

Birmingham City Council

Report to Cabinet

Date: 16th May 2023



Subject:	SCHOOLS' CAPITAL PROGRAMME – SCHOOL CONDITION ALLOCATION, BASIC NEED ALLOCATION 2023-24+ FUTURE YEARS
Report of:	Sue M Harrison, Director for Children & Families
Relevant Cabinet Member	Cllr Karen McCarthy- Children Young People and Families Cllr Yvonne Mosquito - Finance & Resources
Relevant O & S Chair(s):	Cllr Kerry Jenkins– Education & Children's Social Care Cllr Akhlaq Ahmed- Resources
Report author:	Jaswinder Didially, Head of Education Infrastructure, Telephone No: 0121 303 8847 Email: Jaswinder.didially@birmingham.gov.uk

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: 011355/2023		
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 2023/24 plus 'Future Years'.
- 1.3 To seek approval for the Project Definition Document (PDD) for the Schools' Basic Need Programme 2023/24 plus 'Future Years'.
- 1.4 To reaffirm authorisation to increase the delegated authority level of the Service Director for School related projects from £200k to £500k, in order to prevent unnecessary school closures in emergency situations, and to seek authorisation that this increased delegation can be extended for projects to meet our statutory duty to provide additional pupil places.
- 1.5 To seek authorisation for Capital Project and Programme overspends to be approved by the relevant decision maker in line with resource thresholds outlined in the Birmingham City Council Constitution document.

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 (SCA) Programme (**Appendix 2**) and the anticipated allocation of £14.000m for the delivery of this programme.
- 2.3 Approves the PDD for the Schools' Basic Need (BN) Programme (**Appendix 3**) for the delivery of this programme.
- 2.4 Approves the procurement strategy for the Basic Need and Schools' Condition Allocation schemes above the procurement governance threshold of £177,897 to use Acivico Ltd's Constructing West Midlands 2 Framework Agreement and delegates the award of contract to the Cabinet Members for Children, Young People & Families and Finance & Resources in conjunction with the Director for Education & Skills.
- 2.5 Approves the allocation of £5.000m of Basic Need Grant for the development of Feasibility Studies to inform Full Business Cases (FBC) in order to deliver the Basic Need and High Needs Provision Programme.
- 2.6 Notes that in dual funded projects, approval will only be sought for the Council's contribution to the cost of the project.
- 2.7 Notes and reaffirms a decision made by Cabinet on 26th March 2019 increasing the delegated authority level for the Director for Education and Skills, from £200k to £500k for schools' emergency reactive maintenance

projects and approve the extension of this delegation for projects to meet our statutory duty to provide additional pupil places.

- 2.8 Authorises the City Solicitor and Monitoring Officer to negotiate, execute, seal and complete all necessary documents to give effect to the above recommendations.
- 2.9 To delegate the approval of Capital Project and Programme overspends to be approved by the relevant decision maker in line with resource thresholds outlined in the Birmingham City Council Constitution document.

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 mainstream and special educational need 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 Since 2009 over 23,200 additional mainstream school places have been created in Birmingham. These include permanent and temporary expansions as well as bulges to meet in-year growth and includes new schools. The last School Capacity (SCAP) return to the DfE was submitted at the end of July 2022 and is pending signoff. This return provides a clear indication of our requirements for 2022/23 to 2028/29, reflecting the requirement for additional secondary places to meet demand. The secondary place demand was outlined originally in the School Place Planning Requirements 2018/19 to 2024/25 document published in December 2018 as a result of higher primary cohorts, continued growth and new housing developments. However, since that publication, updated forecasts as a result of changes to planning areas, migration in the region and local housing developments has prioritised target areas for additional places in both the north of the city (Erdington and Sutton Coldfield), as well as southeast Birmingham (Hall Green and Selly Oak).
- 3.4 Since 2015 over 620 additional special educational needs (SEND) places across special schools, as well as additional places in both new and expanded resource bases, have been created. This coming summer 2023 will see the first SEND SCAP return to the DfE. Work is ongoing to meet current and forecast demand to meet the needs of our City.
- 3.5 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.
- 3.6 The Health and Safety at Work Act 1974 and School Standards and Framework Act 1998 Section 22 requires the Local Authority in its capacity as the 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.
- 3.7 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.
- 3.8 The School Condition Programme, which sits within the Schools' Capital Programme 2023-24, 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 levering of joint funding with schools wherever possible. In 2022/23 we have so far delivered 47 planned maintenance, 32 approved dual funded projects and forecasting a spend of £0.640m on reactive maintenance as at 31st January 2023.
- 3.9 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 unquantified 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
- ## 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's for Schools' Condition Allocation, Basic Need Allocation and High Needs Provision Allocation are approved.

