

Forward Plan reference number: n/a

Report title: Proposed expansion of Merrylands Primary School and Nursery, Basildon	
Report to: Councillor Ray Gooding - Cabinet Member for Education and Skills	
Report author: Clare Kershaw, Director, Education	
Date: 17 December 2019	For: Decision
Enquiries to: Rhona Long, School Organisation Officer, email: rhona.long@essex.gov.uk Greg Barsby – Project Sponsor, email: greg.barsby@essex.gov.uk	
County Divisions affected: Laindon Park and Fryerns	

1. Purpose of Report

- 1.1 Cabinet Member approval (Forward Plan reference number: FP/397/03/19) has previously been given for Essex County Council (ECC) to enter in to a funding agreement with Berlesduna Academy Trust (“the Academy”) to deliver a 1FE expansion project (“the Project”) at Merrylands Primary School (“the School”). The approval was conditional on the Academy receiving permission to expand under the terms of its agreement with the Secretary of State for Education. Due to purdah the Secretary of State could not formally approve until after the general election. This has created significant delay in the delivery of the Project, therefore permission to enter into the funding agreement is being sought in advance of Secretary of State approval.

2. Recommendations

- 2.1 To enter into a funding agreement with the Academy to deliver the Project without the formal agreement of the Secretary of State to the expansion of the School.

3. Summary of issue

- 3.1 Cabinet Member approval was provided on 19 August 2019 (FP/397/03/19) for the Head of Infrastructure Delivery to enter in to a funding agreement with the Academy to deliver the Project at the School, subject to the following conditions:
- (a) The grant of planning permission;
 - (b) construction costs being within the agreed budget, compliant with ECC’s benchmarking rates and value for money;
 - (c) formal permission from the Secretary of State for Education for the expansion to take place.

- 3.2 Conditions (a) and (b) have been met however condition (c) could not be obtained until after the general election which has led to delays in the delivery of the Project.
- 3.3 In order to expand, an Academy must receive permission to do so under the terms of its agreement with the Secretary of State for Education ("SOS"). This involves the submission of a business case to the Regional Schools Commissioner. The Academy has submitted their business case but formal approval from the Secretary of State is unlikely to be provided until the new year at the earliest as a result of the general election.
- 3.4 Academies that are rated 'good' or 'outstanding' at their last inspection, have a fully funded proposal, and are proposing a change that is in line with the local authority basic need forecast, may propose to expand their physical capacity by following the fast track process. Further it is expected that all academies that were rated as 'good' or 'outstanding' at their last Ofsted inspection and which are situated in areas of population growth, will actively consider how they can best support local authorities in meeting their duty to provide sufficient school places. These conditions are considered by the SOS when assessing a fast track application and if the conditions are met there is little risk that the SOS will not approve this proposal. However, if in the unlikely case that permission is not granted, the Academy may still take up to three bulge years without permission.
- 3.5 Planning permission for the expansion has been granted, and ground work surveys have already taken place as a result of the original decision. Waiting until the new year to enter in to the funding agreement is likely to delay the completion of the Project and the School's capacity to accommodate additional pupils in September 2020. This could consequently lead to ECC incurring additional costs in order to meet its statutory duty to provide sufficient school places.

4. Options

Option 1 – enter into a funding agreement with the Trust in advance of approval from the Secretary of State (recommended option)

- 4.1. The risk of entering into a funding agreement in advance of formal approval from the Secretary of State is minimal as the academy meets the criteria for the fast track approval of its expansion business case and it is therefore extremely unlikely that the academy would not receive formal approval to expand.
- 4.2. Even if such approval is not obtained, the Academy are able to take an additional three bulge years without approval from the SOS and some of the proposed building works are required in order for this to happen.
- 4.3. The risk to the Authority of entering into the Funding Agreement without SOS approval will mean that the Authority may result in providing funding to the Academy but not being able to secure as many additional school places. This risk is considered to be low for the reasons set out in this report.

- 4.4. This issue has only arisen due to the announcement of the general election, and the subsequent purdah period, which could not have been factored into expectations in advance.
- 4.5. It is expected that the academy will receive formal approval to expand under the terms of its agreement with the Secretary of State for Education in the new year and therefore the risk of not being granted formal approval for the expansion is low and therefore this option is recommended.

Option 2 – do nothing (not recommended)

- 4.6. If ECC does not enter into the funding agreement it will incur additional costs and time delays in seeking to install temporary accommodation for bulge years at other schools in the area.
- 4.7. Should additional places not be delivered at the Academy there is a risk that alternative school place allocations may need to be offered which could entail longer journeys between home and school in order to find alternative schools with spaces and that in an increased number of cases parental preference will not be satisfied. Accordingly, this is not the recommended option.

Option 3 – amend the proposed funding agreement to fund 3 bulge years only

- 4.8. The Academy is able to accept 3 additional bulge years without approval of the SOS and the proposed funding agreement could be amended so that only building works for the 3 bulge years are funded.
- 4.9. This option is not recommended due to the confidence in SOS approval for the expansion being given and therefore the likely ability of this Project to deliver a number of school places which meet the demand in the area and reduced journey times between home and school.

5. Next steps

- 5.1 The Cabinet Member's decision will confirm ECC can enter into a funding agreement with the Academy to enable the expansion to be procured and managed by the Academy.

6. Issues for consideration

6.1. Financial implications

Capital

- 6.1.1 Please see the confidential appendix for capital financial information.
- 6.1.2 The financial cost of the previously approved CMA has been reduced by £85,000 and this will be reflected within the updated Funding Agreement.

- 6.1.3 As a result of this decision however if the approval of the Secretary of State is not granted, the Authority will not receive as many additional school places for the funding as envisaged in the previous report.
- 6.1.4 The cost of the build would remain the same but the cost per pupil place would increase in this instance from £13,408 to £17,877 as less accommodation would be used as classrooms, and would represent lower value for money.

Revenue

- 6.1.5 The funding used from the Dedicated Schools Grant funding (DSG) for furniture and equipment would reduce from £28,700 to £22,700 as less of the accommodation would be used to fund classrooms.

6.2. Legal implications

- 6.2.1 ECC has a statutory duty under section 14 of the Education Act 1996 to plan for and secure sufficient schools and places for their area. The expansion of the School was brokered by ECC in accordance with this duty. ECC is responsible for funding the 'basic need' provision of additional school places in Essex at all schools, including academies. The terms of the Academy's funding agreement with the Secretary of State require approval to be obtained for school expansion.
- 6.2.2 As a result of the Secretary of State approval not being received at the time of this report, there is a risk that ECC may not receive as many additional school places for the funding as previously envisaged if approval by the SOS is not provided. The Academy can still proceed with three bulge years however without such approval and therefore the funding can be used for accommodation for the bulge years.
- 6.2.3 In order to mitigate against this risks, the funding agreement could contain a provision to allow ECC to clawback an element of the funding if Secretary of State approval has not been obtained prior to September 2020 and therefore building works are only required for the bulge years.

7. Equality and Diversity implications

- 7.1. The Public Sector Equality Duty applies to ECC 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.

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- 7.2. 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).
- 7.3. The equality impact assessment which has been carried out indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.

I approve the above recommendations set out above for the reasons set out in the report.	Date 07/01/20
Councillor Ray Gooding, Cabinet Member for Education	

In consultation with:

Role	Date
Executive Director for Finance and Technology (S151 Officer) Stephanie Mitchener, Director, Finance & Procurement	06/01/20
Director, Legal and Assurance (Monitoring Officer) Katie Bray on behalf of Paul Turner	18/12/19