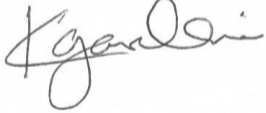



London Borough of Waltham Forest

Report Title	Private Finance Initiative (PFI) - Schools Update, Expiry Activities and Resourcing Plan
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Meeting / Date	Cabinet, 9 th May 2024
Cabinet portfolio	Councillor Kizzy Gardiner, Portfolio Lead Member for Children and Young People 
	Councillor Ahsan Khan, Deputy Leader (Housing and Regeneration) 
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Wards affected	All
Public access	Open except for Appendix 1 which are exempt in accordance with Section 100(A-H) of the Local Government Act 1972 and Schedule 12A as amended, on the grounds that they involve the likely disclosure of exempt information as defined in Part 1, paragraph 3, they contain information relating to the financial or business affairs of any particular person (including the authority holding the information) and disclosure would not be in the public interest.
Appendices	Appendix 1 – Resource Plan and Budget (Exempt) Appendix 2 – Equalities Analysis screening
1. Summary	
1.1	The purpose of this report is to update Cabinet on the status of the Council's three school Private Finance Initiative (PFI) projects and to set out the additional resources required to successfully navigate the expiry process for the Lammas School PFI Project.
1.2	The New Schools (Leyton) PFI Project (Lammas School) is the first PFI contract due to expire in Waltham Forest and the Council must ensure that at expiry of the PFI project agreement on 31 st August 2026, the

buildings within the PFI estate are returned in the condition prescribed under the PFI Project Agreement.

2. Recommendations

2.1 Cabinet is recommended to:

2.1.1 Note and approve the Resource Plan (appendix 1 – exempt) for the New Schools (Leyton) PFI Project (Lammas School):

- Approve funding of up to £95,000 from corporate contingency for the asset condition surveys.
- Note that resource costs of £58,000 for Project Management / Technical and Commercial support in 2024 will be funded by the Infrastructure and Projects Authority (IPA).

2.1.2 Delegate authority to the Corporate Director – Property and Delivery:

- To proceed with the procurement of technical advisers, staff and surveys to support the PFI expiry process and discharge necessary functions arising from the early survey noted at paragraph 3.4.
- To award contracts provided they are within the resources available in the resources plan to meet such commitments.

2.1.3 Delegate authority to the Strategic Director of Resources to increase the future budget for New Schools (Leyton) PFI Project (Lammas School) expiry activities up to a maximum allocation of £500,000 for future expenditure as determined.

3. Proposals

Background

3.1 The Council has three Schools PFI Projects. Typically, contractors set up a Special Purpose Vehicle (SPV) to enter into PFI contracts with Local Authorities. Shareholders fund circa 10% of the capital requirements for the project and the balance is borrowed, as senior debt, from institutional funders. The building works and facilities management services (including lifecycle) are subcontracted to respective building and FM companies.

3.2 The Council pays a Unitary Charge to the SPV. This is funded partly through revenue credits from the Department for Education (DfE), and Schools' contributions.

The PFI Projects

New Schools (Leyton) PFI Project (Lammas School):

3.3 The project was entered into on 29th February 2000 for the design, build, finance and operation of a new secondary school at Leyton. The Project will expire on 31st August 2026. The SPV is owned by Innisfree. Senior Debt was provided by National Westminster Bank. The Senior Debt will be repaid by 31st May 2024.

- 3.4 Facilities inspection should occur two years before Expiry – this has been brought forward to April 2024. The Council's appointed building surveyor (JW Associates) will assess whether the school buildings are in the condition consistent with the SPV's obligations under the Project Agreement. They will also determine what rectification or maintenance work is needed to bring the school back to required condition. They will also provide a view of condition to assist the Council/Academy Trust in future asset management planning.
- 3.5 A formula-based retention mechanism can commence 12 months before Expiry (August 2025) which allows the Council to deduct monies for the costs of outstanding remediation works from the Unitary Charge it would pay the SPV.
- 3.6 The original building contractor was Wates Construction Limited, and Facilities Management is undertaken by Sodexo.

