

## REPORT OF THE CABINET MEMBER FOR CHILDREN AND EDUCATION

August 2011

<b>Title:</b> Demographic Growth Capital Fund Grant – Sixth Form Accommodation at Robert Clack Comprehensive School of Science	<b>For Decision</b>
<p><b>Summary:</b>          On 18 July 2011 the Council was advised that a bid to the Young People Learning Agency (YPLA) for sixth form provision had been successful and £3,058,000 grant had been awarded for a building project at Robert Clack Comprehensive School. The project must reach practical completion by March 2012 and the Council must sign and accept the terms and conditions of the grant by 15 August 2011 otherwise the funding will be forfeited.</p> <p>The report seeks to secure the support of Cabinet for the project and for an accelerated decision making and procurement process to ensure timescales are successfully met.</p> <p><b>Wards Affected:</b> Heath and Whalebone Wards</p>	
<p><b>Recommendation(s)</b></p> <p>The Cabinet is recommended to agree:</p> <ul style="list-style-type: none"> <li>(i) the acceptance of the capital grant of £3,058,000 from the Young People Learning Agency to support the provision of 16-19 student teaching accommodation at Robert Clack Comprehensive School;</li> <li>(ii) the Corporate Director of Children’s Services be authorised to sign and accept the grant on behalf of the Council for submission to the YPLA, together with information confirming the project, by 15 August 2011; and</li> <li>(iii) the procurement proposals as set out in the report and to authorise the Corporate Director of Children’s Services, in consultation with the Corporate Director of Finance and Resources and the Cabinet Member for Children and Education, to approve the appointment of the final contractor and the placing of an order.</li> </ul>	
<p><b>Reason(s)</b></p> <p>This project supports the Council’s priority of providing education places in sufficient number to respond to demand, and will enhance the learning experience for young people.</p>	
<p><b>Comments of the Chief Financial Officer</b></p> <p>Following a bid to the Young People’s Learning Agency (YPLA) to increase the accommodation for post 16 learners at Robert Clack Comprehensive School, the YPLA has approved our bid of £3.058m to pay for 2 wings of 9 classrooms per wing.</p> <p>The terms of the YPLA funding states that the entire grant must be spent by 31<sup>st</sup> March 2012 and that no additional funds will be available after this date. In addition, the Local</p>	

Authority must ensure that the funding must be spent in accordance to the terms and conditions of the grant (see Annex 1) otherwise the sums paid will be subject to claw back or deductions through reducing our YPLA revenue payments.

The Local Authority must sign and accept the terms and conditions of the grant by the 15<sup>th</sup> August 2011 otherwise the funding will be forfeited.

The YPLA have reserved the right, at one weeks' notice to inspect works, invoices, receipts and vouchers in relation to the scheme

The project build includes a 10% contingency element to cover any unforeseen costs. Any under spends will be returned to the YPLA.

### **Comments of the Legal Practice**

This report is seeking Cabinet's approval to accept an offer of a capital grant of £3,058,000 from the Young People Learning Agency (YPLA) to facilitate the improvement of provision of 16-19 classroom accommodation at Robert Clack Comprehensive School, and authority for the Corporate Director of Children's Services to sign and accept the grant on behalf of the Council.

The Council as a Local Education Authority has a statutory duty to support the improvement of the quality of the education and training facilities for young people in their area.

The YPLA grant offer is subject to certain conditions set out in the Funding Terms and Conditions attached at Annex 1 to this report. The most important of these conditions are as follows:

- (a) The grant must only be applied for the purpose of facilitating the improvement of 16-19 student teaching accommodation at Robert Clack Comprehensive School.
- (b) The improvement works must be completed latest by 31<sup>st</sup> March 2012, and YPLA will not be responsible for payment in respect of any works undertaken after that date.

Due to the value of the proposed improvement works, the contract will need to be competitively procured.

Bearing in mind the time constraints imposed by the YPLA deadline of 31<sup>st</sup> March 2012, it is proposed that the construction works be procured either via the OGC Buying Solutions Construction Framework Agreement or via the Council's BSF LEP.

The OGC Framework Agreements have been tendered by the OGC on the EU on behalf of UK public bodies, and are therefore available for use by the Council.

