

Birmingham City Council

Report to Cabinet

Date: 26th March 2019



Subject: **SCHOOLS CAPITAL PROGRAMME – SCHOOL
CONDITION ALLOCATION, BASIC NEED
ALLOCATION 2019-20 + FUTURE YEARS**

Report of: **Director for Education & Skills**

**Relevant Cabinet
Member** **Cllr Jayne Francis - Education, Skills and Culture
Cllr Tristan Chatfield - Finance and Resources**

**Relevant O &S
Chair(s):** **Cllr Mariam Khan - Learning, Culture & Physical
Activity
Cllr Sir Albert Bore - Resources**

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Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: 006198/2019		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential :		

1 Executive Summary

- 1.1 To update on progress of the Schools' Basic Need (BN) Capital Programme and Schools' Condition Allocation (SCA) Programme.
- 1.2 To seek approval for the Project Definition Document (PDD) for the Schools' Condition Programme 2019/20 plus 'Future Years'.
- 1.3 To seek approval for the Project Definition Document (PDD) for the Schools' Basic Need Programme and Special Provision Fund Capital Allocation 2019/20 plus 'Future Years'.
- 1.4 To note the presumption grant allocated for establishing a local authority led Free School.
- 1.5 To reaffirm the increased delegated authority level of the Director for Education & Skills, in consultation with the relevant Cabinet Member, for emergency reactive maintenance projects from £200k to £500k, in order to prevent unnecessary school closures in emergency situations.
- 1.6 To note that in dual funded projects approval will only be sought for the Council's contribution to cost of the project.

2 Recommendations

That Cabinet

- 2.1 Notes the progress on the delivery of the Schools' Condition Programme and Schools' Basic Need Capital Programme, as outlined in this report.
- 2.2 Approves the PDD for the Schools' Condition Programme (**Appendix 2**) and the anticipated allocation of £9,000k for the delivery of this programme (**Appendix 1**).
- 2.3 Approves the PDD for the Schools' Basic Need Programme and Special Provision Capital programme (**Appendix 3**) and the allocation of £125,282k as profiled in **Appendix 1** for the delivery of this programme.
- 2.4 Approves the allocation of £5m of Basic Need Grant for the development of Feasibility Studies to inform Full Business Cases in order to deliver the Basic Need programme.
- 2.5 Notes and reaffirms a decision made by Cabinet on 27th July 2015 increasing the delegated authority level for the Director for Education and Skills, in consultation with the relevant Cabinet Member, from £200k to £500k for schools' emergency reactive maintenance projects.
- 2.6 Notes that in dual funded projects, approval will only be sought for the Council's contribution to cost of the project.
- 2.7 Authorises the City Solicitor to negotiate, execute, seal and complete all necessary documents to give effect to the above recommendations.

3 Background

- 3.1 The Local Authority has a statutory duty to secure sufficient school places to meet the needs of the population in Birmingham.
- 3.2 It remains a challenge to predict with certainty where and when places will be needed. The current priority is to create sufficient secondary places as the growing primary cohorts are now entering secondary school. The supply of school places continues to increase with new places provided by Free Schools, additional places provided by schools that are their own admissions authorities and additional places provided through the Local Authority's Basic Need programme.
- 3.3 To date nearly 17,000 additional school places have been created in Birmingham. These include permanent and temporary expansions as well as bulges to meet in-year growth. The School Capacity (SCAP) return to the DfE was submitted at the end of July 2018 which gave us a clear indication of our requirements for 2019/ 20. This has been reported at the Education Overview and Scrutiny Committee in September 2018 and our School Place Planning Requirements 2018/19 to 2024/25 were published in December 2018 (**Appendix 4**)
- 3.4 Health and Safety At Work Act 1974 and School Standards and Framework Act 1998 Section 22 requires the Local Authority in its capacity as employer to provide a safe place of work and to ensure that the maintained school estate is not subject to decay which could put the health and safety of pupils at risk.
- 3.5 Since the introduction of the Academies Act 2010, the education landscape has been changing as some schools choose to change their status from Local Authority maintained to academy. While the Council's maintained schools portfolio has been reduced as a result of the Academies programme, the Council remains the single largest Accountable Body and Landlord for education in Birmingham and receives an annual grant funding to fulfil its statutory duties in relation to the schools' estate.
- 3.6 The School Condition Programme, which sits within the Schools Capital Programme 2019-20, addresses these issues through annual planned maintenance projects and reactive emergency repairs to LA maintained schools. The SCA grant that the Council receives is not sufficient to meet the substantial backlog maintenance requirements across our maintained schools estate. Therefore, prioritisation of maintenance projects, based upon the risk resulting in school closure, is necessary, along with leveraging of joint funding with schools wherever possible.

4 Options considered and Recommended Proposal

- 4.1 The option of relaxing the Council's commitment to providing school places within recommended travel distances would reduce the risk of capital funding shortfalls but would increase the need for young people to travel

further to attend school with the subsequent, documented risk of non-attendance and underachievement.

