

Forward Plan reference number: FP/320/12/18

Report title: Proposed Chatten Free School, Witham.	
Report to: Cabinet	
Report author: Clare Kershaw, Director, Education	
Date: 26 February 2019	For: Decision
Enquiries to: Ralph Holloway Head of SEND Strategy and Innovation	
County Divisions affected: Witham Northern	

1. Purpose of Report

- 1.1 To agree that ECC will self-deliver the construction of the Chatten Free School. The DfE will provide a capital grants of £7.686m to meet the full cost of construction and ECC will use the DfE Construction Framework.
- 1.2 To agree that the indicative 2020/21 capital programme budget is amended to reflect the DfE grant allocation from £2.477m to £2.621m. This addition brings the total capital cost of the project to £7.686m in line with the DfE grants.

2. Recommendations

- 2.1 To note the need for increased SEND provision and the DfE's intention to establish a SEND Free School in Essex.
- 2.2 To accept grant funding from the DfE of £7.686m for the construction of Chatten Free School, Witham via self-delivery by ECC.
- 2.3 To agree that the 2020/21 capital programme budget is amended to reflect the DfE grant allocation from £2.477m to £2.621m. This addition brings the total capital cost of the project to £7.686m in line with the DfE grants.
- 2.3 Agree to the procurement of the Construction project through a design and build mini competition using the DfE Construction Framework.
- 2.4 To delegate authority to the Head of Infrastructure Delivery to award the contract to the successful bidder, when he is content that the following conditions have been met:
 - Satisfactory planning permission has been granted
 - The construction costs are within the agreed budget and represent value for money.
 - A funding agreement has been signed with the Education and Skills Funding Agency

- ECC has control of the site and that any lease has been surrendered.

3. Summary of issue

- 3.1 The requirement for a school to meet the needs of children with complex autism was identified in the Council's SEND capital programme Strategic Business Case in 2015. The original intention was that ECC would build the school using an invest to save loan from the High Needs Block of the Dedicated Schools Grant.
- 3.2 In 2016 the Market Field Learning Community Multi Academy Trust (MAT) applied to the DfE for capital funding to open a special Free School for children with severe autism. The application was made to the DfE with the support of ECC to help address the shortage of special school places for children with autism. The application in Wave 12 was successful and in 2017 the DfE notified the MAT and the Council that capital had been allocated to pay for the construction of the new special Free School, Chatten School. As a consequence, the proposed 'invest to save' loan from the ECC High Needs Block was no longer required.
- 3.3 ECC has a statutory obligation to provide a school place for each child residing in Essex whose parents/carers request one. In addition, ECC's corporate objectives include: deliver the best possible educational outcomes for children attending schools within its administrative border; improve public health and wellbeing across Essex and, safeguard vulnerable people of all ages.
- 3.4 ECC is facing a projected shortfall of special needs places and is likely to be able to fill all the places in the new school. It is anticipated that this specialist provision for children with severe autism will reduce the Council's current reliance on expensive independent placements.
- 3.5 ECC identified land for Chatten Free School as the DfE made clear at the bidding stage that only those bids which identified suitable sites were likely to be affordable and therefore successful. The land identified in Witham is owned by ECC and is currently part of a playing field at Rickstones Academy.
- 3.6 Rickstones Academy was built in 2012. At that time, ECC entered into a development agreement which imposed an obligation on ECC to grant the Academies Enterprise Trust (which operates Rickstones Academy) a 125 year lease of the land. That lease has not yet been granted and Rickstones Academy continues to occupy the land under license. The Academy has agreed to reduce the footprint of the land to be leased to free up land for the construction of Chatten Free School. Rickstones will still retain sufficient land that is required for their purposes. This means there is no need to identify land for the new Free School in addition to that already identified for school use. The "reallocation" of land to Chatten Free School is supported by the DfE. ECC will have direct access to the land for the construction of Chatten school without requiring access through the land to be leased to Rickstones. The

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award of a lease to MAT is currently being concluded using the principles outlined above and will be subject to consideration and approval by the Cabinet Member for Finance, commercial and Traded Services.

- 3.7 The responsibility for financing and building Free Schools through the Free Schools Programme lies with the Operations Directorate within the DfE. The Operations Directorate undertakes the work undertaken previously by the now abolished ESFA.
- 3.8 The Free Schools Programme provides for delivery of construction of a Free School either:
 - directly by the DfE Operations Directorate or
 - via self-delivery by a third party, for example a Local Authority or a MAT
- 3.9 In the event of self-delivery by a third party:
 - the DfE pays the third party a capital grant which covers the agreed capital cost of the scheme and the third party procures and enters into a design and build contract for delivery of the scheme
 - funding is also made available to the third party to cover its project management costs
- 3.10 The design and build contract is a call off from the DfE's own Construction Framework, established specifically to deliver school projects. This is the DfE's strongly stated preference.
- 3.11 In 2018 ECC submitted a self-delivery business case to the DfE for Chatten Free School and two other special Free Schools (Fox Crescent and Hawthorns). All three business cases have been accepted and approved for delivery by ECC.
- 3.12 ECC has the technical and project management expertise in house to self-deliver the Chatten Free School project. The ECC Infrastructure and Delivery Team (ID) has a strong track record of construction of new school buildings, delivering on time and within budget. Self-delivery of Chatten Free School will allow ECC to control the project, aiding timely delivery and ensuring a school which best meets the needs of vulnerable children in Essex.
- 3.13 ID officers work closely with Education officers on the delivery of ECCs own Capital programme. Both ID and education officers have effective working relationships with the staff of the MAT to quickly resolve questions and issues as they arise. The MAT's preferred option is the ECC to self-deliver the project.
- 3.14 The ECC project management team will report to the DfE periodically.
- 3.15 Subject to cabinet approval, the procurement of the contractor will follow the competition two stage Design and Build process set out within the DfE

Construction Framework. Awards will be made on the basis of the frameworks evaluation criteria of 60% Quality: 40% Price.