Group Schools PFI:

- 3.7 The project was entered into on 15th March 2004 for the design, build, finance and operation of seven new schools. It will expire on 30th April 2036. The SPV is owned by Innisfree and managed by Vercity. The Senior Debt was provided by Dexia Bank.
- 3.8 Final survey is to be undertaken 18 months before Expiry. The retention starts 12 months before Expiry. Deductions can be made from the Unitary Charge equivalent to the costs of works outstanding.
- 3.9 The Build contractor was Kier Regional Limited, and Facilities Management is undertaken by Kier Managed Services.
- 3.10 The Council is working closely with the SPV and FM provider regarding contract performance to ensure expected standards are maintained.

Frederick Bremer Secondary School:

- 3.11 The project was part of the Building Schools for the Future programme and was entered into on 31st August 2007 for the design, build, finance, and operation of a new secondary school. It will expire on 31st August 2033. The majority of the SPV is owned by Bouygues. However, the Council has 10% of the shares in the Local Education Partnership company which owns the SPV. The Senior Debt was provided by Barclays Bank.
- 3.12 A final survey is to be undertaken no later than 18 months before Expiry. Where remediation works were identified in the final survey and they have not been completed 11 months from Expiry, the Council can make deductions from the Unitary Charge in an amount equivalent to the costs of the outstanding works. Alternatively, the SPV can provide a bond in an acceptable form.
- 3.13 The Build contractor was Bouygues Construction Limited, and Facilities Management is undertaken by Equans.

Contract Expiry

- 3.14 The Lammas School PFI Project is the first PFI contract due to expire in Waltham Forest and one of the earliest contracts to expire nationally. Preparation for expiry has a considerable lead in and the PFI Team has been working to ascertain the workstreams and associated resource requirements in liaison with the DfE and Infrastructure and Projects Authority (IPA) towards ensuring retained school assets will be returned in condition prescribed under the contract.
- 3.15 Key workstreams include governance/legal, transition planning, resource planning and contractor and school engagement. Workstream progress and outputs are fed back to the Lammas School PFI Contract Expiry Board.

Governance and Management

- 3.16 A PFI Project Board has been set up to give oversight to the Expiry process. This Board has ongoing strategic oversight on budget spend and the identification of the requirement for additional resource. The Terms of Reference detail the functions of the PFI Project Board and allow for specialists and other stakeholders to attend the board to contribute and provide advice as appropriate, including IPA consultants and DfE representatives.
- 3.17 It is anticipated that the PFI Project board will form part of the review process where there are disputes regarding the outcomes of the condition survey and in the agreement of the extent of the remediation works and related costs.
- 3.18 It should be noted that the SPV owner of both the New Schools (Leyton) PFI Project (Lammas School) and the Group Schools PFI is Innisfree. Ensuring the Council is in the best place to manage the Lammas Project, through additional resources, will enable the Asset Management team to set red lines for the Group Schools Project and its ongoing management.

The Infrastructure and Projects Authority

- 3.19 In October 2023 the IPA undertook its second (three year) Expiry Health Check (EHC) of the New Schools (Leyton) PFI Project (Lammas School). The EHC rated expiry readiness as “red/amber” meaning that there is additional work required to achieve target readiness.
- 3.20 Recommendations were focused on:
- Planning and programming of expiry workstreams, including identifying and procuring specialist legal, technical, and other commercial support, to understand the level of additional resource and budget required
 - increased engagement with the SPV to improve the management of the FM Provider
 - determining the scope for technical advice and support on the negotiation and monitoring of remedial works arising from survey

and; review of the commercial position and objectives of the Council with regards to hand-back

- formulation of a commercial strategy, communications strategy and transition plan to migrate data/information in line with the Academy Trust expectations
- Preparation of an engagement and communications plan for the Academy Trust, including the basis of a transition plan to migrate data/information in line with the Academy Trust expectations.

3.21 The report has been considered and recommendations have been implemented into workstream planning, with oversight on progress from the Lammas PFI Expiry Board.

4. Options & Alternatives Considered

4.1 The allocation of resources set out in this report will ensure that Lammas School, and those covered by the other PFI Project Agreements through lessons learnt, governance structures and upskilling of the Schools' Asset Management Team, are returned in good condition and provide a suitable environment for the education of pupils in the Borough.

