



**Report of the PPPU Project Manager**

**Report to the Director of Children’s Services**

**Date: 15<sup>th</sup> Aug 2014**

**Subject: Report for approval of the advance order of goods prior to funder approval for the Asquith Basic Need Project**



**Capital Scheme Number: 16585/ASQ/EA1**

Are specific electoral Wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, name(s) of Ward(s): Morley North		
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, Access to Information Procedure Rule number: 10.4 (3) Appendix 1 – Quotation from Portakabin (Confidential Information)		

**Summary of main issues**

1. The Design & Cost Report to deliver the proposed Basic Need new build expansion of the Asquith Primary School on the existing site was approved by Executive Board on 25/06/14.
2. In order for the building project to proceed, the PFI contract (and specifically the Principal Agreement), must be amended through a Deed of Variation to incorporate the additional accommodation for the remaining 13 years of the PFI contract in respect of maintenance, service delivery and life-cycling. Legal and Commercial discussions with the PFI consortia (referred to as SPV within this report) and intended contractor are now complete in most material respects, however the signing of the amended Principal Agreement has not yet been achieved.
3. The purpose of this report is to seek approval from the Director of Children’s Services to place an order to the value of £723,042 for the materials required to construct the modular building for the Basic Need new build expansion of Asquith Primary School under the terms of the Principal Agreement, but prior to completion of the Principal Agreement variation that will detail the exact arrangements for this extension.

## **Recommendations**

The Director of Children's Services is requested to:

1. Authorise officers to place an order with Portakabin to the value of £723,042 for the materials required to construct the modular building for the Basic Need new build expansion of Asquith Primary School under the terms of the Principal Agreement, but prior to completion of the Principal Agreement variation.
2. Note the programme dates identified in section 3.2 of this report in relation to the implementation of this decision. The final delivery date for the scheme is February 2015.

### **1.0 Purpose of this Report**

1.1. The purpose of this report is:

- To seek approval to place an order with Portakabin to the value of £723,042 for the materials required to construct the modular building for the Basic Need new build expansion of Asquith Primary School under the terms of the Principal Agreement, but prior to completion of the Principal Agreement variation.
- To provide background information and detail to the Director of Children's Services in respect of the early works required to expand the school.

### **2.0 Background Information**

- 2.1. The Basic Need programme represents the Council's response to the demographic growth pressures in primary school provision. The rapidly increasing birth rate in Leeds has required Leeds City Council to approve over 1100 new reception places since 2009 in order that it fulfils its statutory duty to ensure sufficiency of school places.
- 2.2. The scale of the response cannot be met through the existing estate; therefore the expansion of existing schools or the creation of new schools has been required in many instances.
- 2.3. In February 2013 the Council's Executive Board approved the undertaking of formal consultation on the expansion Asquith Primary from a capacity of 210 to 420 pupils. Both school expansions will be provided on the existing school sites. The statutory consultation was held from 25<sup>th</sup> February 2013 to 29<sup>th</sup> March 2013 and the outcome was reported back to Executive Board in May 2013. Approval was subsequently granted to proceed with the proposals and the Statutory Notices were published on 21<sup>st</sup> June 2013. Final determination for the permanent increase in pupil numbers was granted in September 2013.
- 2.4. The expansion proposals for Asquith Primary School have been allocated 'Targeted Basic Need Funding' by the Education Funding Agency (EFA). Funding has been provided on the basis of a strict timeline for payment and completion being adhered to. Any delay to the programme detailed in section 4.2 resulting in the funding not being claimed to the appropriate timescale potentially places the funding allocation for Asquith at risk.

- 2.5. Asquith Primary School was rebuilt in 2002 as part of a package of 7PFI schools. As such, the SPV for this contract will be delivering the building work associated with the expansion at this site under the 'right of exclusivity' detailed within the PFI contract. The Facilities Management contractor, Carillion, will consequently be assuming the role of 'principal contractor' for any work undertaken and will be responsible for procuring contractors. The scheme needs to be approved by the PFI Consortia's funders before works can commence on site.