- 3.16 ECC has obtained Pre-planning application advice from the County Planning Authority in relation to the principles of the proposed construction project. The advice provides evidence that the principles of the development are supported. This will guide the subsequent planning application in due course.
- 3.17 The DfE has provided a budget of £7.686m for the design and build of the Free School to be delivered by ECC. The feasibility study and cost plan which was undertaken by ECC and submitted to the DfE utilised the DfE scope and quality standards for this type of school. It identified known abnormal costs and included a risk assessment. ECC officers concluded that the project could be completed within the DfE funding cap. The cost plan was approved by the DfE In December 2018.

4. Options

Option One: The DfE delivers the new special Free School project.

- 4.1 Whilst this option represents the lowest risk to ECC, this option is not recommended because previous experience would suggest that a better and speedier outcome is obtained when ECC manages these projects locally. This is because ID officers have local knowledge of the area, the site, local planning conditions and a detailed understanding of the clients (MAT's) requirements.
- 4.2 Under this option the special Free School would be built but it may not result in the best possible outcome for some of the most vulnerable children in Essex. ECC as the commissioner of the places would not have a direct link to the Trust as the provider of places. The lack of a close link between the commissioner and provider could have an impact on the outcomes achieved. There is a duty upon the commissioner to co-produce provision with children and young people with SEND and their families to ensure the closest match between need and resource; this would become much more difficult if we rely upon the DfE to deliver the school.

Option Two: ECC self-delivers the new special Free School project. This is the recommended option.

- 4.3 Self Delivery will enable ECC to ensure that the school is delivered on time and work in conjunction with the MAT to ensure that the project meets the MAT's operational needs and those of the school children of Essex.
- 4.4 ECC ID has carried out a robust and comprehensive feasibility assessment and risk assessment which officers consider mitigates the cost escalation risk to ECC.

- 4.5 ID officers will use their experience and skills of project delivery to ensure that the project is delivered within the DfE grant. If additional potential costs become evident during the project development, there will be clear pathways identified to ensure that either Additional capital funding is secured or value engineering techniques are employed to ensure the project can be delivered within the current and agreed capital grant from the DfE.

5. Issues for consideration

5.1 Financial implications

- 5.1.1 The Estimated total capital cost of the project is £7.686m. This is fully funded by the DfE and will be received in the form of two payments to ECC. The first payment is a Project Delivery Grant (management fee) of £180,000 to support the scheme to be delivered by ECC. The second is a grant for the design and build of the school totalling £7.506m. The profile of expenditure is:

- £60,000 in 2018/19
- £5.005m in 2019/20
- £2.621m in 2020/21

- 5.1.2 It is requested that the total project budget is increased from £7.542m to £7.686m. This increase is fully funded by the DfE and will impact the indicative 2020/21 capital programme by £144,000 bringing the 2020/21 capital budget for this project to £2.621m.

- 5.1.3 The funding provided by DfE does not include an allocation for contingency. ECC consider that the project can be completed within the funding cap. Any additional cost risk will be identified by ECC, reviewed and passed to the DfE for their consideration to increase the funding envelope. If the funding to cover additional risk is not agreed, then value engineering will be considered to deliver the project within the existing funding envelope of £7.686m. If unsuccessful any additional costs will be ECC's responsibility.

- 5.1.4 The Project Delivery Grant of £180,000 covers ECC's costs associated with procurement, contract management and legal. ECC officers have completed and submitted a resource and cost plan to the DfE which demonstrates that ECC can deliver this project within this agreed grant. ECC have signed a Project funding delivery letter that will release the payment of £180,000.

- 5.1.5 Officers will report to the DfE on a regular monthly basis through the life of the project.

5.2 Legal implications

- 5.2.1 The MAT's proposal for Chatten Free School was approved by the DfE on the basis that ECC agreed to make land available for the new Free School.

- 5.2.2 The Development Agreement between the Academies Enterprise Trust (AET) and ECC relating to the land at Rickstones Academy will require variation to

exclude the Chatten Free School allocated land from the land which ECC is obliged to lease to AET. The agreement should be varied prior to entering into the PCSA. Similarly a 125 year lease will need to be entered into with MAT once construction has been completed, in order to enable the School access to the site, and this will be subject to a further decision by the relevant Cabinet Member.

- 5.2.3 ECC is a contracting Authority for the purposes of the Public Contracts Regulations 2015. The estimated value of the contract exceeds the EU threshold for Works of £4.551m. A compliant procurement will be required.
- 5.2.4 This can be achieved by using the DfE construction framework. As a local authority, ECC can call off from this framework.
- 5.2.5 The terms of the capital grant from the DfE for self-delivery of the project allow agreement between ECC and the DfE for an increase in grant in limited circumstances but it will be important to seek DfE agreement before ECC agrees to pay any cost increase.
- 5.2.6 There is a risk that a cost overrun may not qualify for a cost increase. As ECC will be party to the design and build contract, ECC will be contractually liable for the additional cost increases not agreed with the DfE.

6. Equality and Diversity implications

- 6.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:
 - (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
 - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
- 6.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).
- 6.3 The equality impact assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic. The project will have a high positive impact on children between the ages of 3-19 who have particular needs, especially Autism.

7. List of appendices

Appendix A ; Equality impact assessment

8. List of Background papers

- Viability report produced by ECC
- Project grant funding letter from DfE