

TELFORD & WREKIN COUNCIL

CABINET - 18 SEPTEMBER 2014

COUNCIL – 27 NOVEMBER 2014

AWARD OF THE DESIGN & BUILD CONTRACT FOR THE LAWLEY VILLAGE PRIMARY SCHOOL, LAWLEY

REPORT OF THE ASSISTANT DIRECTOR: EDUCATION & CORPORATE PARENTING

PART A) – SUMMARY REPORT

1. PURPOSE

- 1.1** This report seeks approval to enter into a land acquisition and to award a Single School Design & Build (D&B) contract to Shepherd Construction for the Lawley Village Primary Academy, Lawley.

2. RECOMMENDATIONS

2.1 That the Assistant Director: Education & Corporate Parenting in consultation with the Cabinet Member for Children, Young People and Families be authorised to award the Single School D&B contract to Shepherd Construction Limited (SCL) for the Lawley Village Primary School and to finalise and agree all related contract and property related documents including the Development Agreement and contracts with the relevant Academy and landowners for various land acquisitions, exchanges, leases, licences, joint use agreements and any other ancillary related agreements/documentation.

2.2 That the Assistant Director of Law, Democracy & People Services be authorised to agree and execute all necessary documentation. This authorisation to include delegation to the Assistant Director of Law, Democracy and People Services to affix the common seal of the Council to contractual documentation as, in the opinion of the Assistant Director of Law, Democracy & People Services, is appropriate under article 14.06 of the Constitution.

2.3 That it be recommended to Council that a capital approval and estimate for £4.5m in respect of the Lawley Village Primary School scheme be approved.

3. SUMMARY IMPACT ASSESSMENT

IMPACT ASSESSMENT AT A GLANCE

COMMUNITY IMPACT¹?	Do these proposals contribute to specific Priority Plan objective(s)?	
	Yes	Children & Young People – to consult and involve all stakeholders with a vested interest in children's education and safety Children & Young People - supports strategic priority for developing learning communities across the Borough.
	Will the proposals impact on specific groups of people?	
	Yes	Children and Families living within the Wards served by the proposed school.
COMPLETION/ DELIVERY DATE?	The contract is programmed to be awarded in November 2014 and the school facilities will open in January 2016. .	
FINANCIAL (VALUE FOR MONEY) IMPACT?	Yes	The anticipated cost for delivering the scheme is within the funding approval contained within the Council's Capital Programme. The phasing of the Section 106 payments will require the Council to manage the cash flow implications of the project through the use of short term borrowing. The revenue implications associated with this borrowing have not been factored into the Councils current budget strategies. Any slippage identified in the Education Capital Programme could be reallocated to the Lawley scheme to reduce the borrowing requirement. Further detail is provided in Section 7.
LEGAL IMPACT?	Yes	Detail provided in Section 5.

OTHER RISKS & OPPORTUNITIES ?	Yes	Detail provided in Section 6.
IMPACT ON SPECIFIC WARDS?	Yes	The creation of this new primary school will have the most impact on the ward within which it is located, Lawley and Overdale. However, there is potentially Borough wide impact due to parental preference in choosing which schools pupils attend.

4. SUMMARY

4.1 Background. Following a significant amount of housing growth in the Lawley area over the past decade, a large number of additional school-aged children have been generated. Local demographics have meant that secondary school aged pupils have been able to be accommodated within existing schools and the needs for the future are being addressed through the Building Schools for the Future (BSF) programme. However, the continuing pace of development within Lawley means that current primary schools will not be sufficient to accommodate the expected growth and it was for this reason that Cabinet gave their approval to establish a new primary school in Lawley at the Cabinet Meeting held on 27th June 2013.

4.2 Procurement. In July 2012, Shepherd Construction Limited (SCL) were appointed as the Selected Panel Member (SPM) chosen to design and build the sample school from Council's phase 2 of their BSF programme. The procurement followed the Education Funding Agency (EFA) process for selection from the National Academies Framework. The initial contract was for the construction of the sample school, Ercall Wood Technology College, but the framework also allowed for the Council to appoint Shepherd Construction to undertake further schemes if they were included within the Future Schools Agreement that was executed at the same time as the Single School Design & Build Contract. A new primary school at Lawley was included within this Future Schools Agreement.

4.3 Land Acquisition. The proposed freehold site for the school is in the process of being transferred to the Council under the terms of an agreement made under Section 106 of the Town and Country Planning Act 1990 for the sum of £1. The land has always been set aside for the development of educational facilities and will include new restrictive covenants preventing the property being sold for any other purpose than educational and community use. The timing for completion of the land acquisition is programmed for September 2014. Cabinet approval providing delegated authority for the land acquisition was included in the report taken on 3rd November 2003, Cabinet Minute CB104 refers.

4.4 Programme for the appointment of the Academy Sponsor. The tender document was published on 23rd May 2014 and closed on 27th June 2014. Following an interview process with the applicants, the preferred sponsor for Lawley Village Primary School is The Schools' Co-operative Society who we are currently working with on other Multi Academy Trust schools such as the Telford Co-operative Academy, Phoenix Academy and Lakeside Academy. We have written to the Secretary of State and are currently awaiting endorsement of this decision which we are hopeful of receiving in October 2014.

