Brent	**Cabinet** **15th July 2019**
	Report of the Interim Finance Director

Financing the development United Colleges' Wembley site

Wards Affected:	Wembley, Willesden Green
Key or Non-Key Decision:	Key
Open or Part/Fully Exempt: (If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)	Open
No. of Appendices:	None
Background Papers:	N/A
Contact Officer(s): (Name, Title, Contact Details)	Minesh Patel Interim Finance Director Email: minesh.patel@brent.gov.uk Tel: 020 8937 4043 Olga Bennet Head of Finance Email: olga.bennet@brent.gov.uk Tel: 020 8937 3337

1.0 Purpose of the Report

1.1. This report considers how the Council can help facilitate the enhancement of post 16 educational provision and development in Brent by the provision of a loan of up to £50m to United Colleges Group ("United Colleges") given their wish to develop modern newly constructed facilities in Wembley Park. This loan is required as "bridging" finance to enable the project to proceed. The expectation would be that all of the Council's principal loan plus interest would be recovered. As with any project, there are also risks which should be considered, and it might be possible to share these risks by attracting finance from other parties such as Homes England. The remaining risk to the Council ought to be considered alongside the significant social and economic benefits that facilitating the development would be expected to bring.

1.2. The background to the report sets out the benefits of the proposal more fully, but in summary providing the loan, on properly commercial terms, would enable a series of developments to proceed at Wembley Park and Willesden. The end result of these developments would see United Colleges moving into modern newly constructed facilities on the site currently occupied by Network Homes, enabling it to deliver more post 16 academic and vocational education places in the borough. This would also substantially enhance Wembley Park as a place, providing greater mix to the current offer as well as a significant boost to the local economy.

1.3. The council's Borough Plan sets out ambitions to create 'A future built for everyone, an economy fit for all'. This includes the need to improve the skills and opportunities available to the residents of the borough in order to access higher value jobs and incomes.

1.4. Approximately 1,500 new homes would be provided at Willesden Green, with a further 250 at Wembley Park, contributing significantly to the supply in the borough and so alleviating the housing pressures generally that many residents face and providing a much-needed way of reducing the number of families in temporary accommodation or other acute housing need. The planning process would be used to determine the proportion of these that would be affordable.

1.5. The development will also create substantial employment opportunities and ancillary financial benefits for the Council by way of CIL receipts. It is therefore clear that the development would not just be consistent with the Council's overall aims and objectives, as set out in the borough plan, but would make a substantial contribution towards their achievement.

1.6. In general terms (and as set out in more detail throughout the report) the scheme is planned mainly to be financed from the receipts from Quintain's purchase of United Colleges' land for private housing.

1.7. United Colleges have approached the Council for financial support in the form of a bridging loan of up to £50m. The reason for this is that some of the costs will be incurred before the anticipated sale receipts, and that temporary loans or 'bridging' finance will therefore be required.

1.8. United Colleges has not been able to secure funding from commercial sources because it is seeking a loan agreement further in advance than standard terms. United Colleges are seeking assurance that they will have access to the necessary funding before entering into binding commitments with Quintain.

1.9. It is within the Council's legal powers to make such a loan, and the possibility of it was envisaged within the budget set on 25 February 2019 (see Appendix E of that report). However, the Council must of course consider not just the many positive benefits anticipated from the scheme but what might happen if, having provided a loan, the development did not proceed according to plan. The Council must be satisfied that it has appropriately managed the risk that it would not be able to recover all of the money loaned. It is impossible in such a transaction completely to eliminate this risk, and so in order to proceed the

Council would need to be satisfied that whatever residual risk remains is worth taking in order to deliver the benefits that should flow from a successful development.

1.10. This report therefore sets out the structure of the proposed development and details the benefits expected to flow from it before turning to the risks and how these can reasonably be mitigated. It then details the overall financial considerations and concludes that, provided that the key conditions set out in paragraphs 4.3 and 4.4 are met by it would be reasonable to provide the loans on the terms set out in the report. However, it will seek to mitigate risks by working with United Colleges to secure finance from other parties such as Homes England.

1.11. For the avoidance of doubt, this report proposes the granting of a loan facility of up to £50m to United Colleges. No amounts would actually be loaned until the conditions set out in this report were satisfied.

2.0 Recommendation(s)

2.1. To agree to provide a loan facility of up to £50m to United Colleges on the general terms set out throughout this report.

2.2. To agree that the loan shall only be provided subject to the conditions set out in paragraphs 4.3 and 4.4 of the report being discharged.

2.3. To delegate to the Chief Executive, in consultation with the Deputy Leader, authority to determine whether the conditions set out above have been discharged.

2.4. To delegate to the Director of Finance, in consultation with the Deputy Leader, authority to set the interest rate and other terms of the loan.

