



SPECIAL COUNCIL

MINUTES OF THE MULTI-LOCATIONAL MEETING HELD IN THE CHAMBER PENALLTA HOUSE AND VIA MICROSOFT TEAMS ON WEDNESDAY, 19TH APRIL 2023 AT 5.00PM

PRESENT:

Councillor E.M. Aldworth - Mayor
Councillor M.A. Adams - Deputy Mayor

Councillors:

C. Andrews, A.P. Angel, C. Bishop, A. Broughton-Pettit, M. Chacon-Dawson, R. Chapman, S. Cook, D. Cushing, C. Cuss, D.T. Davies MBE, N. Dix, C. Elsbury, G. Enright, K. Etheridge, M. Evans, A. Farina-Childs, C. Forehead, E. Forehead, J.E. Fussell, A. Gair, N. George, C. Gordon, D. Harse, T. Heron, A. Hussey, D. Ingram-Jones, M.P. James, L. Jeremiah, G. Johnston, S. Kent, P. Leonard, C.P. Mann, A. McConnell, B. Miles, C. Morgan, S. Morgan, B. Owen, T. Parry, L. Phipps, M. Powell, D.W.R. Preece, H. Pritchard, J. Pritchard, J.A. Pritchard, J. Rao, J. Reed, J. Roberts, J. Sadler, R. Saralis, J. Scriven, J. Simmonds, E. Stenner, J. Taylor, C. Thomas, A. Whitcombe, L.G. Whittle, S. Williams, W. Williams, J. Winslade, K. Woodland, C. Wright

Together with:

C. Harrhy (Chief Executive), R. Tranter (Head of Legal Services and Monitoring Officer), R. Edmunds (Corporate Director for Education and Corporate Services), M.S. Williams (Corporate Director for Economy and Environment), S. Harris (Head of Financial Services and Section 151 Officer), J. Southcombe (Finance Manager), S. Richards (Head of Transformation and Education Planning and Strategy), A. West (21st Century Schools Admissions and Exclusions Manager), S. Pugh (Head of Communications), E. Sullivan (Senior Committee Services Officer), R. Barrett (Minute Taker)

Also present:

M. Read (Project Director – Local Partnerships)

RECORDING, FILMING AND VOTING ARRANGEMENTS

The Chief Executive reminded those present the meeting was being live streamed, and a recording would be available following the meeting via the Council's website – [Click Here to View](#). She advised that decisions would be made by Microsoft Forms.

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors P. Cook, G. Ead, J. Jones, A. Leonard, D. Price and S. Skivens, together with D. Street (Corporate Director Social Services and Housing).

2. DECLARATIONS OF INTEREST

The following declarations were received in respect of Agenda Item No. 3 – Proposed Voluntary Termination of the Caerphilly CBC School PFI Contract.

Councillor L. Phipps declared a personal interest in this item as her sister works at Ysgol Gyfun Cwm Rhymni (Y Gwindy site) and her niece attends the Ysgol Gyfun Cwm Rhymni (Gellihaf site).

Councillor C. Wright declared a personal interest in this item as her son attends Ysgol Gyfun Cwm Rhymni.

Councillor A. Whitcombe declared a personal interest in this item as his granddaughter attends Ysgol Gyfun Cwm Rhymni.

Councillor C.P. Mann declared a personal interest in this item as he is a LEA appointed Governor at Ysgol Gyfun Cwm Rhymni.

Councillor J.E. Roberts declared a personal interest in this item as his grandchildren attend Ysgol Gyfun Cwm Rhymni.

Councillor R. Chapman declared a personal interest in this item as his granddaughter attends Ysgol Gyfun Cwm Rhymni.

Councillor M.P. James declared a personal interest in this item as he is a LEA appointed Governor of Lewis School Pengam

Members were advised that as these were personal interests only, they could take full part in the debate and vote.

REPORTS OF OFFICERS

Consideration was given to the following report.

3. PROPOSED VOLUNTARY TERMINATION OF THE CAERPHILLY CBC SCHOOL PFI CONTRACT

Declarations of interest were received from Councillors L. Phipps, C. Wright, A. Whitcombe, C.P. Mann, J.E. Roberts, R. Chapman, and M.P. James. All declarations related to a personal interest only, with full details minuted above, and the Members remained in the meeting during consideration of the item.

Consideration was given to the report, which provided details of a proposal to voluntarily terminate the Caerphilly CBC School PFI Contract and sought Council approval of the proposal, which had been considered by the Joint Scrutiny Committee on 28th February 2023 and presented to Cabinet on 8th March 2023.

Members were advised that over a number of years, the Council has sought to achieve savings from the School PFI Contract, to ensure value for money services are being provided to the schools and to minimise affordability implications. The Council has considered all options, including increasing the contract management, reviewing the services provided to identify and implement savings, and using mechanisms in the Contract such as benchmarking to reduce costs. However, despite the funding support from Welsh Government (WG), there continues to be a significant affordability gap between the Council's normal school funding levels and the payments made to the Contractor. As such, a business

case has been prepared setting out details of a proposal to voluntarily terminate the School PFI Contract.