- 4.2 The option of reducing the maintenance programme to emergency repairs only would lead to increased risk of school closure from asset failure and would reduce the value for money that can be secured through effective planned maintenance.
- 4.3 It is therefore proposed that the PDD for Schools' Condition Allocation and Basic Need Allocation is approved.

5 Consultation

5.1 Internal

The Leader and all Ward Members have been consulted in relation to the proposals and no comments were received. The Leader agreed that the report should proceed for an executive decision. Officers from City Finance, Corporate Procurement and Legal and Governance have been involved in the preparation of this report.

School Place Planning Requirements were shared with Learning, Culture and Physical Activity O&S Committee on 5th September 2018

5.2 External

School Place Planning Requirements 2018/19 to 2024/25 document was shared with all schools via Schools' Notice Board. Attendance at Primary, Secondary, Early Years and Post 16 forum is also planned between now and March. Schools are reminded annually of their duty to share their admission numbers with the Council and are required to notify the Council of any changes to their admission arrangements. Ongoing consultation will continue to take place as required with key external stakeholders in all projects within the Schools Capital Programme.

6 Risk Management

- 6.1 Limiting any school condition spend to emergency repairs only will result in backlog maintenance issues escalating across the estate leading to serious health and safety risks for staff and pupils in school.
 - 6.1.1 to mitigate this risk we will prioritise projects that meet the following criteria (as set out in **Appendix 2**):
 - Condition issues that are most likely to lead to school closure
 - Condition issues that pose Health and Safety risks
 - Condition issues that must be addressed in order to fulfil statutory compliance obligations

- 6.2 The risk of projects running over time and over budget will be mitigated by ensuring appropriate governance arrangements are in place so that all parties are informed of progress against the 2019/20 programme. This will enable any concerns to be picked up at the earliest opportunity and resolved so that the programme stays on track. Where there is a risk, acceleration of project may be introduced to ensure projects are delivered on time resulting in sufficient places for all children of Birmingham. Where costs are escalating, a value engineering exercise will be under taken to ensure that the costs do not exceed the agreed amount.

7 Compliance Issues:

7.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

- 7.1.1 The Schools' Capital Programme is necessary for the Council to meet its statutory duty to secure sufficient early years, primary, secondary and special school places in safe and compliant school buildings and early years' settings. City-wide, the School Condition programmes will support the Council Priorities.
- 7.1.2 The spending priorities proposed are in accordance with the Schools' Capital Programme 2019-20 and the Council's Vision and Forward Plan priorities for Children, particularly 'A great place to grow up in by providing an environment where children have the best start in life and are able to realise their full potential through great education'. The provision of additional school places is also beneficial to the safeguarding of children.
- 7.1.3 Birmingham Business Charter for Social Responsibility
Compliance with the BBC4SR is a mandatory requirement that will form part of the conditions for all contractors selected to deliver City-wide Basic Need and School Condition projects (including school led programmes). Prior to contract award an action plan proportionate to the contract sum will be evaluated and agreed with them on how the Charter principles will be implemented and monitored during the contract period.

7.2 Legal Implications

- 7.2.1 This report facilitates the discharge of the Local Authority's duties and overall responsibility for the capital strategy for schools, under section 14 of the Education Act 1996. The Local Authority has a general landlord duty for all buildings which it lets to academies, and a duty under section 22 of the School Standards and Framework Act 1998 to maintain its schools, this includes expenses relating to premises.

7.3 Financial Implications

- 7.3.1 The Schools' Capital programme is primarily funded from the Department for Education's School Condition Allocation (SCA), Basic Need (BN), Special Provision Funding Allocation (SPFA), Free Schools grant allocations and other resources as indicated in **Appendix 1**
- 7.3.2 In the event that capital resource availability for these purposes is changed, then the programme will be amended to reflect such changes through the existing quarterly review process with detailed approval to be sought through the appropriate governance procedures.
- 7.3.3 The expenditure on Schools' Capital programme has previously been reported in staged developments. Moving forward, the reporting will be simplified to align with requirements and available grant.
- 7.3.4 **Appendix 1** provides the summary of spend requirements profiled for 2019/20 + Future Years.
- 7.3.5 Proposals for School Condition for 2019/20
- In 2018/19 we delivered 26 planned maintenance, 29 approved dual funded projects and spent £820,801 on reactive maintenance. The 2019/20 Schools' Condition programme will be an estimated £9,000k. Options and recommended approach are set out in the School Condition PDD (**Appendix 2**). The key investment priorities seek to address the state of repair of school buildings and reduce the risk of school closure resulting from asset failure. The available SCA grant is split between the 4 work streams to address the highest priority condition need.
- 7.3.6 Structural investigations have identified a number of school buildings with major structural issues that are beyond economic repair. In order to mitigate any potential health and safety risks these buildings need to be demolished and rebuilt if required. Any immediate health and safety issues will be funded through the Emergency Unscheduled Repairs funding within the SCA (see **Appendix 2**) whilst a longer term plan is developed to replace the blocks or the whole school as appropriate.
- 7.3.7 Individual schools are not identified in the PDD for the School Condition programme as they are in various stages of identification and development. Individual schools will be identified at FBC / Chief Officer Delegation stage.
- 7.3.8 Schools that demonstrate experience and capacity in delivering their own capital schemes and agree to part fund the works will be able to submit a Dual Funding application. The available funding will be allocated on a priority basis ensuring elements such as safeguarding, compliance and health & Safety are prioritised for funding.
- 7.3.9 Consequential revenue costs and any ongoing day to day repair and maintenance of the asset will be met by schools via the formulaic Dedicated Schools Grant. For Academies any consequential revenue costs arising

including additional staffing, utility costs and any on-going day to day repair and maintenance of the asset will be the responsibility of the Academy and funded from the Academy's General Annual Grant (received by the Academy from the ESFA)

