

Report to the Cabinet

Meeting to be held on Thursday, 7 July 2022

Report of the Director of Strategy and Performance

Part I

Electoral Division affected:
Burnley Rural;

Corporate Priorities:
Delivering better services;

Lancashire Schools Phase 3: Project Agreement Variation

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Brief Summary

Lancashire County Council has been working to progress a series of School Planning projects and suitability works to the Building Schools for the Future estate, most notably the move of Broadfield Special School, Accrington, into the former Hameldon College, Burnley, premises, to create additional places for SEN pupils.

The project aims to improve outcomes for children and young people with autism and reduce High Needs Block spend on out of county placements. The project was initiated over 12 months ago and has not been delivered due to complications arising from defects liabilities.

The Lender has now stated that it requires the Authority to issue a certificate under section 3 of the Local Government (Contracts) Act 1997 before it will approve the variation to the BSF Project Agreement necessary to allow the works at Hameldon College to proceed.

Recommendation

Cabinet is asked to :

- (i) authorise the Director of Corporate Services to approve any documents required to give effect to the variation to the Project Agreement in order to allow the relocation of Broadfield Special School to the Hameldon College premises;
- (ii) authorise the Chief Executive and Director of Resources to issue a certificate under the Local Government (Contracts) Act 1997 in respect of

the variation to the Project Agreement to be entered into between the county council and the PFI Contractor regarding works to be undertaken at the Hameldon College premises; and

- (iii) agree that Lancashire County Council give an indemnity to the Chief Executive and Director of Resources as follows:

“Lancashire County Council shall indemnify the Chief Executive and Director of Resources against any claims made against them (including costs incurred by and awarded against them) and will not itself make claims against them for any loss or damage occasioned by neglect and error or omission committed by the Chief Executive and Director of Resources in the course of or in connection with the signing of the certificate(s) referred to above.”

This decision should be implemented immediately for the purposes of Standing Order C29 as any delay could adversely affect the execution of the county council's responsibilities. The reason for this is that the decision has been designated as business critical by the relevant Executive Director, and any delay in its implementation would have an adverse effect on the operations of the county council.

Detail

On 4 March 2021 Cabinet approved a number of projects as set out in the report 'Developing Provision for Children and Young People with Special Educational Needs and Disabilities' which aimed to deliver against the SEND Sufficiency Strategy 2021-24.

One of the agreed projects, which forms the subject of this report, will deliver additional special school places through the relocation and expansion of Broadfield Specialist School, Accrington, to the former Hameldon College premises in Burnley. The premises are provided through Private Finance Initiative (PFI) arrangements, which is the funding model for Lancashire Building Schools for the Future (BSF) Programme in East Lancashire. The programme was developed during the 2000's and delivered in a number of phases, with the county council entering into a 25 year contract with the PFI Contractor for the design, construction, maintenance and operation of the schools delivered under each phase. The former Hameldon College premises are provided under Phase 3 of the programme.

As the school was procured as part of the Building Schools for the Future programme, there are additional legal agreements beyond those ordinarily seen in the delivery of school place sufficiency projects to deal with the relationship between Lancashire County Council and the PFI Contractor responsible for the maintenance of the school and delivery of facilities management services, including capital building works.

Negotiations with the PFI Contractor regarding the delivery of this project have been underway since May 2021 and were due to be completed to allow Broadfield to move in to the Hameldon College premises from April 2022, with full occupation by September 2022 due to a phased transfer. To date, the PFI Contractor has been

unable to obtain the necessary approvals from its Lender due to a number of issues entirely outside the county council's control.

The county council has followed the process set out in the Project Agreement in seeking to deliver this project through a contract variation which would enable the county council to deliver its strategic commitments, namely the relocation of Broadfield Special School to the Hameldon College premises.

In addition to the issues identified above, the Lender has now imposed a requirement on the Authority to issue a certificate under section 3 of the Local Government (Contracts) Act 1997 in respect of the proposed variation to the Project Agreement in order to provide protection in the event that the variation is deemed to be ultra vires before it will give the necessary approvals for the works at Hameldon College to proceed. This is despite the county council having agreed with the PFI Contractor in December 2021 that no such certificate was required given that the Project Agreement itself had been certified; and the Lender having been aware of this position since that time.