### **3.0 Main Points**

#### **3.1. Proposal**

The proposed work to expand Asquith Primary School consists of the following components:

- Construction of a two storey separate building to act as the junior provision with classrooms and associated ancillary facilities (toilets, cloaks, stores etc.). The existing halls, kitchen, offices, reception, staff room and staff workroom will be utilised;
  - External works will include the creation of additional staff car parking and hard play to meet outdoor play requirements. The playing fields will be fenced (with an associated community use agreement) and the existing path will be closed and diverted;
  - Necessary off-site highways works; and
  - A contribution toward additional teaching furniture and ICT equipment required to populate the new classroom spaces.
- 3.2. The admission limit will permanently change in September 2014 and the school admitted a bulge cohort in September 2013. The construction of the new accommodation will affect the use of the existing hard play area for the school; as such a package of enabling work has already been approved to undertake some internal works and to provide additional hard play. These Phase 1 works are being undertaken this summer to ensure provision is in place for the additional pupils in September 2014.
- 3.3. Phase 2 works to deliver the modular building and associated works are programmed for completion February 2015. The PFI provider and FM contractor (Carillion who are managing the works) have informed the LCC team that an order must be placed by 18<sup>th</sup> August 2014 for the purchase of materials prior to commencement of off-site construction of the modular building in mid-September. This means that the order for the purchase of materials will be placed in advance of PFI funder agreement expected in the first week of September. Even though the order is being placed through the PFI consortia's supply chain, it has been agreed that LCC will have the legal title/ownership of the materials.
- 3.4. An early order will facilitate the delivery of the modular building as programmed by February 2015 and in line with the current budget estimates. Delay to this programme will cause operational issues for the school as well as potentially putting the Targeted Funding allocation at risk of 'claw back'.

- 3.5. The formal PFI deed of variation will not be in place until the PFI funders approve the scheme in early September 2014. Funder approval has not been obtained prior to this date because negotiations around apportionment of risk became protracted, and the Funders' Technical Advisor has been unable to collate their report to Funders until such time that all of the negotiations have been completed. However, commercial discussions with the SPV and intended contractor are now complete in most material respects. It should be noted that although funder due diligence is on-going, the council's project team does not anticipate that there will be any issues raised that can't be resolved in a way that can be agreed by all parties.
- 3.6. Whilst negotiations regarding the contract changes are drawing to a close, there are a number of risks associated with authorising the expenditure outlined above, prior to the contract being signed:
- There is a risk that the PFI consortia don't approve the project and the expenditure is abortive, however this is unlikely to occur as the PFI partners have been leading this scheme in terms of design and specification, so that it is acceptable to the wider consortia.
  - Any ability for LCC to cancel the project is lost if the council changes its mind or the contractor seeks to impose unreasonable terms (LCC would still be liable for the modular building material costs). However, as Final Determination to expand Asquith Primary was granted at the September 2013 executive board, the school will become a 2FE primary from September 2014, therefore this accommodation will be required and the project would not be cancelled by LCC.
- 3.7. To mitigate the risks associated with this approach, the Council have reached the following position:
- The building will be required to meet the statutory requirement to expand the school. If the consortia does not approve the scheme, the order would not be abortive, as the council would seek to engage with the modular building provider direct. The Council would own the title to the materials, which could then be utilised as required;
  - The variation agreement and the risk flow down position is agreed in principle in most material respects. Although funder due diligence is on-going, the council's project team does not anticipate that there will be any issues raised that can't be resolved in a way that can be agreed by all parties.
- 3.8. A detailed cost plan has been produced for this scheme and cost checks have been carried out at the end of RIBA stage E; these cost plans have been validated by the PFI consortia and their cost managers. Contractor proposals have been reviewed by both the PFI provider and LCC and have now been agreed.
- 3.9. **Programme**
- 3.10. The planning application for Asquith Primary schemes was submitted in March 2014 and was approved on 5<sup>th</sup> June 2014.

