

**Forward Plan reference number: FP/330/01/19**

<b>Report title:</b> Fox Free School and Hawthorn Free School.	
<b>Report to:</b> Cabinet	
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<b>Date:</b> 26 February 2019	<b>For:</b> Decision
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<b>County Divisions affected:</b> Chelmsford North	

**1. Purpose of Report**

- 1.1 This report asks the Cabinet to agree to enter into contracts to facilitate the construction of two new free schools in Chelmsford

**2. Recommendations**

- 2.1 Note the need for increased SEND provision and the DfE's intention to establish these two new SEND Free Schools in Chelmsford.
- 2.2 To accept grant funding from the DfE of £15.136m for the construction of Fox Free School (£7.578m) and Hawthorn Free School (7.558m) at the former St Peter's College Site via self-delivery by ECC.
- 2.3 To agree that the indicative 2020/21 capital programme budget is reduced by £349,000 from £2.407m to £2.058m in line with the DfE grant allocation.
- 2.4 Agree to the procurement of the construction project through a design and build mini competition using the DfE Construction Framework using the evaluation criteria prescribed by the framework (60% quality and 40% price).
- 2.5 To delegate authority to the Head of Infrastructure Delivery to award the contract to the successful bidder or bidders, when he is content that the following conditions have been met for both proposals:
- Satisfactory planning permission has been granted
  - The construction costs are within the agreed budget and represent value for money
  - A funding agreement with the DfE is in place

**3. Summary of issue**

- 3.1 The requirement for two new special schools in the central Essex area was identified in the SEND Capital Strategic Business Case in 2015. One school

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was required to meet the needs of children with social emotional and mental health needs and one for children with ASD and complex learning needs.

- 3.2 In 2016 The SEAX Trust, which is a multi-academy trust applied to the DfE for capital funding to open a special Free School for children with severe autism. The application was made with the support of ECC to help address the shortage of special school places for children with autism. The application was successful and in 2017 the DfE notified the SEAX Trust and the Council that capital had been allocated to pay for the construction of the new special Free School in Chelmsford which is to be called Hawthorn School. This will be land on land at the former St Peter's College Site in Chelmsford North which is currently vacant.
- 3.3 In November 2016 the DfE invited Local Authorities to make the case for capital funding to build new special Free Schools. ECC submitted a bid for a special school in Chelmsford to meet the needs of children with social, emotional and mental health needs. In 2017 ECC was notified that capital had been set aside for the construction of a special Free School on land offered by ECC. At that stage no Trust was identified to run the school. However, the DfE appointed Beckmead Trust in January 2019 to run the school, which will be known as Fox Free School. This will also be built on the former St Peter's College Site in Chelmsford North.
- 3.4 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.
- 3.5 ECC is facing a projected shortfall of special needs places and intends to commission all of the places in both new schools. It is anticipated that this specialist provision will reduce the Council's current reliance on expensive independent placements.
- 3.6 The DfE made clear at the bidding stage that only those bids which identified suitable sites were likely to be affordable. The land identified in Chelmsford for the Fox Free School is a small part of the former St Peter's College site at Fox Crescent. The site is considered large enough to accommodate both schools, and in October 2018 proposals to grant leases relating to both schools was approved 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. .
- 3.8 The Free Schools Programme provides for delivery of construction of a Free School either:
  - directly by the DfE Operations Directorate or

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- 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 three special Free Schools. One is Chatten Free School (the subject of a separate report to Cabinet) and Fox Crescent and Hawthorns Free Schools. 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 Free School projects. 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 the new Free Schools will allow ECC to control the projects, aiding timely delivery and ensuring the delivery of schools which best meet the needs of vulnerable children in Essex.
- 3.13 Infrastructure Delivery officers work closely with Education officers on the delivery of ECC's own Capital programme. Both ID and education officers have effective working relationships with the staff of both of the MATs to quickly resolve questions and issues as they arise. Both MATs' preferred option is that ECC delivers the projects.
- 3.14 The ECC project management team will report to the DfE periodically.
- 3.15 Subject to cabinet approval, the procurement of contractors 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 framework's 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 projects. 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 £7.578m for the project management, design and build of Fox Free School and £7.558m for the design and build of Hawthorn Free School to be delivered by ECC. The feasibility studies and cost plans were undertaken by the DfE. It identified known abnormal costs and included a risk assessment. ECC officers concluded that both school

projects 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 projects.

