



**Cabinet**  
9<sup>th</sup> March 2020

**Report from Strategic Director,  
Regeneration & Environment**

## Uxendon Manor Primary School Expansion Project

<b>Wards Affected:</b>	Kenton
<b>Key or Non-Key Decision:</b>	Key
<b>Open or Part/Fully Exempt:</b> (If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)	Part Exempt - Appendix 1 is not for publication as it contains the following category of exempt information as specified in Paragraph 3, Schedule 12A of the Local Government Act 1972, namely: "Information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).
<b>No. of Appendices:</b>	One Appendix 1: Cost Appraisal (exempt)
<b>Background Papers:</b>	None
<b>Contact Officer(s):</b> (Name, Title, Contact Details)	Jas Yembra, Capital Project Manager Property & Assets, Regeneration & Environment Email: <a href="mailto:jas.yembra@brent.gov.uk">jas.yembra@brent.gov.uk</a> Tel: 020 8937 2379  Neil Martin, Interim Capital Programme Manager Property & Assets, Regeneration & Environment Email: <a href="mailto:neil.martin@brent.gov.uk">neil.martin@brent.gov.uk</a> Tel: 020 8937 4203

### 1.0 Purpose of the Report

- 1.1 This report provides an update on the current position of the expansion project at Uxendon Manor Primary School. It also requests approval of the virement of a sum of £6.0m to increase the project budget, notes a revised procurement strategy and the intention to pursue the claim through a commercial settlement against the contractor's Parent Company Guarantee (PCG) for such losses and costs as have arisen as a result of the original contractor's default.

### 2.0 Recommendation(s)

That Cabinet:

- 2.1 Note the background and current project position as set out in paragraphs 3.1 – 3.8 and the way forward in paragraphs 3.9 – 3.12.

- 2.2 Note the increased forecast project costs of £17.3m as set out in paragraph 4.1 as a result of the original contractor failure and the proposed resolution.
- 2.3 Approve the virement of the sum of up to £6.0m from the basic need capital grant to this project as set out in paragraphs 4.1 – 4.4 to meet the increased forecast project costs.
- 2.4 Note that it is intended that such losses and costs, including the costs of re-procurement that have arisen as a result of the original Contractor's default of its obligation, will be pursued to the extent possible under the Parent Company Guarantee. This value stands at £6.3m and is set out in paragraph 4.6.
- 2.5 Note that subject to Recommendation 2.3 above the Strategic Director of Regeneration & Environment in consultation with the Cabinet Members for Schools, Employment and Skills would approve the award of a Medium Value Works Contract as set out in section 5.1.

### **3.0 Background and Proposed Way Forward**

#### **Background**

- 3.1 On 26 January 2017, the Council entered into a design and build contract with Lakehouse Contracts Limited ("Lakehouse") for Uxendon Manor Primary School as part of the Phase 3 Primary School Expansion Programme. This contract was subsequently executed on 15 January 2018 at a value of £6.5m.
- 3.2 On 8<sup>th</sup> October 2018, sectional completion of the new buildings was due to be delivered and external areas on 8<sup>th</sup> February 2019. However, there were significant contractor delays resulting in sectional completion not being achieved. On 9<sup>th</sup> October 2018, the Council made financial deductions (Liquidated and Ascertained Damages ('LADs')).
- 3.3 In November 2019, the contractor significantly reduced activity on site and effectively stopped work on site in December 2018 without completing the project. The original expansion project included three areas of new build which consisted of a new reception classroom block, hall and the main teaching block. The new reception classroom block has been completed and is operational. The new hall and main teaching block are built but not sufficiently complete to be occupied.
- 3.4 In February 2019, Cabinet approved the termination of the Lakehouse contract on the basis of the Contractor failure. On 11<sup>th</sup> March 2019, the Contractor then went into administration. On 14<sup>th</sup> March 2019, the Council subsequently terminated the contract in order to allow Chief Officers to award contracts under Delegated Authority to other contractor(s) to complete the previously contracted works.
- 3.5 In April 2019, the Council awarded an Enabling Works Agreement Contract to John Graham Construction Ltd ("Grahams") in order to start the process of completing the works. This contract included securing the site, preventing further deterioration of the building and undertaking detailed surveys to assess condition. It was expected that these surveys would form the basis for the scope

of works necessary to complete the project. On completion it became clear that they only specified defective works.

- 3.6 In June 2019, the Council awarded a two stage Design & Build Contract to Grahams. In the first Pre-Construction Services Agreement (PCSA) stage Grahams were to complete any design and procurement work needed in order to provide a fixed price to complete all the construction work. On 20 August 2019, the Council received Grahams contractor proposals (CP) to complete the project at a fixed price. This is detailed in paragraph 3.5, Table 1 of Appendix 1. The submission did not contain sufficient detail to allow the Council's cost consultants to validate the costs and fully advise on value for money.
- 3.7 Limited design information was provided by Grahams and as no detailed schedule of works had been requested in the PCSA it had not been provided. This meant that the price was unable to be validated and therefore the Council was unable to recommend this CP should be accepted. In addition, the price was extremely high in relation to the original and outstanding value remaining on the contract.
- 3.8 The PCSA period (running up to the proposed contract award date) was extended by six weeks to mid-October 2019 to enable greater client team review and a revision of the PCSA deliverables to obtain further clarity from Grahams. This did not produce the desired outcome and led the Council to appoint a designer to prepare a detailed schedule of works and drawings to enable a new procurement exercise to take place.