The option of procuring via the BSF LEP is also legally viable as the OJEU notice issued by the Council in respect of the BSF LEP contract covered the provision of construction services in respect of educational facilities.

The Legal Practice confirms that there is no legal reason preventing Cabinet from approving the acceptance of the grant offer from the YPLA. All reasonable efforts would

however need to be taken by the Council to ensure that the deadline for completion of the improvement works by the YPLA deadline of 31st March 2012 is met, otherwise the Council will have to find funds from its own resources to meet the cost of any works undertaken subsequent to that date.

The Legal Practice should be consulted in relation to terms and conditions of the construction contract to be entered into with the successful contractor.

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## 1. Background

- 1.1 An opportunity came unexpectedly from the Young People's Learning Agency on 10 June 2011 which invited the Council to submit by 18 July 2011 a proposal to increase 6<sup>th</sup> Form capacity at outstanding secondary schools in the Borough.
- 1.2 Reference was made to the options available and the strategy document for sixth form provision based on historical information contained in the BSF Business Case.

## 2. Proposal

- 2.1 After analysis of the possible options the only viable possibility that met the criteria and could be delivered within the timescale was at Robert Clack School. This proposal takes away two 1930s timber wings of the school and replaces them with 2 double storey modular built constructions. These will provide nine classrooms in each wing together with some offices, lift and access facilities. The net increase in classroom accommodation would be 12 new classrooms and potentially cater for an additional 185 learners aged 16-19 years.
- 2.2 These proposals will allow for the much needed replacement and provision of additional classrooms to ensure that Robert Clack School is able to respond to demands from pupils to meet their needs for 16-19 education. The capital costs will be met entirely from YPLA funds, provided time constraints are met. The school will be able to support the aspirations of the wider student community specifically across the North East 6<sup>th</sup> Form Consortium.

## 3. Financial Issues

- 3.1 The grant amounts to £3.058m which is a substantial sum and will bring a much needed facility to the Borough. It is the full amount requested in the application and this was based on prices secured from a reputable provider of the types of building solution which is being considered for this project. The price allows for a small contingency of 10% and all ground works, building, fitting out and fee costs. Any overspend would need to be underwritten by the Council as no additional grant request can be made.

#### **4. Legal Issues**

4.1 The responsibility for delivery of this project will lie with the council and it will be for the Council to satisfy the condition of the grant sum, and to meet the timescales to spend the grant which will be 31 March 2012.

4.2 For member's information the conditions of the grant are appended to this report.

#### **5. Other Implications**

##### **5.1 Risk Management**

5.1.1 The conditions of the grant do highlight a number of requirements or risks to the project and place requirements on the Council. The two major risks are that the timescales must be met and any overspends incurred are the responsibility of the Council.

5.1.2 It is proposed to identify and manage these risks through a methodical approach to minimise risk ensuring that we in particular select a procurement route which responds appropriately. We require a construction company that has a proven record of delivery of this type of scheme on time and within budget. We must establish good communication links with YPLA so that they are fully informed during the whole process.

##### **5.2 Contractual Issues**

5.2.1 Details of the contractual issues relating to the grant are set out in the appended requirements at the end of this report.

5.2.2 In terms of procurement at the current time there are two options being pursued to either use the Office of Government Commerce (OGC) Framework for system buildings or as an alternative through the Borough established Local Education Partnership (Laing O'Rourke). Further investigations are continuing in this respect and the preferred option will be determined by officers, in consultation with the Lead Member, having regard to the best option for the Council and the current status of the OGC framework, and the deliverability of the project relating to the Council's own rules.

5.2.3 Corporate procurement have advised that given the timescales and risks associated with this project, from a procurement perspective, the use of a pre-existing arrangement albeit via an OGC Framework or the LEP would appear to be the most appropriate and expedient route open to us.

##### **5.3 Staffing Issues**

5.3.1 There are no specific staffing issues, but with more pupils on the system there is likely to be additional teaching opportunities and the increase in building area will lead to additional facilities management demands.

## **5.4 Customer Impact**

5.4.1 More young learners will have improved opportunity to study, not just at Robert Clack, but also those in the North East 6<sup>th</sup> Form Consortium. Additional and improved facilities will give a better experience for the Borough's young people.