Council were advised that the report sought to include as much detail as possible to enable Members to have a constructive debate in open session. However, commercially sensitive information from the business case was not included in the report so as not to compromise negotiations that will need to take place with the PFI contractor.

The proposal was considered by a joint meeting of the Policy and Resources and Education Scrutiny Committees on 28th February 2023, and prior to this, a briefing note was shared with the headteachers and Chairs of Governors of the two PFI schools, which was largely based on the content of the Council report. The report was originally scheduled for Council consideration on 15th March 2023, but was deferred to 19th April 2023 to allow all interested parties more time to fully consider the proposal and provide further views prior to a final decision being made. Representatives of both school governing bodies had since taken the opportunity to confidentially read the business case and reading days for Members had also been arranged on 27th March 2023, 5th April 2023 and 13th April 2023 to allow them to confidentially review the business case. Following this process, a number of further questions were raised by the two PFI schools and the details of these, along with the Officer responses, were provided in Appendix 4 of the report. A further letter was also received on 18th April 2023 from the Chair of Governors of Ysgol Gyfun Cwm Rhymini which was circulated to all Members ahead of the meeting of Council.

Council were advised that the business case is based on a proposed termination date of 31st July 2023. However, due to the rearranged date for Council consideration of the proposal, this termination date is no longer achievable, and subject to Council approval of the proposal, the earliest termination date is now likely to be October 2023. The financial assessment in the business case shows a significant net financial benefit for both Best Case and Worst Case scenarios, and early indications are that the revenue budget savings for the Authority may be circa £2m per annum. The actual level of savings cannot be determined with certainty unless a termination actually takes place, but it is clear that the financial benefit is significant. The revised earliest termination date of October 2023 will not materially impact on the financial assessment.

It was noted that should the proposal be agreed by Council, then following payment of the compensation sum, a further report will be presented to Council setting out details of the funding of the payment, the revenue budget savings arising and the options for utilising the savings.

Members were reminded that the Council continues to face significant financial challenges and budgetary pressures, and that proceeding with the proposed voluntary termination would allow the Council to realise revenue budget savings that can support the delivery of the Medium Term Financial Plan and may also provide an opportunity for some capital investment across the wider education estate. It was emphasised that the proposal is purely a contractual matter between the Council and the PFI contractor on a number of non-educational services, including building maintenance, catering and grounds maintenance, and that none of the options outlined in the report were likely to negatively impact pupil attainment. Should the proposals be supported, these will bring clarity to the way that schools across the county borough are funded and operated by the local authority, ensuring a fairer approach to funding across all schools, and will also produce a significant annual saving through the early termination of the PFI Contract. Assurances were also given that both schools would be kept informed, updated and supported by the Authority throughout the process.

Council discussed the report and one Member expressed reservations around the potential implications arising from the proposal, including future service provision, building repair liability and redundancy costs, and expressed the view that overall the proposal did not offer

value for money, although he was pleased that the termination date had been postponed to October 2023 which would allow schools sufficient time to secure new contract providers.

Mr Steve Harris (Head of Financial Services and Section 151 Officer) confirmed that the Authority has done everything possibly to address the concerns of schools, which were outlined in detail and responded to within the report. In terms of building maintenance, the business case figure has been based on condition surveys undertaken in 2018, and new condition surveys would be undertaken at both schools which may result in a higher or lower figure. However, should this figure increase, then the Authority will take account of this in their negotiations with the PFI contractor, and should they not complete these works before handover, then the Authority would seek a reduction in the compensation payment.

In terms of redundancy costs, it was explained that these would only apply if existing staff do not transfer to new service providers, with it highlighted that TUPE provisions would apply and in the event of the schools procuring services from the Council, then existing staff would transfer to Council employment. In terms of financial equity, if voluntary termination were to proceed, then capital and maintenance works funding for the two PFI schools would be addressed in the same way as every other school in the county borough. In terms of savings, it was emphasised that the Authority has worked very closely with Local Partnerships on the business case, which includes both best and worst-case scenarios, and which demonstrate that significant savings are achievable from this process. Members were reassured that if at any point, it becomes apparent that the savings are not achievable and it is not in the financial interests of the Council to proceed, then a further report would be brought back to Council in this regard.

In response to a Member's query on community use of these schools in the evenings, Mrs Sue Richards (Head of Transformation and Education Planning and Strategy) confirmed that one of the Council's strategies is to maximise after-school use, and the Authority would have the increased ability to use school buildings in this way, should Members agree to voluntary terminate the PFI contract.

One Member referred to a series of questions which he had circulated to Cabinet Members and Officers, including queries relating to financial estimates and assessments, cost savings, building surveys, contractor discussions, and compensation payments arising from the proposals, together with aspects of the process that had been approved under delegated powers. Mr Robert Tranter (Head of Legal Services and Monitoring Officer) and Mr Richard Edmunds (Corporate Director – Education and Corporate Services) confirmed that both emails from the Member had been received and responded to, and that the responses to the questions had also been circulated to all Members for their information.