#### **Proposed Way Forward**

- 3.9 Contract Standing Order 86 (e) permits the Council to enter into a contract with powers delegated to Chief Officers for Low to Medium Value Works contracts (under £5m).
- 3.10 The two procurement options considered include either an Open Tender or a mini competition from a framework. Given the time restrictions and the need to appoint a contractor by March 2020 in order to deliver the project, it was deemed a framework would be the most suitable route. The Fusion 21 Lot 2b framework (which has 24 suppliers) offers the most appropriate mechanism to procure a contractor. This is an education lot where suitable suppliers were appointed to the framework following an evaluation process. Lot 2b allows for the supplier to take responsibility for design work.
- 3.11 On 11<sup>th</sup> December 2019, expressions of interest were invited from the 24 suppliers on the Fusion 21 Framework and on 19<sup>th</sup> December 2019, six expressions of interest were confirmed. On 23<sup>rd</sup> December 2019, the six contractors that confirmed their interest were then invited to tender.
- 3.12 On 19<sup>th</sup> December 2019, in accordance with Standing Order 86(e), the Strategic Director of Regeneration & Environment approved the invitation of tenders in line with powers delegated to them. The table below sets out the pre-tender considerations (in accordance with Standing Order 89) for this opportunity.

Ref.	Requirement	Response
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Ref.	Requirement	Response																		
(i)	The nature of the services	Construction works to complete the expansion project at Uxendon Manor Primary School																		
(ii)	The estimated value.	Medium value works contract (£250,000-£5,000,000)																		
(iii)	The contract term.	18 <sup>th</sup> March 2020 to 08 <sup>th</sup> December 2020. A further 12 months for the defects liability period.																		
(iv)	The tender procedure to be adopted.	Mini Competition call-off from Fusion 21 Construction Works & Improvements Framework (Lot 2b)																		
(v)	The procurement timetable	<b>Indicative dates are:</b>																		
		EOI Issue Date	11 <sup>th</sup> December 2019																	
		Expressions of interest returned	18 <sup>th</sup> December 2019																	
		Interested Suppliers confirmed	19 <sup>th</sup> December 2019																	
		Invite to tender	23 <sup>rd</sup> December 2019																	
		Deadline for tender submissions	3 <sup>rd</sup> February 2020 Extended to 14 <sup>th</sup> February 2020																	
		Panel evaluation	14 <sup>th</sup> February 2020 - 2 <sup>nd</sup> March 2020																	
		Governance	13 <sup>th</sup> January 2020 – 17 <sup>th</sup> March 2020																	
		Publish Key Officers Decision	18 <sup>th</sup> March 2020																	
		Contract Award	25 <sup>th</sup> March 2020																	
		Start on site date	30 <sup>th</sup> March 2020																	
		Completion of Teaching Block and Main Hall	29 <sup>th</sup> July 2020																	
		Completion of Link Corridor	10 <sup>th</sup> August 2020																	
		Completion of External Works	8 <sup>th</sup> December 2020																	
(vi)	The evaluation criteria and process.	<table border="1"> <thead> <tr> <th>Technical / Quality</th> <th>Area weighting</th> <th>Overall weighting</th> </tr> </thead> <tbody> <tr> <td>Q1 Delivery</td> <td>30%</td> <td rowspan="7"><b>40%</b></td> </tr> <tr> <td>Q2 Resources</td> <td>25%</td> </tr> <tr> <td>Q3 Working in a live School Environment</td> <td>15%</td> </tr> <tr> <td>Q4 Quality Monitoring</td> <td>13%</td> </tr> <tr> <td>Q5 Traffic Management</td> <td>7%</td> </tr> <tr> <td>Q6 Social Value</td> <td>10%</td> </tr> <tr> <td><b>Total for Quality/Technical</b></td> <td><b>100%</b></td> </tr> </tbody> </table>	Technical / Quality	Area weighting	Overall weighting	Q1 Delivery	30%	<b>40%</b>	Q2 Resources	25%	Q3 Working in a live School Environment	15%	Q4 Quality Monitoring	13%	Q5 Traffic Management	7%	Q6 Social Value	10%	<b>Total for Quality/Technical</b>	<b>100%</b>
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Ref.	Requirement	Response		
		Commercial - Cost	Area weighting	Overall weighting
		Commercial (Price)	100%	60%
		<b>Total</b>		<b>100%</b>
(vii)	Any business risks associated with entering the contract.	No specific business risks are considered to be associated with entering into the proposed contract.		
(viii)	The Council's Best Value duties.	The Council has a duty under Best Value to secure cost-effective and efficient services that meet the needs of the Borough's customers. This will be achieved through inviting bids from all suppliers on the identified framework lot and awarding the contract based on Most Economic Advantageous Tender		
(ix)	Consideration of Public Services (Social Value) Act 2012	Under the Fusion 21 framework social value needs to be part of the quality criteria. 10% of the quality evaluation criteria is assigned social value. See section 9 below.		
(x)	Any staffing implications, including TUPE and pensions.	See section 7.0 below.		
(xi)	The relevant financial, legal and other considerations.	See sections 4.0 and 5.0 below.		