Cabinet is therefore asked to:

- (i) authorise the Director of Corporate Services to approve any documents required to give effect to the variation to the Project Agreement in order to allow the relocation of Broadfield Special School to the Hameldon College premises;
- (ii) authorise the Chief Executive and Director of Resources to issue a certificate under the Local Government (Contracts) Act 1997 in respect of the variation to the Project Agreement to be entered into between the county council and the PFI Contractor regarding works to be undertaken at the Hameldon College premises; and
- (iii) agree that Lancashire County Council give an indemnity to the Chief Executive and Director of Resources as follows:

“Lancashire County Council shall indemnify the Chief Executive and Director of Resources against any claims made against them (including costs incurred by and awarded against them) and will not itself make claims against them for any loss or damage occasioned by neglect and error or omission committed by the Chief Executive and Director of Resources in the course of or in connection with the signing of the certificate(s) referred to above.”

The 1997 Local Government (Contracts) Act certificate is issued by the county council and signed by a statutory chief officer (typically the Section 151 Officer, which will be the county council's Chief Executive and Director of Resources) and provides a degree of protection for the PFI Contractor against losses in the event that the variation is declared void as a result of an ultra vires act on the part of the county council.

An indemnity provided by the county council in favour of the Chief Executive and Director of Resources is required as the 1997 Act Certificate is signed in the officer's personal capacity. As such, although the PFI Contractor would take the protection

from the 1997 Act Certificate, a separate cause of action may lie against the Chief Executive and Director of Resources, for which they must be indemnified.

Consultations

N/A

Implications:

This item has the following implications, as indicated:

Risk management

The county council and partners across education, health and care are required to work together to plan for and meet the needs of children and young people who have special educational needs and disabilities, in line with the Special Educational Needs and Disabilities Code of Practice 2014.

If the decision was not to proceed with the proposals contained within the report, there would be a risk of insufficient places being available for children and young people with special educational needs and disabilities within the county, and potential for increased costs for out of area placements. This proposal mitigates the risk of this and the county council failing in its duty to provide sufficient school places.

Legal

The county council may issue certificates under the Local Government (Contracts) Act 1997 and regulations made under it to certify any service contract with a term lasting over five (5) years, such as the Project Agreement. The intention is to provide a private sector contractor with protection in the event that the contract is subsequently deemed to be ultra vires.

Although as part of the PFI Contractor's due diligence the county council has supplied comprehensive evidence, to the satisfaction of the PFI Contractor, that the appropriate decision making process has been followed in respect of the proposed variation to the Project Agreement; and the Project Agreement which sets out the variation procedure was itself certified in accordance with the Local Government (Contracts) Act 1997, the Lender has determined that additional comfort in the form of a 1997 Act Certificate is required to protect its interests in the unlikely event that the variation to the Project agreement is deemed to be ultra vires.

Equalities and Cohesion

In making any changes to provision the county council must comply with the Public Sector Equality Duty, which requires it to have 'due regard' to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;

- advance equality of opportunity between people who share a relevant protected characteristic and people who do not share it; and
- foster good relations between people who share a relevant protected characteristic and people who do not share it.

The proposed increase in provision available in Lancashire will improve what is available for children and young people with special educational needs and disabilities.

This proposal to relocate and expand Broadfield School impacts on both the age (young people) and disability protected characteristics of the Equality Act 2010 and is designed to contribute positively to the Public Sector Equality Duty's general aim of advancing equality of opportunity and its related aim of increasing participation in public life for these children and young people, their families and carers.

Financial

High needs funding within the dedicated schools grant supports provision for children and young people with special educational needs and disabilities. This funding enables local authorities and education providers to meet their statutory duties under the [Children and Families Act 2014](#).

The escalating pressures on the high needs block are not unique to Lancashire; the special educational needs reforms introduced through the Children and Families Act in 2014 placed new statutory duties on all Local Authorities, which included an extension in the age range from birth to twenty-five years, previously this was up to school leaving age of sixteen for the majority of young people.

Detailed implications for the project to expand Broadfield Special School and relocate to the former Hameldon premises are set out in the report to Cabinet in March 2021.

The county council is in the process of calculating the financial impact resulting from the delay in progressing and delivering this project.

List of Background Papers

Paper	Date	Contact/Tel
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None		
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Reason for inclusion in Part II, if appropriate

N/A
