9 The Council entered into a design and build contract with Lakehouse Contracts 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.
- 3.10 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 the financial issues noted above. 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.
- 3.11 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 subsequently the work is expected to be completed in February. No formal programme has yet been provided.
- 3.12 Whilst frustrating for the school, the outstanding works not having been completed yet is not having an impact on the provision of school places or a significant impact on the day to day running of the school.
- 3.13 Further detail is provided in Appendix 1.

- 3.14 Cabinet is asked to note the current status and contractual position of the two projects.
- 3.15 Parent Company Guarantee and Available Options to Complete the Works**
- 3.16 As set out in the contract, the Council entered into a Parent Company Guarantee Agreement ('PCG') with Lakehouse PLC (now known as Sureserve Group Plc) (the 'Guarantor') on 25 May 2018 for Uxendon Manor Primary School. Under the terms of the guarantee, the Guarantor must immediately upon the Council's demand, perform and fulfil the obligations the Contractor has failed to comply with.
- 3.17 Given the contractor's failure, Officers have commenced actions to enforce the Parent Company Guarantee for Uxendon Manor Primary School by writing to Sureserve requesting that it takes all necessary actions to resume the construction works within 14 days in accordance with the terms of the PCG.
- 3.18 Cabinet is asked to note the activities being undertaken to secure completion of the works under the Parent Company Guarantee/s.
- 3.19 As an alternative to enforcing the Parent Company Guarantee and in order to complete the outstanding works, the Council is entitled to terminate the Contract. In the event the Council chooses to do this, it could then choose to procure another contractor to complete the outstanding works and it would be entitled to recover its costs from Lakehouse Contracts, or Sureserve if required. To be clear the contract cannot be terminated whilst the PCG is being enforced and no other contract can be awarded unless or until the existing contract is terminated.
- 3.20 Both contracts are classified as "High Value Works Contracts" 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 delegate authority to the Strategic Director of Resources in consultation with the Chief Finance Officer and the Chief Legal Officer to terminate the High Value Works Contract for Uxendon Manor Primary in the event that Sureserve cannot / will not honour the Parent Company Guarantee or Officers conclude reliance on the Parent Company Guarantee is not in the Council's interest. Delegating authority will prevent delay in progressing matters.
- 3.21 Unlike Uxendon Manor Primary School, there is no PCG for Elsley Primary School (there is a performance bond instead). As the Elsley Primary School contract is now in the Defects Liability Period (post – practical completion) the contract allows for the Council to procure an alternative contractor to complete the outstanding works without terminating the contract and to deduct the sums required to do so from Lakehouse Contract's final payment.

Re-procurement

- 3.22 Given the current level of uncertainty, it is appropriate that officers continue to explore the alternative procurement options to secure the completion of works

on site, especially at Uxendon Manor where the work programme is longer and has greater impact. Cabinet is asked to note this activity and approve 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.

- 3.23 In the event that Sureserve cannot / will not honour the Parent Company Guarantee or Officers conclude reliance on the Parent Company Guarantee is not in the Council's interests, 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. Further detail is provided in Appendix 1.

4.0 Financial Implications

- 4.1 The Council served a Non-Completion notice on 9 October 2018 on the Contractor for works delays at Uxendon Manor Primary School. Liquidated and Ascertained Damages ('LADs') are currently being deducted pursuant to clause 2.29 of the amended JCT Design and Build 2011 Contract in respect of the two sections of the works. The Council has incurred other losses in respect of these delays and the current contractual position. Sureserve has been advised of these losses as the Council is entitled to recover them.
- 4.2 In the event of contract termination, following completion of the works and making good defects by another contractor, the Council would have the opportunity to reclaim from Lakehouse Contracts the amount of expenses incurred in the re-procurement and appointment of the new contractor and any direct loss or damage caused to the Council for which the Contractor is liable; whether arising out of the termination or otherwise.
- 4.3 Project expenditure was forecast to be fully spent by 2018/19, however these issues and delays mean that some expenditure will now be incurred in the 2019/20 financial year.
- 4.4 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 Uxendon Manor Primary School Contract under clause 8.4 of the JCT terms, if before practical completion of the works, the Contractor fails to proceed regularly and diligently with the performance of its obligations under the Contract.
- 5.2 In order to terminate the Contract, the Council must first serve a notice on the Contractor specifying the default (i.e. details of the failure to proceed regularly and diligently with the works). If the default continues for a further 14 days, the Council may serve a notice of termination on the Contractor. The notice of termination may only be served on the Contractor within 21 days following the expiry of the 14 day period. Upon serving a valid termination notice, 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 Uxendon Manor Primary School is classified as a High Value Works Contract. As detailed in paragraph 2.5, Cabinet is asked to delegate such authority to the Strategic Director of Resources in consultation with the Director of Legal & HR Services and the Chief Finance Officer.
- 5.4 Contract Standing Order 96 provides for contracts below the EU threshold, tenders should be invited in accordance with Contract Standing Orders using a single or two stage tender process. Contract Standing Order 84(a) however provides that subject to any requirements in the European Procurement legislation for below threshold contracts, Cabinet may agree an exemption from the requirement to procure where there are “good operational and/or financial reasons” for doing so. For the reasons detailed above and in Appendix 1, it is not considered that waiving Contract Standing Orders would constitute a breach of domestic and EU legislation.
- 5.5 Part 3 of the Constitution details that the Strategic Director is authorised to approve the award of Low and Medium Value Works Contracts.
- 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 schools are key stakeholders and both have 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

Cabinet Report (12 December 2016): Phase 3 Permanent Primary School Expansion Programme – Update on Design and Build Contracts

Report sign off:

ALTHEA LODERICK
Strategic Director of Resources.