

Forward Plan reference number: Not applicable

Report title: Variations of Agreements for Lease relating to Hawthorns and Sir Geoff Hurst Free schools, Former St Peters College, Fox Crescent, Chelmsford CM1 2BL	
Report to: Councillor Chris Whitbread. The Chancellor of Essex	
Report author: Ben Finlayson, Director: Property and Investment and Delivery	
Date: December 2023:	For: Decision
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County Divisions affected: Chelmer.	

Confidential Appendix

This report has a confidential appendix which is not for publication as it includes exempt information falling within paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended.

1. Everyone's Essex

- 1.1 Investing in two new Special Educational Needs and Disability (SEND) schools in Chelmsford will deliver on key commitments set out in Everyone's Essex – Our plan for levelling up the county: 2021-2025.
- 1.2 The investment will support vulnerable children in Essex to fulfil their potential. The new schools will provide specialist teaching and residential accommodation with greater opportunity to access a variety of services and opportunities. Delivery of key commitments include delivering infrastructure to support new homes and communities; achieving net-zero, through buildings that will have a net-zero carbon operational design; supporting active travel as part of the built environment of a sustainable, healthy neighbourhood; enabling healthy lifestyles by providing facilities that give focus for the community; supporting high quality education outcomes with facilities that ensure children are able to learn and teachers able to teach in the most conducive environment.
- 1.3 Expanding SEND provision in Chelmsford represents a capital investment in the local community. It delivers a modern, high quality learning environment for pupils beginning their formal education, promoting engagement during those vital early years of schooling, and thus increasing the likelihood of future prosperity.

2 Recommendations

- 2.1 To agree to vary the Agreements for Lease between ECC and the Secretary of State for Education relating to the provision of two new SEND schools at the site of St Peter's School, Chelmsford on terms which will increase Essex County Council's financial contributions as set out in the confidential appendix.
- 2.2 To delegate authority to the Director: Property and Investment and Delivery to enter into the deed of variation.
- 2.3 To agree to pay the costs set out in the confidential appendix under the terms of the Early Access Licence between ECC and the Secretary of State for Education.

3 Background and Proposal

- 3.1 The purpose of this report is to seek approval for Essex County Council (ECC) to incur additional costs in relation to the development by the Secretary of State for Education (DfE) of two new SEND free schools in Chelmsford and an access road to serve both the Schools and the residential development proposed on the remainder of the site (the Roadway). It is intended to develop the site of the former St Peters school site in Chelmsford to build two new SEND schools to be called Sir Geoff Hurst and Hawthorns Schools (the Schools) to meet special education needs and for the remainder of the site to be brought forward for residential development by ECC (the Retained Land). Decisions have been taken separately by ECC approving the construction of the Schools, the residential development and ECC's contribution towards additional works set out below.
- 3.2 Initially ECC, which owns the land, intended to oversee the design and construction of the Schools on behalf of the DfE and two formal decisions were taken to endorse this approach in 2019. However, it was subsequently agreed that the DfE would oversee the design and construction of the Schools. A further decision was taken in July 2020 to enter into agreements for lease and other ancillary legal agreements to facilitate the construction of the Schools and the Roadway by the DfE.
- 3.3 In September 2020, ECC entered into agreements for lease (the Agreements) with the DfE to allow the DfE to enter ECC owned land to build the Schools, the Roadway, associated infrastructure to serve the Schools and land retained by ECC (the Project). Under the terms of the Agreements ECC and the DfE will enter into the ancillary agreements attached to the Agreements on completion of the lease which include an Enabling Works Agreement and Road Repayment deed. In May 2023, ECC entered into an early access licence with the DfE and under the terms of the licence ECC are liable for any existing contamination on the site.
- 3.4 Variation of the Agreements is necessary to enable the Project to proceed, benefitting Essex residents by providing two new SEND schools in Chelmsford. As set out in Appendix 3 of this report, ECC currently spends significant funds on independent special school placements. The average cost per placement

for a 38-week day placement in the independent sector is current £65,000; the cost for the same provision in the two new maintained schools will be £37,500. The spend on placements in independent special schools has risen from £18m in 2016/17 to £36m in 2023/24 with a further forecast to £47m in 2026/27 if new maintained provision is not in place. This is mainly due to the absence of the appropriate facilities and provision to cater for specific types of severe and complex special education needs.