2.5. To delegate to the Director of Finance, in consultation with the Deputy Leader, authority to conclude and execute the loan transaction or transactions referred to above, whether acting independently or with other lenders, including to make such minor adjustments to the precise terms as prove necessary.

2.6. To note and carefully consider the potential benefits of the scheme alongside the inherent risks and how these risks are proposed to be mitigated.

3.0 Background

3.1. United Colleges was formed through the merger of the former College of North West London and Westminster College. It provides high quality post 16 education, including traditional A levels and a wide range of vocational education. It currently provides services from the (somewhat run down) former CNWL site on Wembley Park and from two other sites. The first of these is the modern, completed facility at Paddington Green, and the second is at Willesden.

3.2. Further education expansion in Wembley Park will help to facilitate the place making of the area, with the addition of students in higher numbers who will spend time in the area, helping to bring it to life alongside new accommodation, retail, hospitality and commercial space.

3.3. The council's Borough Plan sets out ambitions to create 'A future built for everyone, an economy fit for all'. This includes the need to improve the skills of the borough in order to access higher value jobs and incomes. This is in the context of Brent having the 3rd lowest household incomes of all London boroughs, with 8% of the population having no recognised qualification, only 55% of the population qualified to NVQ Level 3 (GCSEs or equivalent), and with less than 40% of the population being degree qualified compared with over 50% for London on average.

3.4. To achieve the ambitions of the Borough Plan, a strong Further Education offer to the most vulnerable adolescence in the borough is key. This would include an offer for a strong alternative to traditional further education. The Borough already has high quality infrastructure for the provision of traditional further education through secondary schools but the provision for vocational education is relatively poor. Investment in this form of setting is key to redress the imbalance.

3.5. A new state of the art college facility in Brent is an opportunity to raise the aspirations for young people and adults alike in Brent, by creating an inspiring learning environment. Both of the existing sites are tired and don't offer an optimal learning environment for Brent residents. The College of North West London supports 1,000 young people aged 16-18 and 3,000 adults (aged 19+).

3.6. The new facility will support a range of skills and sectors that are important to Brent and that are the mainstay of the existing CNWL facilities in Wembley Park and Willesden, including construction, engineering, manufacturing, health, care, and business support.

3.7. The new facility will enable the growth of provision that will support digital technologies, arts, media, and creative industries, sectors that are growing in London and creating higher value job opportunities. This includes expansion of apprenticeship delivery, particularly in digital technologies (including computing and digital and creative media). This includes the delivery of degree apprenticeships to enable skills and pay progression. Additional construction jobs would be supported through the development, and in the service and post 16 education sectors once completed, as well as a (difficult to quantify) boost to the economy through the spending of students in the local area.

3.8. The above is merely a summary, but it clearly demonstrates that the proposed redevelopment will bring substantial potential benefits to the borough and to its residents. Subject to the financial risks being appropriately managed and mitigated there is therefore a good social reason for the Council wishing to facilitate the development.

4.0 The development

4.1. In order to consider the loan transaction being proposed this report now sets out the essential features of the overall transaction. In summary:

- United Colleges would swap the former CNWL site at Wembley with Quintain for the site currently occupied by Network Homes. This latter site would in turn be redeveloped to provide the long-term, and substantially enhanced educational facilities for United Colleges, and the former CNWL site for housing, in line with the existing masterplan for Wembley Park.

- The current Willesden site would be developed to provide new housing, including affordable housing. This would happen in stages, so that there would be continuity of educational provision during the development.

- United Colleges would use the proceeds from the sale of their Willesden site to fund the development of what is currently the Network Homes site. Since this will, be before the whole of Willesden is sold, United Colleges need the bridging finance set out in this report.

- On agreement of the terms between United Colleges and Quintain the development would commence, with the approximate expectation that the permanent facilities in Wembley Park (the current Network Homes site) would open in July 2023 and the two stages of the Willesden site would complete in July 2020 and July 2023. The former CNWL site in Wembley Park would be developed by Quintain by after it is vacated by United Colleges in July 2023.

- In order for United Colleges to be able to sign their contracts 'and any other agreements with Quintain they would need to be sure that they had access to a loan facility to enable them to fulfil their construction contract (i.e. to develop the college facilities at Wembley Park). They therefore require reasonable certainty from a lender that these funds will be available. This report proposes that the Council provide such a facility.

4.2. For the avoidance of doubt, this means that United Colleges would, on conclusion of the contracts, have the right to require the Council to provide the loan on terms as set out below, and the Council would have the obligation to loan the funds, provided that the following 'conditions precedent' were met. (Conditions precedent simply mean things that must be completed before the rights and obligations set out above would exist in contract).