The key milestones to achieve this programme for Asquith are detailed below:

- Design Freeze - March 2014
- Planning submitted - March 2014

- Planning approval - May 2014
- Tender out - February 2014
- Tender return - April 2014
- Contract award - Sept 2014
- Start on-site - Refurb Works July / Main Works Sept 2014
- Occupation by school - Feb 2015

- 3.11. If an early order cannot be placed, completion will be delayed to June / July 2014, as the next available manufacturing slot for the modular units will be mid-October. There could also be a further potential knock-on effect that poor weather conditions in January/February may prevent delivery of the completed modular units to site. The current assumption for EFA funding draw down profile is that the full costs of the scheme would fall within the 2013/14 financial year. A delay to the programme will amend that profile, resulting in substantial costs being profiled for the following financial year, which may potentially put the grant funding at risk, although it is not known whether the EFA would actually invoke clawback.
- 3.12. Occupation of the new accommodation is not required until September 2015, however the school have compromised by temporarily utilising some key areas within the existing building to accommodate the additional 2013 and 2014 intake. Completion of the new building in February 2015 will alleviate the operational compromises the school are making in order to facilitate the expansion
- 3.13. Approximately £121k of design, legal and survey fees have already been incurred, which would be abortive expenditure if the scheme was cancelled.

## **4.0 Corporate Considerations**

### **4.1 Consultation and Engagement**

- 4.1.1. The proposed scheme and associated work have been the subject of consultation with Children's Services Officers, school representatives and PFI partners. The school management team have been integral to the development of the proposals contained within this report, full support of the Governing body has been attained following regular update sessions at their periodic meetings.
- 4.1.2. Local ward members have been briefed periodically throughout the design development. Children's Services and PPPU will continue to brief Councillors at key stages throughout the expansion project as required.
- 4.1.3. Consultation has taken place at Asquith prior to the planning application being submitted in March 2014. On the 24<sup>th</sup> March 2014 a planning drop-in session was held for local residents and parents to present the planning drawings and field any enquiries.

### **4.2 Equality and Diversity / Cohesion and Integration**

- 4.2.1. The recommendation within this report does not have any direct nor specific impact on any of the groups falling under equality legislation and the need to eliminate discrimination and promote equality. A screening document was prepared for the main Design and Cost report to Executive Board in June and an independent impact assessment was not required for the approvals requested (see Appendix 2). On the basis that this is a consequential decision arising from the Design and Cost Report, it is considered that a further screening document is not required.

#### **4.3. Council Policies and City Priorities**

- 4.3.1. These schemes are due to be delivered under the City Council's Basic Need programme and are required to fulfil the Local Authority's statutory responsibility to provide sufficient school places. In providing places close to where the children live the proposals will improve accessibility of local and desirable school places, and thus reduce any risks of non-attendance.
- 4.3.2. A key objective within the 'Best Council Plan 2013-2017' is to build a child friendly city. The delivery of pupil places through Basic Need is one of the most baseline entitlements of a Child Friendly City. A good quality school place contributes to the achievement of targets within the 'Children and Young People's Plan' such as our obsession to 'improve behaviour, attendance and achievement'. In addition, "Narrowing the Gap" and "Going up a League" agenda and is fundamental to the Leeds Education Challenge.
- 4.3.3. A further objective of the 'Best Council Plan 2013-2017' is to ensure high quality public services. We want to promote choice and diversity for parents and families and deliver additional school places in the areas where families need them. Meeting this expectation while demonstrating the five values underpinning all we do is key to the basic need programme.