4.2 If the Expiry process is not allocated additional resource or expertise, this will result in delays to the implementation of the condition survey's findings, the failure to identify the full extent of the works required and the school potentially being returned in a sub-standard condition. The Council could also be in breach of its obligation under the Schools Agreement with the Academy Trust and could face scrutiny from the DfE and IPA who have a keen interest in the Expiry process and who have undertaken surveys and made recommendations to ensure the smooth transition to Expiry.

5. Council Strategic Priorities (and other National or Local Policies or Strategies)

5.1 Delivery of the Lammas School PFI expiry activity will play a key part in delivering the Council's priorities in line with the Mission Waltham Forest objective:

- Ensure every family and every child are given every opportunity.

5.2 Successful outcomes of the project will ensure that the school building will continue to be used effectively by residents for many years to come.

6. Consultation

6.1 The Lammas School PFI expiry project has an established Board attended by Council Officers, IPA and DfE representatives. Meetings are held regularly with PFI contractors and with School and Trust

representatives to discuss activities and monitor progress of expiry activities. The Portfolio Lead Member for Children and Young People will be updated through periodic reports to Portfolio Lead Member meetings.

7. Implications

7.1 Finance, Value for Money and Risk

7.1.1 A programme and associated resource plan have been developed, which provides a cost estimate of £548k for all anticipated New Schools (Leyton) PFI Project (Lammas School) expiry activities. The asset condition surveys up to a total of £95,000 will be funded from corporate contingency. Funding for Project Management / Technical and Commercial advisors at an anticipated cost of £58,000 in 2024 will be provided by the IPA.

7.1.2 Once initial activities, including the condition survey are undertaken, resource requirements for Legal support and the second and third year leading to contract expiry will be better defined and further internal application for funding would be made in line with the delegations as set out in paragraph 2.1.3. Procurement of specialist resources and activities will be undertaken in liaison with the IPA, utilising available frameworks where possible.

7.1.3 The key risks to the Council of failing to adequately resource the Expiry process are:

- Inadequate review of the condition survey which will result in a missed opportunity to identify and realise the extent of the works required on Lammas School. A thorough technical analysis is required by suitably qualified technicians to ensure that all aspects of the remediation works are captured.
- Not completing the works identified in the survey, resulting in the school being returned in a standard that does not match the contractual requirements.
- The Council and Academy Trust could be left with a sub-standard building after paying for the lifecycle replacement and maintenance for 25 years. This could result in operational performance issues in the school building ultimately resulting in a disrupted education for pupils.
- Complaints from the Academy Trust who contribute to the project revenues/Unitary Charge.
- The risk of the Academy Trust making claims against the Council for losses, which they claim to have suffered, as a consequence of the Council failing to properly manage and/or enforce the Project Agreement.

7.2 Legal

7.2.1 The procurement of individual contracts will be carried out in accordance with the Council's Contract Procedure Rules and the Public Contracts Regulations 2015. Some projects may be individually advertised, some may be procured through frameworks which the Council may lawfully use, and some may be carried out under contracts already entered into by the Council.

7.3 Equalities and Diversity

7.3.1 An Equalities Analysis screening template has been completed and there are no negative or adverse impact identified on protected groups. (see Appendix 2). The expiry activity has identified additional needs and associated resources that were not considered at the commencement of the PFI contracts circa 25 years ago. If these duties are not discharged effectively, this would leave the school and its users in a disadvantaged position when compared with other non PFI schools. There will be continued monitoring for any potential equality impact as the project progresses.

7.4 Sustainability (including climate change, health, crime and disorder)

7.4.1 The Lammas School will be subject to a full condition survey prior to expiration, which will be used as the baseline regarding current building condition, with remedial workplans drawn up by the SPV and monitored leading up to expiry. Any remedial works undertaken will need to be compliant with current building regulations.

7.4.2 It is anticipated that management of the expiry process will have a positive impact on children and young people in the borough. Not doing so could lead to operational performance issues in the school building, ultimately resulting in a disrupted education for pupils, and a related negative impact on their health and wellbeing.

7.5 Council Infrastructure

7.5.1 The resources required within the Property and Delivery Division and external specialist support has been identified as part of the New Schools (Leyton) PFI Project (Lammas School) resource plan and is detailed in the Resource Plan and Budget (appendix 1 - exempt).

Background Information (as defined by Local Government (Access to Information) Act 1985)

None