



## Mayor and Cabinet

**Report title: Watergate School expansion project: approval to procure and budget allocation****Date:** 21.09.22**Key decision:** Yes**Class:** Part 1**Ward(s) affected:** Bellingham**Contributors:**

Executive Director for Children and Young People, Executive Director for Housing, Regeneration & Public Realm, Director of Law, Chief Accountant, Procurement and Commercial Services Manager

**Outline and recommendations**

Watergate School provides education for children aged between 2 and 11 years old with severe learning difficulties. The current school provides places for 140 pupils; 108 places on the Watergate school site, and 32 nursery/reception places temporarily based at the former Ladywell Complex Needs Centre in Ladywell, accommodated across 4 classrooms. It is projected that the school will require a total of 186 primary SEND places and therefore the school is to be expanded on the main school site to accommodate 24 reception places and 27 per year group across years 1-6.

This report seeks:

- Approval to procure works to deliver the Watergate School Expansion project through an open tender exercise
- Approval for the use of additional grant funding and S106 funding
- Approval of the scope, budget (including s106 sums) and anticipated timescales to deliver the Watergate school expansion project

### **Timeline of engagement and decision-making**

Approval to Procure Report - 5<sup>th</sup> January 2018 (subject to M&C approval)  
Mayor and Cabinet SEND School Expansion Report – 19<sup>th</sup> February 2018  
Approval to Re-procure Report - 4<sup>th</sup> September 2018  
Single Tender Action to carry out refurbishment works at Ladywell Complex Needs Centre - 23<sup>rd</sup> July 2019  
Single Tender Action for the removal of asbestos works at Ladywell Complex Needs Centre – 3<sup>rd</sup> February 2020  
Mayor and Cabinet approval to procure and budget allocation – 14<sup>th</sup> September 2022  
Overview and Scrutiny Committee – 21<sup>st</sup> September 2022

## **1. Summary**

- 1.1 This report seeks approval for officers to carry out an open tender procurement exercise to procure works to deliver the Watergate School expansion project as a single stage Design and Build (D&B) contract of works.
- 1.2 This report seeks approval for the use of additional grant funding and S106 funding.
- 1.3 This report provides an update on the Watergate School expansion project, seeking approval for the revised scope, budget and anticipated timescales to complete the project.

## **2. Recommendations**

### **It is recommended that the Mayor and Cabinet:**

- 2.1 Approve the procurement of capital works contract to deliver the Watergate School Expansion Works. Note the procurement route to be used in order to deliver the capital works for the expansion of Watergate school
- 2.2 Approve the allocation for the use of additional grant funding S106 funding to the budget
- 2.3 Approve and agree the revised scope, anticipated timescales and indicative total budget to deliver the works, on the understanding that a further report will be presented for the award of the construction contract once the works have been procured.

## **3. Policy Context**

- 3.1 The proposal within this report is consistent with the Corporate Strategy 2018-2022, in particular the Corporate Priority of 'Giving children and young people the best start in life' and the commitment to '*increase the provision for children with Special Educational Needs to meet children's learning needs within the borough*'.
- 3.2 The Local Authority has a duty to ensure the provision of sufficient places for pupils of statutory school age and, within financial constraints, accommodation that is both suitable and in good condition.

- 3.3 In aiming to improve upon the provision of facilities for Special Educational Needs and Disability (SEND) education in Lewisham which are appropriate for the 21st century, the implementation of a successful SEND strategy will contribute to the delivery of the Corporate Priority 'Giving children and young people the best start in life'.
- 3.4 It supports the delivery of Lewisham's Children & Young People's Plan (CYPP), which sets out the Council's vision for improving outcomes for all children and young people, and in so doing reducing the achievement gap between our most disadvantaged pupils and their peers. It also articulates the objective of improving outcomes for children with identified SEND by ensuring that their needs are met.