#### **4.4. Resource and Value for Money**

- 4.4.1. The overall estimated cost of the Asquith project is £2,895,100. This figure is inclusive of all fees and other associated costs, and Authority to Spend approval was obtained at the June Executive Board. Project costs will be financed from Basic Need, and Targeted Basic Need capital grants.
- 4.4.2. The costs for the Asquith project will be met through capital scheme number 16585/ASQ/000 as part of the Basic Need Programme. The costs incurred through the advance order for materials, up to £723,042, will be met through sub-capital scheme number 16585/ASQ/EA1.
- 4.4.3. Under the 'right of exclusivity' detailed within the PFI contract, the SPV will be procuring this work based on a 'best value' benchmarking exercise using their preferred contractor

#### **4.5. Prior Approvals**

- 4.5.1. The Design & Cost Report to deliver the proposed Basic Need new build expansion of Asquith Primary School was approved at the Council's Executive Board meeting in June 2014.
- 4.5.2. Planning approval was received 5 June 2014.
- 4.5.3. Initial change orders have been approved for the phase-1 refurbishment works associated with the pupil requirements for Sept 2014.

#### **4.6. Revenue Effects**

- 4.6.1. There are no revenue implications specifically with this order. However, any additional revenue consequences that may arise as a result of the overall project will be managed within the school budget.

#### **4.7. Legal Implications, Access to Information and Call-In**

- 4.7.1. This report constitutes a Significant Operational Decision and as such will not be subject to 'Call-In'.
- 4.7.2. The Director of Children's Services has the authority to make this decision under powers granted within part 3 of the Council's Constitution.
- 4.7.3. See Section 3 for detail of the legal and commercial implications.

#### **4.8. Risk Management**

- 4.8.1. Risk is to be managed through the application of 'best practice' project management tools and techniques via the City Council's 'Delivering Successful Change' methodology. Experienced Project Management resource has been allocated from within the Public Private Partnerships Unit.
- 4.8.2. The risk of failure to achieve delivery date of Feb 2015 has been reported as a High risk. The EFA have indicated that claw back of the funding available for the project if further delays are reported.
- 4.8.3. See section 3 for detail of the legal and commercial implications.

#### **5.0. Conclusions**

- 5.1 The admission limit at Asquith Primary School will permanently change in September 2014 and phase-2 works to deliver the modular building accommodation and associated works are programmed for completion in February 2015.
- 5.2 As Asquith is a PFI School, the PFI Consortia will be delivering the building works associated with the expansion at the site under the 'right of exclusivity' detailed within the PFI Contract. Furthermore, the scheme needs to be approved by the PFI Consortia's funders before works can commence on site.
- 5.3 Final funder approval is not expected until the first week of September, however in order to maintain programmed completion in February 2015, an order will need to be placed with the modular building contractor by 18<sup>th</sup> August for the materials required to enable commencement with off-site construction in September.
- 5.4 If this order is not placed by 18th August, there are the following risks to the project:
  - Department for Education funding draw down deadline will be missed by 4 months which potentially risks the funding being withdrawn / clawed back, although we are unsure whether the DfE/EFA would invoke this;
  - Cancellation of the project means there is abortive expenditure to date of approx. £121k and new school places will not be available by Sept 2015, breaching the Council's statutory commitments to expand this school;
  - If DfE funding was not withdrawn, there would still be a delay to the programme of 4 months leading to operational impacts for the school in relation to ancillary spaces, group rooms and appropriately sized teaching spaces;

- Whilst, placing the order does open the council up to some potential legal and commercial risks as described in section 3, the likelihood of these risks materialising is marginal when considering the operational and financial impacts associated with further delay to this scheme. Furthermore, LCC would have legal title/ownership of the materials which could still be utilised.

5.5 Negotiations with the PFI Consortia are at an advanced stage, such that it is considered that there is minimal risk that the Funders will not approve the scheme in September.

## **6.0 Recommendations**

6.1 The Director of Children's Services is requested to:

- Authorise officers to place an order with Portakabin to the value of £723,042 for the materials required to construct the modular building for the Basic Need new build expansion of Asquith Primary School under the terms of the Principal Agreement, but prior to completion of the Principal Agreement variation.
- Note the programme dates identified in section 3.2 of this report in relation to the implementation of this decision. The final delivery date for the scheme is February 2015.

## **7.0 Background documents<sup>1</sup>**

7.1 Appendix 1 – Quotation from Portakabin (Confidential Information)

7.2 Appendix 2 – EDCI Screening Form

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<sup>1</sup> The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.