Once the decision has been endorsed by the Secretary of State, a Development Agreement, including a 125 year freehold lease of the site to the Academy Sponsor as per DfE guidance, and Community Use Agreement will be entered into between the Council and the Sponsor that sets out the obligations of the Council and the Sponsor. For the duration of the construction through Practical Completion and Defects Liability, the Council will manage the contract with Shepherd Construction on behalf of the Academy Sponsor. Upon issue of a certificate of defects completion, the contract will be novated to the Academy and the 125 year freehold lease will be entered into.

4.5 Contract Sum and Funding Arrangements. The contract will be fixed price, lump sum at £4.1m. The funding allocation is ring fenced to deliver the project as planned. No alterations to the contract with any adverse cost implications will be agreed with the contractor or the end user, which will therefore reduce the risk of an overspend on the project. £3.6m of funding will be paid through Section 106 Agreement between the Homes & Communities Agency (HCA) and the Council, with funding to be released as follows:

- a) £1.0m on the transfer of the site to the Council – September 2014
- b) £1.0m within 12 months of the above date (a) – September 2015
- c) £0.4m on completion of the school – September 2015
- d) £1.0m within 12 months of date b) – September 2016
- e) £0.2m by September 2018

The remainder will be provided from existing Council capital funding which was approved in the 27th June 2013 Cabinet Report.

4.6 Programme for the Academy Build. Programmed dates for the Academy build are as follows:

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|---|---------------------------------|
| • Planning Application being considered by Planning Committee | 13 th August 2014 |
| • Cabinet Meeting for approval to award the contract to SCL | 18 th September 2014 |
| • Complete the land Acquisition from the HCA | October 2014 |
| • Contract Derogations to be approved by the EFA | October 2014 |
| • Sign the Design & Building Contract with SCL | November 2014 |
| • Academy Sponsor confirmed by the SoS | October / November 2014 |
| • Start on Site | December 2014 |
| • Sign the Development Agreement with the Academy Sponsor | November 2014 |
| • School Open | January 2016 |

4.7 Stakeholder Consultation. Design meetings have been held over the last 3 months involving key specialists such as architectural, educational, ICT, technical and finance. We have also held a public consultation event in Lawley and numerous consultation meetings with other stakeholder groups such as the Parish Council, the Local Planning Authority, highways, HCA, the Lawley Development Group and other local primary school heads. Once appointed, the new Academy Sponsor will be involved throughout the construction phase and have continuing input into the design and fit out solutions that have yet to be finalised.

5.0 LEGAL COMMENT

5.1 The Design & Build Contract has been drawn up in accordance with the EFA Framework Agreement and has been developed in accordance with the Council's project specific requirements by the Council's project team in consultation with external Legal Advisors, Ward Hadaway.

5.2 The award of the Design & Build Contract to Shepherd Construction is subject to full planning permission being granted. In addition, the award of the Design & Build Contract is subject to approval of derogations by the EFA. While the EFA will not provide any funding for the project and the Council may have expected a lighter touch regime than for the BSF funded projects, EFA have confirmed that they will require to formally approve the contract documentation as the contract is to be awarded under the EFA Framework. As the Academy sponsor will not be in place until October, the Development Agreement to be entered into with the Academy sponsor will be completed after the Design & Build contract has been completed and EFA will need to confirm they are satisfied with this approach

5.3 The signing of the contract is targeted for October 2014. In awarding the Design & Build Contract the Council must continue to ensure that there is compliance with procurement legislation and the financial and contract procedure rules contained within the Council's constitution at Part 4, Sections 6 and 7 respectively. A close working relationship with the EFA will also be required to ensure that the contract derogations are reviewed and approved accordingly. These areas will need to be continuously reviewed and those who are granted delegated authority in paragraph 2.1 of the report will require updates and information to ensure that these risks are addressed and that informed decisions can be made. If delegated authority is allowed by the Cabinet, the delegated decision making set out in paragraph 2 should be formally recorded.

5.4 Legal Documents. The main documents to complete and execute are:

- The Single School Design and Build Contract (between the Council and Shepherd Construction)
- A Parent Company Guarantee from the contractor's parent company (between the Council, Shepherd Construction Ltd and its parent company)
- A Development Agreement (between the Council and the new Academy Sponsor), which will include a freehold lease of the site to the Academy Sponsor for 125 years
- A Community Use Agreement (between the Council and the new Academy Sponsor)
- A land purchase contract with the Homes & Communities Agency (HCA)
- Land Transfer from the HCA to the Council
- Licence for the Site Compound

6.0 OPPORTUNITIES AND RISKS

6.1 Access Road. There is a requirement by the Council's Highways department that an access road is designed and implemented prior to occupation of the new school. The responsibility for funding and establishing this road lies with the HCA via the Lawley Village Development Group. However, until developers are in place on the adjacent sites, the funding for the access road is not in place. The Council has therefore agreed that the S106 Agreement can be varied in order that an amount equivalent to the cost of the road, £200,000, can be a final phased payment payable in September 2018, payable in any event and whether developers are secured or not. . The existing S106 Agreement will therefore be subject to a Deed of Variation in order to reflect the new phased payment arrangements as set out in paragraph 4.5. The contract for the land acquisition from the HCA will include a step-in right for the Council to construct the access road in the event that the Lawley Village Development Group have not commenced the works for completion before January 2016 when the school is due to open.