#### **4. Background**

- 4.1 The Council has a statutory obligation to ensure the provision of school places in a sustainable way, across the borough. A need for Special Educational Needs and Disability (SEND) places for Lewisham children and young people was identified following on from the 2016 SEND review. The Place Planning Strategy 2017-2022 confirmed the need for increased SEND places and was approved by Mayor & Cabinet on 22nd March 2017.
- 4.2 As part of the Place Planning Strategy 2017 - 2022, officers conducted feasibility studies of the available educational sites and these show that the extra provision can be provided alongside a rationalisation of the educational estate. Specifically; Watergate School can be extended within a wider site redevelopment scheme.
- 4.3 It was identified within the Place Planning Strategy 2017 - 2022 that there was need for an increased number of SEND school places, as a high number of SEND students currently receive out-of-borough provision (resulting in a high cost to the Authority, and inconvenience to the families). This includes an additional 59 primary Severe Learning Difficulty (SLD) places, and 93 secondary SLD places and a need to offer KS4 Social, Emotional and Mental Health (SEMH) provision.
- 4.4 On 6th December 2017, a report was presented to the Mayor recommending Watergate and Greenvale schools as the preferred locations to provide additional primary SLD and secondary SLD places respectively. Officers were therefore duly authorised to commence the statutory consultation process to:
- Expand Greenvale School from 117 to 210 places
  - Expand Watergate School from 108 to 167 places
- 4.5 On 28th February 2018, the Mayor approved the expansions of Watergate and Greenvale schools, the project budgets, and authorised officers to procure the capital works required to facilitate them via Lot 18 of the London Construction Programme (LCP) Framework.
- 4.6 Unfortunately, this procurement process was unsuccessful, as only one tender was submitted for the two schemes which was unaffordable. The tender exercise was therefore closed without a contract being awarded.
- 4.7 On the 10th September 2018, the Executive Director for Resources and Regeneration authorised officers to re-procure the expansion works to Watergate and Greenvale schools utilising an open tender OJEU process, in order to attract greater interest from a wider range of contractors.

- 4.8 Following a successful tender exercise a PCSA contract was awarded to Geoffrey Osborne for Greenvale School at Mayor and Cabinet on 28th January 2019 and Watergate School at Mayor and Cabinet on 24th April 2019.
- 4.9 During the tender stage of the Watergate project, officers became aware of a number of additional design requirements which needed further attention and discussion with the school. The number of additional places to be accommodated at the school also increased.
- 4.10 In June 2019 Avanti Architects carried out a Watergate masterplan feasibility study, incorporating the school's additional design requirements and exploring the potential to develop and enhance some of the surrounding Council-owned land. It transpired that the additional requirements meant that a further re-scope, additional approvals and further consultation with internal and external stakeholders would be required. The decision was therefore taken to postpone the project, until this exercise had been carried out and the total number of additional pupil places required had been confirmed.
- 4.11 In 2021, the total number of primary places required on the Watergate School site was confirmed as 186. In November 2021, Ellis Williams Architects were procured to develop a revised feasibility study, based on the updated requirements and having reviewed all previous feasibilities undertaken to date. The aspiration was to improve and redesign existing play facilities (the Dumps Adventure Playground as part of a broader, mixed-use development, which could see the introduction of some new provision as well as an expansion of the school site to provide additional external play space, and an area for vehicular drop-off/pick-up.
- 4.12 The feasibility was consulted on and then a preferred option was agreed in principle by all key stakeholders. In June 2022, Ellis Williams Architect were then procured to further develop the design up to RIBA stage 2.

## 5. Programme, Scope of Works

- 5.1 An outline programme for the Watergate School expansion project is included below:

<b>Watergate School Expansion Project Milestones</b>	
RIBA Stage 2 Design	Jun-Sept 2022
Mayor & Cabinet – approval to expand, and agreement of outline budget, programme and procurement route	14 September 2022
RIBA Stage 3 Design	Sept – Nov 2022
Submit Planning Application	Nov 2022
Tender works contract	Nov 2022
Tender Responses	Jan 2023
Contract Award Report for works	Feb 2023

Design Finalisation and contract negotiations	Mar – May 2023
Commence works on site	June 2023
Works completed and handover	Aug 2024

5.2 The scope of works comprises a new two storey stand-alone building (incorporating 8 classrooms with their own play areas and group rooms, toilets, entrance, office, hall, kitchen and specialist rooms), an enhanced Dumps Youth Centre and Adventure playground, a new shared-use MUGA, a new vehicle through road for a revamped pick-up and drop-off strategy, and remodelling of the existing 'Gold' classroom make the best use of space in the existing School.