## 4.0 Financial Implications

4.1 The forecast value to complete the expansion project is £17.3m as outlined in the table below and in more detail in paragraph 4.1, table 2 in Appendix 1. The current approved project budget is £11.3m.

Forecast Expenditure Description	Cost (£m)
Construction	15.1
Professional Fees	1.7
Surveys	0.0
Statutory Costs	0.1
FF&E & ICT	0.4
<b>Total</b>	<b>17.3</b>
Project Budget	11.3
<i>Virement required</i>	<i>6.0</i>

4.2 The total estimated costs for the project have increased over the approved project budget as a result of Lakehouse's non completion of the works. Cabinet approval is required to increase the budget. It is proposed this will be funded from the Basic Need Programme Budget.

4.3 For the period 2011 – 2020, the Council has been allocated a total of £164.1m Basic Need Capital. After taking into account spend to date and commitments

the remaining budget was assigned to the Secondary School Expansion Programme approved by Cabinet in October 2019.

- 4.4 The impact of transferring the proposed £6.0m from Basic Need Capital would reduce the funding available for the Secondary School Expansion Programme.
- 4.5 As this programme budget has insufficient funding, the Council would need to seek additional funding from sources such as capital contributions from development projects and/or further Basic Need allocations for 2021 and beyond should they be provided to the Council.
- 4.6 The Council has a Parent Company Guarantee for the Lakehouse contract with Sureserve Holdings. A claim is pending against Sureserve Holdings to recover the increased costs arising from non-completion of the original Lakehouse contract. The proposed claim figure is £6.3m and is further detailed in paragraph 4.6 in Appendix 1.
- 4.7 Finance will be involved in the evaluation process to ensure that the bidders for the current construction contract opportunity described in paragraphs 3.9 – 3.12 meet the Council's requirements and are financially viable to enter into this contract on the terms and at the value specified in this report.

## **5.0 Legal Implications**

- 5.1 The Council intends to let the new Construction Contract by way of a Call Off (after mini-competition under a Framework Agreement). The estimated value of such contract is such that it is classed as a Medium Value Contract under the Council's Contract Standing Orders and Financial Regulations (i.e. up to £5M for construction contract purposes). Under Para.9.5.3 (a) of the Scheme of Delegation in Part 3 of the Constitution the Strategic Director of Regeneration and Environment has delegated authority to approve the Council's entry into the Call Off Contract of a Medium Value Contract.
- 5.2 According to Para 24 (Capital Programme) of the Financial Regulations, subject to advice from the Director of Finance, and limits on new Spending at Paras 26 – 29 of the Financial Regulations, the Cabinet may make and approve such virements within the Capital Programme as are necessary to ensure that overall spending is within the resources available, and it can bring forward, delay or stop projects as necessary to achieve this.
- 5.3 Caution is advised as regards the Council's ability to recover the totality of the estimated project costs. There are legal factors that may limit the Council's ability to recover all of these project costs under the PCG such as where not all of the project costs referred to in the report are attributable to the original Contractor's default, to include where additional costs are due to extensions in the scope of the new re-procured Contract that were not within the contemplation of the Council at the time it let the first Construction Contract.
- 5.4 Previous advice from the Council's external Solicitors, Messrs Sharpe Pritchard (in January 2019) suggested that recovery under the PCG ought to be sought after the making good period of the new Construction Contract is completed. This would help the Council quantify the totality of its costs more accurately,

although depending on its financial position, there may be an inherent risk that Sureserve Holdings might be wound up by then. Whilst Sureserve Holdings continues in business, Officers should be mindful that the risk it becomes insolvent or has insufficient assets from which the Council can recover its losses remains and if this were to happen pursuing legal action to enforce the indemnity in the Parent Company Guarantee would be futile.

## 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
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 Staffing/Accommodation Implications

7.1 Some pupils are currently being taught in temporary accommodation until such time as the permanent accommodation is made ready following completion of the project. As a result, the school is operating with reduced open space and play areas. There is currently sufficient accommodation for pupils at the school.

7.2 Any further delays to the project could lead to the requirement for additional works to maintain/prevent further deterioration to the new buildings before full completion.

## 8.0 Consultation with Ward Members and Stakeholders

8.1 The Lead Member for Schools has been consulted as part of the drafting of this report.

8.2 The school is a key stakeholder and have been kept regularly informed of the situation.

8.3 Ward members were advised of the contractual position at the time of the last Cabinet report (11<sup>th</sup> February 2019). Further consultation will take place following the report to Cabinet in March 2020.

Related Document:

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:**

**AMAR DAVE**

Strategic Director, Regeneration  
and Environment