5.4.2 The construction of the facilities will ensure that for employees and young people attending the school there will be level access into the building with appropriate accessible facilities and passenger lift to the first floor.

## **5.5 Safeguarding Children**

5.5.1 The current condition of some of the buildings, notably those planned to be replaced at Robert Clack, are very poor being put on site in the 1930s. Replacement of these wooden structures will certainly provide students with a much improved and safer environment in which to learn.

## **5.6 Health Issues**

5.6.1 There are no specific health issues. However, the provision of a new facility will mean an improved environment in which to work and study for staff and pupils.

## **5.7 Crime and Disorder Issues**

5.7.1 Consideration will be taken to make the new facility a safe place for staff and students to use and also to design out opportunities for potential crime.

## **5.8 Property / Asset Issues**

5.8.1 The buildings which are to be replaced at Robert Clack are approaching the end of their useful life and are being attacked by vermin and fungus. Their replacement will greatly enhance the school buildings on the site.

## **6. Options appraisal**

6.1 The opportunity to apply for this grant was unexpected as previously indicated. Before determining which project to submit, consultation took place with colleagues in schools and because of demand and the condition of the buildings at Robert Clack were selected as representing the most appropriate to be replaced and additionally where most demand would be satisfied.

## **7. Background Papers Used in the Preparation of the Report:**

- 16-19 Demographic Growth Capital Fund (DGCF) Letter from the Young Peoples Learning Agency dated 10.06.11
- 16-19 DGCF Bid document date 08.07.11
- 16-19 DGCF Letter from YPLA dated 18.07.11 (Grant Advice Letter)
- 16-19 DGCF Terms and Conditions Document
- 16-18 DGCF Proposed Works Form

**8. List of appendices:**

Annex 1 – YPLA Demographic Growth Capital Fund 2011-2012 - Terms and Conditions for Local Authorities receiving YPLA Funding.

**YPLA Demographic Growth Capital Fund 2011-2012  
Terms and Conditions for Local Authorities Receiving YPLA Funding**

**Introduction**

1. The London Borough of Barking and Dagenham (the Local Authority) has submitted to the Young People's Learning Agency (YPLA) a proposal, for Robert Clack Comprehensive School, described on the Demographic Growth Capital Fund (DGCF) Information Form dated 08 July 2011, to address the need for capacity for extra places in school sixth forms arising from the increase in the population of young people aged 16-19. The YPLA has applied the DGCF assessment criteria and has allocated funding as described in the Conditions of Funding letter (attached) to support the Local Authority's proposal.
2. By signing and returning this document, the Local Authority agrees to apply the allocated funding solely for the purposes of the eligible works, namely as described in the DGCF Information Form and the DGCF Proposal Works Form, according to the Terms and Conditions described below.
3. "Allocated funding" refers to the sum identified in the Conditions of Funding letter (attached) that the YPLA has allocated to the Local Authority to support the Local Authority's proposal pursuant to this agreement.
4. This agreement (which is made up of the DGCF Information Form, the DGCF Proposed Works Form and these Terms and Conditions) applies to the use of the allocated funding provided by the YPLA for the purposes described by the Local Authority on the DGCF Information Form and the DGCF Proposed Works Form.

**Proposed Works**

5. The Local Authority will complete and return, by the date specified in the attached Conditions of Funding letter, the DGCF Proposed Works Form which sets out the following information:
  - the development that the Local Authority intends to carry out;
  - planned milestones, including securing planning permission;
  - the planned maximum expenditure profile and total expenditure;
  - the intended start date on site of the works; and
  - the proposed date of practical completion of the works – i.e. the date on which the architect signs the Certificate of Practical Completion.
6. The YPLA may request the Local Authority to provide reports on the progress of the works referring to the information set out in the DGCF Proposed Works Form if, for example but not limited to, the project is proceeding more slowly than planned or the Local Authority has raised concerns that could affect progress. The Local Authority shall notify the YPLA in writing with reasons as soon as possible if there are delays in the planned schedule and provide a revised schedule.

7. The Local Authority will need to obtain the YPLA's written agreement as soon as it is aware of any changes to the works listed in the DGCF Proposed Works Form. The YPLA will not give consent to any changes which will mean that the proposed works will no longer address the need for capacity for extra places in school sixth forms. For the avoidance of doubt, such changes will include, but are not limited to:

- any change (i.e. more than 10 per cent) in the scale of the works; and/or
- any change to the location of the site or premises at which the works will be undertaken.