## 6. Procurement options considered – route to market

- 6.1 The project requires specific construction expertise and competencies across a range of specialisms that Lewisham Council staff do not have. This work will be carried out by an external supplier. Setting up the required infrastructure to enable this function does not represent good commercial or practical sense, given the nature, complexity and scale of the works. The Council will deliver in-house other elements required to successfully undertake and maintain the works, including: project management, clienting and stakeholder management.
- 6.2 Due to the value of the works the contract is classified as a Category (A) contract under the Council's Contract Procedure Rules and therefore the procurement will be an open tender process via the London Tender portal. Bidders will be asked to submit a description of their proposals in the form of method statements, in order to test their understanding of the Employer's Requirements. The criteria for evaluation will be weighted 50% financial, 50% quality (including 5-10% social value). The contract will be awarded to the highest scoring compliant bidder after approval to award has been received from Mayor and Cabinet.
- 6.3 The works contract will be procured in line with the Council's policies and procedures via the London Tenders Portal. The contract will be procured via an open tender exercise, as a single stage Design and Build Contract.
- 6.4 There is little value in appointing a Design and Build Contractor to deliver the project via a two-stage process, whereby the initial stage is a Pre-Construction Services Agreement which develops the design from initial concept right up to construction. This would not make effective use of the time and project developments made on the project to date, and would be a reiteration of work that has already been contracted. There is no value to be gained by allowing a Design and Build contractor to start again from scratch.
- 6.5 A range of options were considered, including the use of a range of frameworks. However relevant frameworks would not enable engagement with specialist contractors. Consideration was given to CCS Lot 2.2: Construction Works and Associated Services – South England but this only has 11 contractors listed. Of these only 5 indicated working in the Education sector, one contract worked on SEN projects but was based in the East of England. Overall this framework did not evidence that there was any specialism or focus on SEND requirements. The suppliers listed appeared to have extensive expertise pertaining to infrastructure, engineering and fit out.
- 6.6 ESPO and YPO is a building related framework but does not offer a suitable construction option.

- 6.7 It is anticipated that this will be an open tender option and that this will provide the widest range of suitable suppliers.
- 6.8 The decision is to procure as a single stage tender rather than conduct a two stage tender or a restricted tender. This is due to the specialist nature of the required building and is also due to the current construction market being volatile, and therefore the intention is to 'de-risk' the project by developing the design further before it is tendered out to the market. Considerable time has been spent liaising with key stakeholders and developing the design.
- 6.9 The proposed procurement timetable for the main works is as follows:

Activity	Date
Mayor & Cabinet approval to tender	14 September 2022
Tender period, incl. clarifications and site visits	Nov 2022 to Jan 2023
Evaluation	Jan 2023
Mayor & Cabinet approval / Standstill	Feb 2023
Contractor mobilisation	May 2023
Works commence	June 2023
Works complete	August 2024

- 6.10 Tenders will be evaluated on a 50/50 basis (price/quality).The exact evaluation method will be that the tender will be evaluated using MEAT - Most Economically Advantageous Tender; this will be conducted with the advice and support of the Council Procurement team.
- 6.11 The procurement opportunity will be advertised via the Council's online tendering system (ProContract Procurement Portal), which publishes opportunities through the London Tenders Portal.
- 6.12 A separate contract award report will be prepared seeking authority to appoint the successful contactor, in line with the Council's procurement rules and procedures.
- 6.13 Baily Garner, the appointed multi-disciplinary consultant, will administer the contract that is awarded and will be responsible for ensuring the works are carried out as required.
- 6.14 It should be noted that, due to timescale pressures, the intention is for the Planning Determination Period to run in parallel with the Procurement of this project. There is therefore a risk that any design changes required as a result of the Planning Determination process may impact on the timescales and/or cost of this project.