7.3.10 Priority School Building Programme (PSBP)

This is a Department for Education (DfE) funded condition led capital programme. However, the Local Authority, as landowner, is expected to meet the costs with regard to ground contamination and for works outside the site boundary e.g. Section 278 highway works, which are unknown and un-quantified at this stage. The Council also has the opportunity to provide additional funding to create additional places should there be a need in the area. These costs will have to be funded from either the School Condition or Basic Need allocations and will be confirmed at FBC / Chief Officer Delegation stage.

7.3.11 Proposal for Basic Need Allocation

In 2018/19 10 school projects were completed and handed over, with 9 projects in delivery. A further 6 school projects are in development at various gateway stages. The 2019/20 Schools' Basic Need programme will be £46,264k and the options and recommended approach are set out in the Basic Need PDD (**Appendix 3**). The key investment priorities seek to address the shortfall of school places as set out in the School Place Planning Requirements 2018/19 to 2024/25 (**Appendix 4**).

7.3.12 Our strategy in Birmingham to meet Basic Need has 4 key strands:

- Make optimum use of existing space, buildings and sites to provide sufficient, suitable, high quality additional places where needed
- Work with all schools, academies and new schools to meet Basic Need through co-ordinated expansion plans
- Allocate annual Basic Need Capital investment effectively and efficiently to areas where basic need requirements can only be met through either re-modelling, refurbishment or new-build projects
- Identify alternative funding sources and models to deliver requirements including S106, school contributions, bidding opportunities etc..

7.3.13 Part of the solution for creating the number of additional places required will be through establishing new schools. We will continue to work with the EFA to provide information on where the greatest need for additional provision is required in line with Basic Need. The size, location and type of provision are all key determining factors for whether a proposal will meet the needs of the authority. Where there are significant gaps in provision, the Local Authority will establish a new school through the Free School Presumption route. The capital funding for any such proposal will be met through the Local

Authority's Basic Need Allocation. However, Birmingham has been identified as one of the LAs to receive a one off presumption grant allocated for establishing a local authority led Free School.

7.3.14 Individual schools are not identified in the PDD for the Schools' Basic Need programme as they are in various stages of identification and development. Individual schools will be identified at FBC / Chief Officer Delegation stage as required.

7.3.15 Special Provision Fund (SPF) - Allocation from 2018-19 to 2020-21
Local authorities must ensure there are sufficient good school places for all pupils, including those with SEN and disabilities. In March 2017, the Government committed £215 million of capital funding from 2018 to 2021 to help local authorities create new school places and improve existing facilities for children and young people with SEN and disabilities.

7.3.16 Birmingham's SPF allocation is a total of £7,253k from 2018 to 2022. This capital funding is not ring-fenced and local authorities can use it as they see fit to improve special provision for children and young people with education, health and care (EHC) plans. Full guidance on the SPF grant can be found in **Appendix 5**

7.4 Procurement Implications (if required)

7.4.1 The procurement route for the major Capital Projects will be via the Constructing West Midlands (CWM) Framework. Previously approved criteria will be applied to achieve best value for money based on current DfE education space guidelines and industry benchmark rates. Acivico will provide Project Management to ensure value for money is achieved throughout delivery of the capital programme.

7.4.2 Schools or Trusts that demonstrate experience and capacity in delivering their own capital schemes will be able to do so subject to relevant Gateways and Approvals. However, grant funding will only be released on production of paid invoices and once the works have been inspected and signed off by BCC.

7.5 Human Resources Implications (if required)

7.5.1 N/A

7.6 Public Sector Equality Duty

7.6.1 A Full Equality Analysis (EA0001202) was carried out in May 2016 for the Schools' Capital Programme 2019–2020. The outcomes from the consultation demonstrate that proposed capital developments support positive outcomes for children, young people, their families and carers. No negative impact on people with Protected Characteristics was identified. It was concluded that sufficiency of educational places and opportunities for

all children and young people contributes to providing positive life chances, and supports a positive approach to Safeguarding in Birmingham actively reducing the number of children and young people out of school helps to mitigate risk to their safety and wellbeing.

8 Appendices

8.1 List of Appendices accompanying this Report (if any):

1. Requirements and financial model
2. PDD SCA
3. PDD BN
4. Sufficiency
5. SPF Guidance
6. Risk Register

9 Background Documents