One Member expressed concerns around the proposed timeframes and the speed of the consultation process to date and suggested that the final saving figures should be presented to Council before Members were asked to make a decision on the proposal. Mr Harris confirmed that all responses to the consultation process were detailed in the report, and that in terms of timescales, if the proposal were to be agreed, the Council will have a 6-month timeframe to carry out the necessary work to terminate the PFI contract, with the condition surveys scheduled for the school summer holiday period. It was emphasised that this will be a lengthy and comprehensive process comprising work with Local Partnerships, with the timeline to be revised to incorporate the new anticipated termination date, and that following agreement of the final terms of the termination under delegated powers and payment of the compensation sum, a further report will be brought back to Council setting out further details and the options for utilising the savings.

A Member questioned whether a significant level of savings arising from the proposal would be achievable, given that the final payments were yet to be confirmed. Mr Harris explained that the business case outlines how the compensation payments in the Best Case and Worst Case scenarios would be funded, through a combination of existing PFI reserves and

borrowing, which demonstrates that savings of up to £2m per annum are achievable, although it was emphasised that the final savings will depend on determination of the final compensation sum.

A Member referred to the recommendation which sought provision for the final terms of the termination to be agreed under delegated powers, and sought clarification on whether there were any regulations which define a maximum monetary level for delegated decisions. Officers confirmed that they were not aware of any such restrictions and explained that delegated authority would be given to the Head of Financial Services and Section 151 Officer, the Head of Legal Services and Monitoring Officer, and the Cabinet Member for Finance and Performance. Mr Harris emphasised that the proposal would not proceed if it became apparent that it is not in the financial interests of the Council to do so, and also explained that as the Council's Chief Financial Officer, he has a responsibility to ensure that any deal meets the requirements of the CIPFA Prudential Code for Capital Finance in Local Authorities for it to be prudent and affordable. Therefore, Members were being asked to agree that this delegated authority be given to the relevant Officers so that this responsibility can be discharged.

Clarification was sought on whether there would be any detriment to school pupils as a result of the proposals, and whether leisure facilities at the schools would be available to local residents on the evenings and weekends. Mrs Richards explained that such use is currently limited, but the Authority would be seeking to extend community use of the site to 7 days a week. In terms of educational impact, Members were reminded that Ysgol Gyfun Cwm Rhymni sits on two sites and that the Y Gwyndy site is already a non-PFI site that is funded and managed in the same way as all other Caerphilly schools, and on that basis, there would be no anticipated impact on pupil education across the two schools.

A Member asked if the PFI condition surveys were based on current inflation rates or 2018 levels and referred to the borrowing that would be needed to help fund the proposal. Mr Harris explained that the £982k figure for backlog maintenance is based on 2018 levels and has not been adjusted for inflation, but since that time some of these works will have been undertaken, and that although there will be higher costs due to inflation, these will help negotiations in terms of the final compensation sum to be paid. It was also explained that although some borrowing is needed to assist in the settlement, this presents a much better financial deal for the Council than the current PFI situation.

One Member sought clarification on the concerns around services raised by the two schools, given that the Council already supplies services to the non-PFI Y Gwyndy site, and another Member expressed reservations over the proposal and whether the Authority would be able to match the PFI level of service at these schools. Mrs Richards explained that through a series of meetings with the headteachers of both schools, some of these concerns had been alleviated, and that furthermore, the Council will be working with the schools to support them throughout this process with a minimum impact on everyone involved in the proposal.

A Member queried whether it was prudent to use reserves to help fund the proposal, and Mr Harris explained that these particular reserves were established for PFI use and can be used to help fund the compensation sum. Additionally, the WG financial contribution to the PFI contract will continue for the next 9.5 years, which puts the Council in a strong financial position.

Following consideration of the report, it was moved and seconded that the recommendations in the report be approved. By way of Microsoft Forms and verbal confirmation and in noting that there were 42 for, 12 against and 8 abstentions, this was agreed by the majority present.

RESOLVED that for the reasons given in the Officer's report:-

- (i) the proposal to voluntarily terminate the Council's School PFI Contract be

approved;

- (ii) delegated authority be given to the Head of Financial Services and Section 151 Officer, the Head of Legal Services and Monitoring Officer, and the Cabinet Member for Finance and Performance to agree the final terms of the termination;
- (iii) the final compensation sum and other associated external adviser costs be funded through a combination of existing PFI reserves and borrowing;
- (iv) the borrowing requirement be determined by the Head of Financial Services and Section 151 Officer in line with the requirements of the CIPFA Prudential Code for Capital Finance in Local Authorities;
- (v) a further report be presented to Council following the payment of the compensation sum setting out details of the funding of the payment, the revenue budget savings arising, and the options for utilising the savings.

The meeting closed at 6.11 p.m.

Approved as a correct record and subject to any amendments or corrections agreed and recorded in the minutes of the meeting held on 23rd May 2023 they were signed by the Mayor.

MAYOR