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 ECC officers have local knowledge of the area, the site, local planning conditions and a detailed understanding of the clients' requirements.

4.2 Under this option the special Free Schools 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 a third party to deliver the school.

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

4.3 Self Delivery will enable ECC to ensure that both schools are delivered on time. ECC will work in conjunction with both MATs to ensure that the projects meet each MAT's operational needs and those of the school children of Essex.

4.4 ECC ID has carried out a robust and comprehensive assessment of the DfE feasibility and risk assessment for each project 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 both projects are 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 projects 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 cost of Fox Free School is £7.808m; £7.552m capital and £256,000 revenue. This is funded by £7.578m of DfE grant and £230,000 of Schools Forum Funding. The profile of capital expenditure is:

- £1.500m in 2019/20
- £5.000m in 2020/21
- £1.052m in 2021/22

The above profile includes a reduction of £172,000 in the 2021/22 indicative capital programme which reflects the most recent DfE grant allocation stated in the feasibility stage estimate.

5.1.2 The estimated total cost of Hawthorn Free School is £7.789m; £7.506m capital and £283,000 revenue. This is funded by £7.558m of DfE grant and £231,000 of Schools Forum Funding. The profile of capital expenditure is:

- £1.500m in 2019/20
- £5.000m in 2020/21
- £1.006m in 2021/22

The above profile includes a reduction of £177,000 to the indicative 2021/22 capital programme budget to reflect the most recent DfE grant allocation as stated in the feasibility stage estimate.

5.1.3 The DfE funding of £15.136m will be received in the form of two payments, a Project Delivery Grant of £360,000 and £14.776m for the design and build of the schools. The Project Delivery Grant (management fee) of £360,000 is to support the scheme to be delivered by ECC. The will cover ECC's costs associated with procurement, contract management and legal. ECC officers have completed and submitted resource and cost plans to the DfE which demonstrate that ECC can deliver this project within the agreed grant

5.1.4 The DfE funding does not include contingency. ECC consider that the project can be completed within the capital sums allocated. 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. If unsuccessful any additional costs will be ECC's responsibility.

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

## **5.2 Legal implications**

5.2.1 The SEAX Trust's proposal for Hawthorn 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 Similarly the ECC bid to the DfE for funding for Fox Free School was approved by the DfE on the basis that ECC agree to make land available for the new Free School.

- 5.2.3 Hawthorn and Fox schools will be sited next to each other on a portion of the former St Peter's College site at Fox Crescent in Chelmsford. The grant of leases of land to the respective multi academy trusts proposing to run the new Free Schools at part of the St Peters Site was approved by the Cabinet Member for Finance, Commercial and Traded Services in October 2018 under reference FP/329/01/18.
- 5.2.4 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.
- 5.2.5 As a local authority, ECC can call off from the DfE construction framework. As long as ECC follows the framework mini competition rules, the call off contract will be compliant.
- 5.2.6 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. No cost increases should be agreed by ECC without DfE agreement.
- 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 even if the DfE does not agree them. There is therefore a risk that ECC will have to find additional funding.

## **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 proposal to build two new special Free Schools will have a

very positive impact on those children with severe and complex learning needs living in the Mid Essex area. These children will now be educated in their community and will not have to travel considerable distances to access specialist provision.

**7. List of appendices**

Appendix 1 Equality Impact Assessment

**8. List of Background papers**

OBC to investment board.  
SEND Capital Strategic Business Case