5 Consultation

Forecasts have been refreshed to update the latest information on births, cohort growth (including migration and cross-border movement) and housing developments. These were submitted to DfE during July 2022. They reflect notable changes in migration trends, particularly including the impact of pupil numbers arriving from resettlement schemes within the region. Information on the changes and implications to schools has been shared through Primary and Secondary School Forums, as well as via consortia or network meetings, meetings with schools, trusts and governing bodies. In some circumstances, schools have been targeted and consulted directly to consider additional places. Schools are reminded annually of their duty to notify the Council of and consult on 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 programme management of Contractor is place so that all parties are informed of progress against the 2023/24 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 projects 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 undertaken to ensure that the costs do not exceed the agreed amount or available budget.

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 education 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 2023-24 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 of any contract in accordance with the social value policy. Contracts in tier 1 (below the PCR 15 threshold) are encouraged to complete at least 1 project from the Match My Project portal for the duration of the contract. Any tier 2 contracts (above the PCR15 threshold) require the full consideration of social value and application of the BBC4SR including the delivery of at least 1 project which is relevant to the social value outcomes sought through the contract and where possible from the Match My Project portal, per year. Tenderers will be required to submit an action plan with their tender that will be evaluated in accordance with the CWM2 framework protocol and the action plan of the successful tenderer will be implemented and monitored during the contract period.

As a condition of any grant issued, each school will be required to be certified to the BBC4SR and produce an action plan with commitments relevant and proportionate to the payment:

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.
- 7.2.2 Under Section 1 of the Localism Act 2011, the Council has the power to enter into the arrangements set out in this report, which are within the remit and limits of the general power of competence Section 2 and 4 of the Localism Act 2011.

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), High Needs Provision Capital Allocation (HNPCA) 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 **Appendix 1** provides the summary of spend requirements profiled for 2023/24 + Future Years.
- 7.3.4 There is no request for any new resources, but approval to spend existing allocated resources as outlined in **Appendix 1**.

School Condition Resources	Projected Profile Spend 2023/24 £m
School Condition	14.000
Totals	14.000

Additional Places Resources	Projected Profile Spend 2023/24 £m
Basic Need	6.000
High Needs Provision	5.000
S106 Funding	1.000
Corporate Resources	8.500
Totals	20.500

7.4 Procurement Implications (if required)

- 7.4.1 The Council's primary procurement route for works of this nature is to use Acivico Ltd's Constructing West Midlands 2 Framework Agreement either undertaking a further competition exercise (this being the default route) or a direct award, subject to the complexities and timescales of each project in order to ensure that the Council's statutory duties are met. Where direct award is the route, value for money will be demonstrated by Acivico Ltd to the Council and reported in any award report
- 7.4.2 Where a grant is issued to a school for the works, the responsibility for the procurement and award of contract is with the school under their

governance arrangements. The Conditions of Grant Agreement will include the requirement to demonstrate to the Council value for money and compliance to any legislation including the Public Contracts Regulations 2015 from the issue of the payment.

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 (EQA650) was reviewed and updated in March 2023 for the Schools' Capital Programme 2023–2024. Having considered the Public Sector Equality Duty in light of the recommendations in this report, it has been decided that another Full Equality Analysis is not required, and it is thought that the decisions taken in this report will support the Council's performance of the duty.
- 7.6.2 The outcomes from the Equality Analysis 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.

7.7 Environmental and Sustainability Implications

- 7.7.1 Not required - Financial reports with no sustainability/environmental implications

8 Appendices

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

1. Requirements and financial model
2. PDD SCA
3. PDD BN

9 Background Documents

9.1 None