6.2 Academy Sponsor. The process for formally approving our choice of official Sponsor to the Academy now lies with the Secretary of State. We understand that this usually takes approximately 2-3 months but there are potential issues given the recent Cabinet reshuffle and new appointment to the SoS post. Additionally, if our decision is not approved, a Sponsor could be appointed on our behalf. There are risks associated with agreeing the terms of the Development Agreement with whoever is selected and potential programme risks if the decision is delayed beyond this time.

6.3 EFA. There is a further risk to the delivery of the Academy for January 2016 if the EFA confirm that they are not satisfied that the Development Agreement can be entered into retrospectively i.e. after the Design and Build contract has been executed

6.4 Funding – Government Grant. The capital grant funding is allocated from future years grant allocations which are yet to be confirmed. In the unlikely event these future allocations reduce substantially a significant proportion of the grant received could be allocated against this scheme therefore impacting on the Councils ability to deliver other projects.

6.5 Funding – Section 106 contributions. Under the terms of the Section 106 Agreement, the financial contributions will be indexed linked to the Building Cost Information Service (BCIS)

Tender Price Index. There is the potential that the financial contributions could be greater than anticipated, which current modelling has indicated. However, if there is a downturn in the economy in the future periods under consideration, September 2014 to September 2016, there is a risk that the indices could drop resulting in an under payment. It is anticipated that any additional financial contribution received from the Section 106 Agreement would displace grant funding as included in the assumed project affordability (see Table 1).

7.0 FINANCIAL IMPLICATIONS

- 7.1** A total funding allocation of £4.5m for the delivery of the project has been secured through Section 106 contributions, £3.6m, and capital grant funding, £0.9m, from the Department of Education (DfE) as approved in the 27th June 2013 Cabinet Report. The affordability for the delivery of the project is set out in Table 1 below.
- 7.2** The indicative contract sum, as included in Table 1, for the design and build contract is based on Shepherd Construction Ltd's Contractor's Proposals and will be finalised in line with the agreed pre-contract programme for the Academy Build as included at 4.6 above.
- 7.3** The phasing of the Section 106 contributions will necessitate the need for short-term borrowing to manage the expected cash flow implications associated with the delivery of the scheme. The anticipated revenue implications associated with the borrowing is as follows:
- 2014/15 - £13,902
 - 2015/16 - £63,344
 - 2016/17 - £52,341
 - 2017/18 - £12,144
 - 2018/19 - £6,489

These implications will need to be factored into the Council's latest medium term budget strategy.

- 7.4** The Education capital programme will continue to be monitored throughout the financial periods covered above to identify any slippage which could be reallocated to the Lawley scheme in order to mitigate the short term borrowing requirement.

Table 1 – Affordability of the project

	£000	£000	£000
Funding			
Section 106 contribution	(3,600)		
Education Capital Grant	(900)		
Total Funding		(4,500)	
Estimated expenditure			
Indicative contract sum	4,096		
Fees and survey's	285		
ICT hardware	84		
Academy Set Up	35		
Total estimated expenditure		4,500	
Affordability shortfall / (surplus)			0

8.0 PREVIOUS MINUTES

- Cabinet 24th November 2008 - Planning of School Places: Campus Telford & Wrekin. Minute CB94 refers.
- Cabinet 6th April 2009 - Campus Telford & Wrekin: Additional Post-16 Provision, Trust School Status, BSF Procurement Approval. Minute CB182 refers.
- Cabinet 15th September 2009 – Planning of School Places: Campus Telford & Wrekin – Part 2. Minute CB60 refers.
- Cabinet 23rd March 2010 – Borough Towns Initiative Sports & Learning Community – Final Business Case and Award of Contracts relating to BSF and Abraham Darby Sports & Learning Community. Minute CB181 refers.
- Cabinet 11th January 2011 – School Organisation – Borough Towns Initiative – Sports and Learning Community Update. Minute CB109 refers.
- Cabinet 22nd September 2011 – Planning of School Places – Secondary School Provision. Minute CB45 refers.
- Cabinet 26th January 2012 – Ercall Wood Land Acquisition and Disposal. Minute CB-92 refers.
- Cabinet 29th March 2012 – Building Schools for the Future – Contractors Framework Procurement Approval. Minute CB-123 refers.
- Cabinet 27th June 2013 – Proposal to establish new Primary School in Lawley. Minute CB-15 refers.

9. WARD IMPLICATIONS - There are implications for the following wards:

Ward

Lawley and Overdale

Member

Cllr Jayne Greenaway and Cllr Roy Picken

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