**7. Use of s106 Funds**

- 7.1. In order to support the scheme, it is recommended that the Council provide grant through financial contributions that have been secured for education purposes through Section 106 agreements.
- 7.2. The table below summarises the specific Section 106 agreements and sums that have been identified for the suggested grant allocation of £447,870.16, followed by the relevant descriptions:

Planning Number	Site Address	Amount	Type of obligation

DC/10/75331	Site of Parkside House, Grinstead Rd (Neptune Wharf)	£387,157.95	Education General - Contribution
DC/10/75331	Site of Parkside House, Grinstead Rd (Neptune Wharf)	£60,712.21	Education General - Contribution
TOTAL		£447,870.16	

7.3 The s106 sums which have been received are detailed below:

***Education contribution DC/10/75331 Site of Parkside House, Grinstead Rd (Neptune Wharf) – s106 Agreement dated 30<sup>th</sup> March 2012. The s106 has been amended by one Deed of Variation (dated 23.3.21) which makes no amendment to the Education provisions,***

The original s106 defines the Education sums as follows:

Phase 1 Education Contribution means:

“the sum of ninety-two thousand two hundred and sixty pounds (£92,260) (Index Linked) to be paid by the Developer to the Council in accordance with paragraph 1.1 of Part 8 of Schedule 1;”

Phase 2 Education Contribution means:

“the sum of two hundred and forty-seven thousand Contribution" seven hundred and thirty-five pounds (£247,735) (Index Linked) to be paid by the Developer to the Council in accordance with paragraph 1.2 of Part 8 of Schedule 1”

Schedule 8 states:

“1.3 The Council will apply the Phase 1 Education Contribution and the Phase 2 Education Contribution solely towards Education Purposes”

And defines Education Purposes as:

"the provision of new or the expansion of existing preschool primary school and/or secondary school facilities within the Council's Area.”

The sums which have been received differ from the amounts noted in the above meanings due to indexation and because the developer has paid part of the Education sum early – it was due on occupation (which has not yet happened) not on commencement.

All of the £447, 879.16 will be used leaving a total of £0.00 and will be spent on Watergate school which is a primary school within the Council’s Area, and as such meets the obligations.

Watergate School expansion is noted in the Council’s Infrastructure Delivery Plan although with fewer places (59) as such this is considered to be an appropriate use of the funds.

Once the sums have been agreed, a revised PID will be submitted for approval to

Regeneration and Capital Programme Delivery Board in October.

## **8. Cost and budget allocation**

8.1 Full cost and budget allocation have been set out in section 7 of the Part 2 report

## **9. Financial Implications**

9.1 Full financial implications have been set out in section 8 of the Part 2 report

## **10. Legal implications**

- 10.1 The value of the proposed works contract including all applicable contingency means this is a Category A Contract for the purposes of the Council's Contract Procedure Rules (CPR). The value of the contract is above the former E.U (now Find a Tender) threshold for works. The proposal envisages an open tender, which would be compliant with the CPR and the Public Contract Regulations 2015. Officers should ensure the contract is advertised in accordance with the regulations.
- 10.2 The award of this contract in due course will be a key decision under Article 12.2(a) and (c) (xxiii) of the Constitution, as the value of the contract will be above £200,000.
- 10.3 The Public Services (Social Value) Act 2012 requires that when the Council is procuring above the former EU (now Find a tender) threshold – as is the case here - it must consider, before commencing a procurement process, how the procurement might be conducted so as to improve the social, economic and environmental wellbeing of the area. The matters to be considered must only be those relevant to what is to be procured and it must be proportionate in all the circumstances to take those matters into account. The Council has adopted a Social Value policy which must also be applied; and the Council's Sustainable Procurement Code of Practice will need to be applied to the contract. The report sets out the social value issues which arise, and any future decision by the decision maker will also need to take those matters into consideration.
- 10.4 The Council is legally required to apply the contributions received by it in accordance with the terms of the particular Section 106 Agreement under which the contribution was received and should it not do so may be required to repay the money. The agreements listed enable the contributions to be spent on the provision of new or the expansion of existing preschool primary school and/or secondary school facilities within the Council's Area. The report identifies that the money from the S106 agreement identified at paragraph 7.2 of this Report will be used towards the expansion of the primary SEND provision at Watergate School site so as to provide 186 primary places. This use accords with what is required in the definition of the term "Education Purposes" set out within the S106 Agreement.
- 10.5 If money is to be paid in advance of works being completed, an appropriate funding agreement needs to be entered into with the Council, so as to ensure that the money is applied for the purposes approved and falling within the purposes set out in the S106. This report therefore delegates authority to Executive Director of Housing, Regeneration and Public Realm, in consultation with the Director of Law, Governance and Elections, to negotiate the terms of the funding agreement
- 10.6 The Equality Act 2010 (the Act) introduced a new public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.