### **Completion Date**

8. The Local Authority will ensure that either the eligible capital works reach practical completion no later than the 31st March 2012 or, if works continue beyond 31st March 2012, that the YPLA allocated funding will have been fully spent by 31st March 2012 on the works described in the DGCF Proposed Works Form. The DGCF will end on 31st March 2012 and no further claims can be lodged nor will payments be made in respect of expenditure after 31st March 2012. Any YPLA allocated funding not paid to the Local Authority by 31st March 2012 will not be subsequently available to the Local Authority and will be retained by the Department for Education. If the YPLA determines that the Local Authority has spent allocated funding in breach of the agreement, the YPLA may clawback the appropriate level of funding by, for example but not limited to, reducing revenue payments.

### **Procurement and Contracting**

9. The Local Authority will follow best project management and public procurement practices, including, but not limited to, procuring all YPLA funded works by competitive tendering, obtaining professional advice where required and securing in a timely manner all planning permissions, legal and financial consents.

10. The Local Authority is responsible for securing all required consents and permissions relating to the proposed works before the works are undertaken.

### **Right of Inspection by YPLA**

11. Subject to notice of at least one week the Local Authority will make arrangements for representatives of the YPLA, the YPLA's agents or consultants to attend site meetings, inspect work in progress, inspect invoices, receipts, vouchers and other documentation relating to the scheme and take copies of such invoices, receipts, vouchers or documentation.

### **Suspension of Payments**

12. The YPLA may suspend payments if the Local Authority fails to meet the conditions set out in paragraphs 9, 10 and 11.



## **Payments**

13. Subject to compliance with the agreement the YPLA will pay the funding allocation in three instalments through normal BACS transfers as follows:

August 2011	45% of the grant allocation
December 2011	45% of the grant allocation
March 2012	10% of the grant allocation

14. The YPLA reserves the right, in its sole discretion, to amend the timing and value of payments in accordance with project progress, including, but not limited to, accelerating payments if projects proceed faster than planned, delaying payments where progress is slower than planned and reducing payments if project costs are lower than planned. In any event, YPLA allocated and paid funds will not exceed the sum stipulated in the attached Conditions of Funding Letter.

## **Allocation Reduction and Clawback**

15. At its sole discretion, the YPLA will require repayment of any YPLA allocated funding that the Local Authority has spent either on ineligible works, (see paragraph 2), or for works that have not taken place by 31st March 2012 or at all.

16. In the event of a breach of any of the agreement, the YPLA may exercise all or any of the following rights:

- to require the repayment, in whole or in part, of DGCF funding paid to the Local Authority; and/or
- to withhold, withdraw and/or clawback in whole or in part allocated funding that would otherwise have been payable to the Local Authority under these terms and conditions. The value of withheld or withdrawn funds will be determined by the YPLA in its sole discretion and will be based on the extent of the breach – for example, the value of ineligible works.

## **Limitations**

17. This agreement does not impose or imply any obligation on the YPLA to provide any capital funding towards additional building costs in excess of the sum of allocated funding identified in the Conditions of Funding letter (attached). The Local Authority should make sure that it has appropriate risk assessments and plans in place to deal with the consequences of any overrun on project costs or other eventualities that may affect project completion beyond the terms of this agreement.

## **Change of Use**

18. The proposed works supported by this funding allocation must be used for the purpose of supporting education for 16-19 year olds provided by the Local Authority. The Local Authority must notify the YPLA of any intended change that would result in said buildings being used for other purposes. The YPLA may then determine the level of funding to be repaid by the Local Authority to the YPLA, depending on the time elapsed since the completion of the works. If the Local Authority fails to notify the YPLA of any change of use, the YPLA may reclaim

appropriate funds from any other funding payable to the Local Authority, at any time.

**Signed:**

\_\_\_\_\_  
Chief Executive or Director of Children's Services or delegated authority as listed on the previously returned Information Form

**Date:** \_\_\_\_\_

**Please complete and return to: Mary Brigden, Capital and Infrastructure Team, YPLA, Cheylesmore House, Quinton Road, Coventry, CV1 2WT**