4.3. Firstly, United Colleges must submit a satisfactory planning application, which is then approved by the Council in its role as the statutory planning authority. Fairly self-evidently, if there is not an agreed planning application then the development would not proceed, and under those circumstances the Council would not be obliged to loan the funds (nor would United Colleges require them).

4.4. Secondly, the Council must complete satisfactory due diligence on United Colleges and its proposals. This work is underway, but cannot be completed as at the date of this report. For example, part of due diligence would involve, as a responsible lender, reviewing the detailed cost plans for the project and confirming that they include, for example, reasonable levels of contingency and other normal assumptions, confirming that any external funding anticipated for the project is confirmed, that adequate security is available and so on. United Colleges have the initial high level cost plans that one would expect for a project at this stage of its development, but alongside the planning application would develop these into more detailed proposals.

4.5. It is difficult to succinctly list all of the detailed areas for investigation as part of the due diligence work, nor to provide an exhaustive list of issues that might mean the outcome is not satisfactory. Instead due diligence will help understand the proposals and the associated risks ‘in the round’ and enable an informed judgement to be made.

4.6. Given risk cannot be eliminated, in addition work is required to determine whether it is possible to share the remaining risk with another lender, such as Homes England. Initial discussions with Homes for England have been encouraging, given the amount of housing that this proposal would provide, but will require further work to determine if finance can be provided and so reduce the risk for the Council.

4.7. Given the detail involved in these considerations it is therefore appropriate to delegate confirmation that these due diligence steps have been satisfactorily completed, and this report proposes that this delegation should be to the Chief Executive, in consultation with the deputy Leader. More detailed “heads of terms” have been shared with United Colleges, confirming the points on which the Council, as a responsible lender, would require subsequent confirmation, and of course the Council would not unreasonably withhold its confirmation. If approved specific terms of the loan and its execution, delegation would be to the Director of Finance, in consultation with the deputy Leader.

4.8. However, as is common in any such transactions, there are risks. Construction costs may rise beyond the current estimates, for example, or sales receipts be less than anticipated, as well as the related risks arising from the contract between United Colleges and Quintain. Whilst those risks do not sit directly with the Council it is important that the Council considers its position, as lender, should those risks crystallise to a material degree, as in the worst-case scenario the Council may not be able to recover its loan, or not recover it within a reasonable timeframe.

5.0 Risks and mitigation

5.1. At this stage there, inevitably, significant uncertainty on what the scheme will finally cost, and the contingency, at 2% is low for this stage of development, although this is being reviewed. The due diligence process will test this as potential designs become better worked up and hence costs become more certain. This therefore provides a reasonable basis for mitigation of this risk, since the Council is not obliged to provide the loan until such time as the due diligence has been completed.

5.2. Once the design is confirmed and a planning application approved (assuming it is approved) United Colleges will let their construction contract. There is a risk, as with all construction contracts, that at that point costs begin to rise beyond those budgeted. Good project management would mitigate these risks, and it is also proposed that the Council should have “step in” rights in such a situation (essentially, the right to nominate an appropriate officer to assist in the contract management to help improve the position).

5.3. As additional mitigation, the Council will place a charge on United Colleges properties. Further charges could be placed on the Paddington site, although in that case United Colleges’ banker already has a first charge on the property.

5.4. In any event, these charges only provide a degree of mitigation. The project plans assume that the Willesden site is sold and the proceeds used to finance the development. Having a charge over the site therefore ensures that this does indeed happen, but does not cover the situation if construction costs rise significantly after the contract is let. Similarly, the charge over the Paddington site can only be realised immediately by forcing a sale of the site, thus ending the educational provision there, which the Council, it is assumed, would not want to do. Control over costs will therefore be essential and the Council will work with United Colleges to identify ways to ensure that this is as robust as possible.

5.5. Therefore, although charges over property are available as security for the loan, these charges (subject to valuation) may not be sufficient to cover the total amount of the loan, and in any event may not provide the level of security that ideally would be desired.

5.6. If United Colleges doesn’t receive the full land payment for the second part of the Willesden site, there would be a shortfall, meaning that the Council as lender cannot recoup its loan immediately on conclusion of the project. Appropriate contingencies are an important part of managing this, as is the due diligence process to ensure that before any amounts are actually lent the Council is as confident as is reasonably possible that the risks and not unreasonably high.

5.7. It is also important to bear in mind that these risks fall to United Colleges. What is most important to the Council as lender is our ability to recover the loans in the event that these risks materialise. As discussed above, the security over property provides only a degree of comfort in this respect.

5.8. United Colleges could also repay any shortfall over time, but clearly their ability to do so depends on their ability to generate surpluses in future years. They may be able to manage this, but like other parts of the public sector face their own funding challenges, and hence this cannot be assumed to be certain.