3.5 There is currently no Social, Emotional and Mental Health (SEMH) provision for girls in Essex and the two SEMH special schools for secondary aged pupils (Langham Oaks and Ramsden Hall) do not have the physical capacity to take all the pupils who require such provision. The pupil place forecast for the next 5 years shows a growth in demand for pupils who require places in special schools as well as a change in the pattern of the type of special education needs. The financial pressure created by this forecast growth in numbers and spend will result in the High Needs Block moving into a significant deficit. Moving from a surplus position to being overspent in-year and then accumulatively by 2026/7. The spend on independent school places per pupil is clearly less cost effective than maintained placements and so increased use of independent provision means higher overall spend. As a result of this there is need to invest in the education estate in order to respond to the challenges described above towards achieving the following outcomes:

- Reduce the number of independent special school placements by providing the appropriate facilities to enable the creation of new special schools to cater specifically for some of these pupils with severe and complex special education needs; and
- Ensure there is adequate provision of special schools situated in the right location to cater for the projected growth in demand for places and changing pattern of special education needs.

3.6 The DfE have entered the site under an early access licence to commence some early ground works but have not yet entered into a contract to deliver the Project due to delays caused by previous procurement challenges at a time of increased costs associated with Covid 19, Brexit and high inflation costs. The DfE have completed two earlier procurements and stated DfE were unable to agree a fair and reasonable cost for project being the reason for not entering into Contract in 2020 and 2021. A third procurement has been undertaken via a different route which has led to a satisfactory tender. This has caused a three-year delay to the original timetabled delivery. The DfE have now completed their procurement process but have now said that they will not enter into a contract with their contractor for delivery of the Project unless and until ECC have confirmed that they are prepared to pay the costs set out in the Confidential Appendix and a deed of variation has been entered into.

Roadway Costs

3.7 Under the terms of the Agreements the DfE are obliged to construct the Schools and the Roadway including drainage and associated infrastructure to

service both the Schools and the Retained Land. The Schools will be subject to academy leases and the Retained Land will be developed for residential purposes by Essex County Council, subject to obtaining satisfactory planning consent and a further decision to progress construction.

- 3.8 The Roadway will be constructed and paid for by the DfE as part of the school development. The Roadway will also be required to access the wider residential development, so an additional length of road and additional services are required (the Extended Roadway). ECC has therefore agreed to pay for the cost of the Extended Roadway together with a proportion of the construction costs of the Roadway on disposal of part or parts of the Retained Land as set out in the Confidential Appendix.
- 3.9 Under the terms of the Agreements, ECC agreed to pay an estimated amount towards the Extended Roadway as set out in the Confidential Appendix on completion of the lease, with any additional costs being agreed and paid on completion of the relevant works. In terms of Roadway, ECC agreed to pay a capped amount towards these costs as set out in the Confidential Appendix. Repayment is over a 15-year period and is triggered by disposals of the Retained Land. Disposal of the Retained Land to ECC's wholly owned company (Essex Housing Development LLP) for development will not trigger the repayment in respect of the Roadway. The Roadway costs will be met from the proceeds of sales once the Retained Land has been developed. In the event that the Retained Land is not transferred to EHDLLP the liability to meet the Roadway costs will sit with ECC and will be triggered by a disposal of the Retained Land.
- 3.10 The DfE have requested that ECC increases its cost contribution towards the Roadway and the Extended Roadway as set out in the Confidential Appendix. The timings of the payments remain the same. Full cost information has been shared and the figures have been carefully scrutinised, and a compromise position has now been reached. The same principals have been followed in apportioning the increased Roadway and Extended Roadway costs between ECC and the DfE. Under the terms of the variation there will be a revised completion date of 30th September 2024 and this period is acceptable to ECC. The construction of the Roadway and Extended Road will benefit the Retained Land and will serve the future residential development. The plans attached to the Agreements will be updated to reflect the final road layout following the receipt of planning permission. The changes are very minor and do not impact Retained Land.
- 3.11 Should ECC decide to dispose of the land to EHDLLP under a separate decision, it should be noted that the total cost of the road works would be taken into consideration when the Red Book valuation of the site is undertaken in connection with the transfer of the site to EHDLLP. When looked at in isolation this would result in a reduction of land receipt for ECC.