- 10.7 In summary, the Council must, in the exercise of its functions, have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
  - advance equality of opportunity between people who share a protected characteristic and those who do not.
  - foster good relations between people who share a protected characteristic and those who do not.
- 10.8 The duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.
- 10.9 The Equality and Human Rights Commission has issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at: <http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice-and-technical-guidance/>
- 10.10 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:
- The essential guide to the public sector equality duty
  - Meeting the equality duty in policy and decision-making
  - Engagement and the equality duty
  - Equality objectives and the equality duty
  - Equality information and the equality duty
- 10.11 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at: <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/guidance-on-the-equality-duty/>

## **11. Equalities implications**

- 11.1 The services provided will benefit all pupils and staff in the school, as well as the community. No individual person or group will be disadvantaged because of any protected characteristic in the Equality Act 2010 and the requirements of the act will be fully taken into account during the project.

## **12. Climate change and environmental implications**

- 12.1 The Watergate school expansion project will deliver improvements across the school,

In particular through providing a new two-storey energy efficient building, as well as eco-friendly accompanying external facilities. The youth centre will benefit from an upgraded building with better insulation and energy efficient solutions and new adventure playground. The new vehicular through road will assist with better traffic flow and there will be an anticipated air quality improvement along with more landscaping.

### **13. Social Value implications**

- 13.1 The Watergate School Expansion project will deliver social value to the London Borough of Lewisham by working with colleagues in the Local Labour, Sustainability and Procurement teams to set targets in line with the Council's strategic aims and objectives for the contract. The Lewisham Sustainability policy and social value tool will be used.
- 13.2 The quality weighting will include 5%-10% for Social Value in line with the Council's procurement policies. The weighting given to the social value element of the method statement will be agreed with Procurement and be in line with the Council's Social Value Policy. Part of the tender evaluation for quality will include a method statement question on Social Value to evaluate the social value commitments contractors have made.
- 13.3 The social value targets will be agreed and managed by the Local Labour Business Scheme (LLBS) team who will ensure that all social value targets are met.

### **14. Crime and disorder implications**

- 14.1 There are no Crime and Disorder Implications arising from this report

### **15. Health and wellbeing implications**

- 15.1 The Watergate School expansion project will help to improve the health and wellbeing of staff, children and the community by creating a safer environment and better functioning facilities for the school and community.

### **16. Background papers**

- 16.1 19<sup>th</sup> February 2018 SEND School Expansion Mayor and Cabinet Report

### **17. Report author and contact**

- 17.1 Iffat Iqbal, Project Manager - Iffat.Iqbal@lewisham.gov.uk, 07392 862 185
- 17.2 Comments for and on behalf of the Director of Law, Governance and HR Mia Agnew (Senior Lawyer) [mia.agnew@lewisham.gov.uk](mailto:mia.agnew@lewisham.gov.uk) (Ref JW)
- 17.3 Comments on behalf of Head of Finance, Sofia Mahmood (Chief Accountant) [sofia.mahmood@lewisham.gov.uk](mailto:sofia.mahmood@lewisham.gov.uk)