5.9. For the sake of example, if the shortfall at this point was £1m, then United Colleges could be required to pay, say, £100,000 per year for ten years, plus interest, in order for the Council to recover its loan. Provided that the loans were repaid over a reasonable time period this would not damage the Council's long-term ability to support its capital programme. It is true that the shortfall would mean that some capital finance was tied up in the loan but the Council has considerable borrowing headroom and so this may not be a significant constraint. Self-evidently, the more substantial any shortfall the more challenging it may be for United Colleges to repay it over any reasonable period of time.

5.9.1. On 15 January 2018, Cabinet approved a framework that enables loans to be made to private capital projects that support the Council's aims. The loans framework includes delegated authority to the Chief Finance Officer (now the Director of Finance) in consultation with the Deputy Leader of the Council, where a proposed loan meets certain criteria. While this route is proposed for the detailed aspects of the loan, it is proposed that the Chief Executive, in consultation with the Deputy Leader, is granted authority to determine whether the conditions set out above have been discharged.

5.9.2. In this case, it is likely the proposed loan will not meet all of the criteria set out in the framework, meaning Cabinet approval is required. Specific criteria that may not be met include:

- The borrower having a minimum credit rating of A minus. United Colleges does not have a credit rating. However, the college has made a loss in the last two years, partly due to costs associated with the recent merger.

- A first charge to the value of the loan.

5.10. In summary, there are financial risks to proceeding, which must be set against the wider social benefits anticipated from successful delivery of the development.

6.0. Financial Implications

6.1. The report has set out the social benefits anticipated from the scheme, and also the financial risks associated with it. The Council is not proposing that it proceeds with the scheme in order to generate financial benefits, but there are nonetheless ancillary financial benefits that should be taken into account in considering the proposal.

6.2. Overall CIL receipts of approximately £5m are anticipated from the entire development. As the presumption is that the development would not proceed without Council support it is relevant to take these expected receipts into account. (Separately, the Council has already budgeted for its capital contribution to the scheme of £6.5m.)

6.3. The Council would lend money to United Colleges at a rate to be determined. This would of course have to be compliant with State Aid legislation, including arrangement fees and similar commercial terms. The Council's intention would be to set the rate at a level that complies with this legislation but not to seek to do so at a rate designed to maximise its surplus on the on-lending. This is in excess of the Council's rate for new borrowing, and so would represent an ancillary surplus to the Council.

6.4. State Aid advice would be required, and as this cannot be concluded until other matters are also concluded, such as the precise terms of United Colleges' contract with the developer, it is proposed that the decision to set the interest rate is delegated to the Director of Finance, in consultation with the Deputy Leader.

6.5. The Council will seek a security package that adequately protects the Council in the event of a default by the college. For example, by obtaining first charge land security.

8.0 Legal Implications

8.1 The Council has power to make loans under the General Power of Competence in Section 1 of the Localism Act 2011. This power is used to supplement a specific power to invest under Section 12 of the Local Government Act 2003.

8.2 The proposed loan to United Colleges falls outside the criteria approved by Cabinet in January 2018 when establishing the Council's loan framework for in-borough capital projects and as a result specific Cabinet approval to any loan is required.

8.3 It is proposed that Cabinet be asked to agree to provide the loan facility to United Colleges. However, due to ongoing due diligence and negotiations with United Colleges and the suggested conditions precedent, it is necessary to seek a series of delegations to the Director of Finance in consultation with the Deputy Leader.

8.4 As indicated in paragraphs 6.3 and 6.4, there is a potential for the loan to constitute State Aid and specialist external legal advice has been sought regarding this aspect. There are a number of approaches which the council could potentially rely upon when lending to avoid suggestions that the loan constitutes State Aid. The favoured approach is reliance on the Market Economy Investor Principle by the provision of a loan on market terms. As stated in paragraph 6.3, advice on State Aid cannot be concluded until other elements of the proposed loan are agreed and therefore it is recommended to delegate the decision to set interest rates to the Director of Finance to ensure the interest rate agreed upon will be regarded as State Aid compliant.

8.5 The Council should take steps to protect its loan. Various steps are detailed in Section 5, to include "step in" rights and securing the loan against the United Colleges assets. Such steps will help to protect the Council should United Colleges be unable to repay the loan in full and also assist the Council to show it is acting in line with the Market Economy Investor Principle thus avoiding State Aid issues. Whilst United Colleges have agreed to any loan being secured on its assets, as detailed in paragraph 5.4, there would be issues with the Council enforcing any security given the educational use of the buildings that may be charged. Further, the Technical and Further Education Act 2017 introduced a new insolvency regime for further education and FE colleges in England and Wales known as education administration, the objective of which is avoiding or minimising disruption to the studies of existing students of an insolvent FE college. This regime would impact on steps the Council could take if United Colleges were unable to repay the loan.

Report sign off:

Minesh Patel
Interim Finance Director