Additional Specification Costs

- 3.12 Under the terms of the Agreements the DfE will deliver an extended library/Study area and fitness suite for Sir Geoff Hurst School and drama and music rooms and a fitness suite for Hawthorns School (Additional Specification Works). ECC have agreed to pay the cost of the Additional Specification Works (Additional Specification Costs) on completion of the lease. The DfE have asked ECC to increase the Additional Specification Costs as set out in the Confidential Appendix.
- 3.13 Although DfE delays have increased the Additional Specification Costs as the need for the Schools is high and the costs of placing children going out of the area is higher, ECC is required to pay these additional amounts to ensure the delivery of the Schools. The Additional Specification Works were included in the DfE full planning application (Q4 2020) and are an integral part of the design and setting out of each School. Therefore, at this stage there is no opportunity to remove the Additional Specification Works without extensively increasing the programme duration as to remove the Library/fitness/music and drama rooms would require an alternative design and a new planning application delaying the DfE completion date of both Schools. The Additional Specification Works costs have been benchmarked against Educational Building and Development Officers Group (EBDOG) and Essex County Council points of reference for similar scope. The rates presented by DfE are higher than EBD OG and ECC standard rates, however, the DfE contract is procured via DfE Framework guidance and their Terms and Conditions, which ECC are not party to, apply. Furthermore, DfE use an enhanced specification to reduce carbon across the construction and operational phases of the build have increased the benchmark rates in excess of those acceptable to ECC projects. ECC has agreed to pay a fixed contribution for the delivery of the Schools as set out in the Confidential Appendix.
- 3.14 ECC and DfE have both stated that they cannot contribute any further costs for the Additional Specification works. The DfE have completed their procurement and tendering exercise and therefore there is a high certainty on final costs in respect of ECC's requirements. In the instance of any further additional costs in relation to the Additional Specification Works, such as if ECC's requirements change, these will not be covered by the DfE. However, ECC has already determined its requirements, which have been procured by the DfE, therefore there are unlikely to be any further additional costs. The DfE will notify ECC upon receipt of any legitimate claim for such costs and as ECC cannot contribute any further costs for the Additional Specification Works ECC will work with DfE to reduce the scope and content of the Additional Specification Works to ensure these can be delivered within the Additional Specification Costs.

Costs under the Early Access Licence

- 3.15 Under the terms of the Early Access Licence ECC remain liable for ground contamination. The DfE are seeking agreement from ECC to meet these costs in line with the licence. Agreement has been reached with the DfE to meet these costs as ECC require the schools to be built without further delay which would lead to higher costs of meeting the educational needs of the pupils.

4 Links to our Strategic Ambitions

4.1 This report links to the following aims in the Essex Vision

- Provide an equal foundation for every child.

4.2 Approving the recommendations in this report will have the following impact on the Council's ambition to be net carbon neutral by 2030:

- The new school will meet local needs and so reduce journey times and travelling distances.

4.3 This report links to the following strategic priorities in the emerging Organisational Strategy 'Everyone's Essex':

- A strong, inclusive, and sustainable economy.
- A high-quality environment.
- Health wellbeing and independence for all ages.
- A good place for children and families to grow.

5 Options

5.1 Option 1 – Do nothing (Not recommended)

Option 1 is discounted because this would mean that the Schools do not get built and whilst education needs can be met through the independent education sector, this is more expensive, further from the child's community and not conducive to transition to adult life.

5.2 Option 2 – (Recommended option)

- Enter into the deed of variation allowing for increased cost contributions by ECC for the Roadway and the Additional Specification Costs.
- Agree to pay the contamination costs as per the licence.

Option 2 is recommended as this will allow for the construction of the Schools to proceed as soon as possible. This will enable ECC to meet its statutory responsibility to provide an appropriate school place for children and young people with SEND more cost effectively, closer to where they live and support preparation for adulthood.

6 Issues for consideration

6.1 Financial implications

- 6.1.1 The Roadway contributions due from ECC to the DfE remain separated into two payments. One payment upon completion of the lease and one final payment due over a 15-year period and triggered by disposals of the Retained Land. Disposal of the Retained Land to ECC's wholly owned company (Essex Housing Development LLP) for development will not trigger the repayment in respect of the Roadway. The Roadway costs will be met from the proceeds of sales once the Retained Land has been developed. In the event that the Retained Land is not transferred to EHDLLP the liability to meet the Roadway costs will sit with ECC and will be triggered by a disposal of the Retained Land.
- 6.1.2 ECC is contractually liable for the initial payment under the Agreement for Lease. ECC will make the initial payment as stated in the Confidential Appendix upon completion of the lease. This will be funded from the fully received Land Release Funding from One Public Estate. The remaining payment as stated in the confidential appendix is ECC's responsibility upon the sale of completed units however if ECC takes a separate decision for EHDLLP to develop the land, these costs will be passed to EHDLLP to pay under an agreement between ECC and EHDLLP.
- 6.1.3 Should ECC decide to dispose of the land to EHDLLP under a separate decision, it should be noted that the total cost of the road works would be taken into consideration when the Red Book valuation of the site is undertaken in connection with the transfer of the site to EHDLLP. When looked at in isolation this would result in a reduction of land receipt for ECC.
- 6.1.4 In the event that the site is not developed or is sold within 15 years, and if the DfE require payment of the road costs then this payment remains the responsibility of ECC.
- 6.1.5 In August 2020 the council agreed to an estimated contribution, as stated in the Confidential Appendix, for the Additional Works requested at Sir Geoff Hurst and Hawthorns school. This estimated contribution was added to the education capital programme at this time. Due to a number of factors DfE have advised that the cost of the Additional Works has increased above the original estimate, as stated in the Confidential Appendix.
- 6.1.6 The DfE have confirmed that they have received a final tendered figure from the contractor and the contribution for the Additional Works will be included in the agreed Contract sum and is not subject to revision or change. DfE have confirmed that they will invoice once the final cost for the Additional Works has been confirmed. This revised cost has been included in the capital programme for the 2024/25 budget setting process.
- 6.1.7 It should be noted that the DfE are not liable for any additional costs due under the contract that relate to the Additional Works. The Council has advised DfE that the contribution is limited to the amount stated in the Confidential Appendix. In the event that the DfE are notified of additional

costs by the Contractor, the DfE will notify the Council and will work with the Council to reduce the scope to remain within the agreed contribution.

6.1.8 In May 2023 ECC entered into an early access licence with the DfE and one of the terms of the licence means that ECC remain liable for any existing contamination. The DfE have provided a final tendered confirmation of the costs of these works, and they have been included in the 2024/25 budget setting process.

6.1.9 The increased costs for the Additional Works and contamination are included in the draft SEND capital programme that will progress through the 2024/25 budget setting process.

6.2 Legal implications

6.2.1 ECC has various powers to purchase, hold and sell land, for regeneration, environmental and other purposes. For example, the Local Authorities (Land) Act 1963 allows ECC to carry out development to improve its area.

6.2.2 Essex Legal Services will be commissioned to carry out all legal work associated with this matter.

6.2.3 The construction of the Schools and Roadway will be procured and funded by the DfE subject to the financial commitment from ECC detailed in this report. ECC's agreement to refund a proportion of the construction costs of the Roadway is contained in the agreement relating to the repayment of access road construction costs. These costs will be recouped from the disposal of the land retained by ECC for residential development. ECC has 15 years to repay these funds.

6.2.4 ECC and the DfE will need to enter into a deed of variation to vary the Agreements and record the proposals set out in this report.

7 Equality and Diversity Considerations

7.1 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.

7.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, sex, 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).

7.3 The Equalities Comprehensive Impact Assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.

8 List of Appendices

8.1 Confidential Appendix – not for publication

8.2 Appendix 2 – ECIA

8.3 Appendix 3 – Independent Schools – Working Group Nov 23

9 List of Background papers

None

I approve the above recommendations set out above for the reasons set out in the report.	Date
Councillor Chris Whitbread, The Chancellor of Essex	13.12.23

In consultation with:

Role	Date
Councillor Tony Ball, Education Excellence, Lifelong Learning and Employability	12/12/23
Councillor Lee Scott, Cabinet Member for Planning a Growing Economy	13/12/23
Helen Lincoln Executive Director: Children, Families and Education	12/12/23
Tom Walker Executive Director: Economy Investment & Public Health of Executive Director consulted.	13/12/23
Executive Director, Corporate Services (S151 Officer)	08/12/2023
Stephanie Mitchener on behalf of Nicole Wood Director, Legal and Assurance (Monitoring Officer)	05/12/2023
Susan Moussa on behalf of Paul Turner	