

## REPORT TO THE CHIEF EXECUTIVE

October 2012

<b>Title:</b> Demographic Growth Capital Fund Grant - Trinity School Sixth Form Further Education Centre (FEC)	
<b>Report of the Corporate Director of Children's Services</b>	
<b>Open Report</b>	<b>For Decision</b>
<b>Wards Affected:</b> Heath	<b>Key Decision:</b> Yes
<b>Report Author:</b> Mike Freeman, Group Manager School Estate and Admissions	<b>Contact Details:</b> Tel: 020 8227 3492 E-mail: <a href="mailto:mike.freeman@lbbd.gov.uk">mike.freeman@lbbd.gov.uk</a>
<b>Accountable Divisional Director:</b> Jane Hargreaves, Divisional Director of Education	
<b>Accountable Director:</b> Helen Jenner, Corporate Director of Children's Services	
<p><b>Summary:</b></p> <p>The Council has been successful with a bid of £922,250 to the Education Funding Agency (EFA), the agency appointed by the Department for Education to manage educational finances, for additional sixth form provision in the Borough. The successful bid relates to the expansion of the 16-19 student teaching accommodation at Trinity School. The project must reach practical completion by 31 March 2013.</p> <p>The proposal would allow for the much needed provision of additional classrooms to ensure that Trinity School is able to respond to the demand for 16-19 education for pupils with Special Educational Needs (SEN). The capital costs will be met entirely from EFA funds, provided time constraints are met.</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. In view of the timescales and risks associated with this project, it is proposed to procure the works either via the Government Procurement Service (GPS) EU-procured Construction Framework Agreement or via Thames Partnership for Learning Limited (the Council's EU-procured Building Schools for the Future Local Education Partnership (BSF LEP)).</p>	
<b>Recommendation(s)</b>	
<p>The Cabinet is recommended to:</p> <ul style="list-style-type: none"> <li>(i) accept the capital grant of £922,250 from the Education Funding Agency to support the provision of 16-19 student teaching accommodation at Trinity School on the terms and conditions detailed in Annex A to this report;</li> <li>(ii) agree to the inclusion of this project in the 2012/13 Capital Programme in the sum of £922,250; and</li> </ul>	

- (iii) Authorise the Corporate Director of Children's Services, in consultation with the Chief Financial Officer, Head of Legal and Democratic Services and the Cabinet Member for Children's Services, to approve the procurement route, appointment of the final contractor and the placing of an order.

**Reason(s)**

To assist the Council to achieve its Policy House objective "Building a Better Life For All".

**1. Introduction and Background**

- 1.1 An opportunity came unexpectedly from the Education Funding Agency on 8 May 2012 which invited Council's to submit by 18 May 2012 a proposal to increase sixth form capacity. Barking and Dagenham was not identified as a priority area for mainstream sixth form provision however, there was an opportunity to bid for sixth form provision for pupils with SEN.

**2. Proposal and Issues**

- 2.1 After analysis of potential projects, the only viable possibility that met the criteria and could be delivered within the timescale was at Trinity School. The proposal would double the current size of Trinity School's Further Education Centre which can currently accommodate up to 30 pupils. This would increase the opportunity for young people attending the school as there are currently 41 pupils in Years 12 and 13 at Trinity School, which means that the current provision is insufficient to meet their full educational needs. Once completed, the expanded facility would also offer opportunities to pupils attending other schools to benefit, such as pupils who currently attend mainstream school Additional Resourced Provision.

**3. Options Appraisal**

- 3.1 The opportunity to apply for this grant was unexpected as previously indicated. Before determining which project to submit, consultation took place with colleagues and because of demand and the limitations of the buildings at Trinity and the criteria set by EFA it was felt this was the only project likely to succeed.

**4 Consultation**

- 4.1 During the process of formulating the bid consultation and progressing the development of the scheme was very active with the Headteacher, Governing Body and staff at the school.

**5 Financial Implications**

Implications completed by: Dawn Calvert, Finance Group Manager

- 5.1 Following a bid to the EFA to increase the accommodation for post 16 learners at Trinity School, the EFA has approved our bid of £922,250 to pay for 5 teaching areas together with storage, toilets and hygiene and circulation space.

- 5.2 The terms of the EFA funding states that the entire grant must be spent by 31 March 2013 and that no additional funds will be available after this date. In addition, the Council must ensure that the funding is spent in accordance to the terms and conditions of the grant otherwise the sums paid will be subject to claw back or deductions through reducing EFA revenue payments.
- 5.3 The EFA has reserved the right, at one weeks' notice, to inspect works, invoices, receipts and vouchers in relation to the scheme.
- 5.4 The project build includes a 10% contingency element to cover any unforeseen costs. Any overspends would have to be met by the Council but to mitigate this risk appropriate arrangements would be put in place, in consultation with Trinity School. Any under spends will be returned to the EFA.

## **6. Legal Implications**

Implications completed by: Eldred Taylor-Camara, Legal Group Manager

- 6.1 This report is seeking Cabinet's approval to accept an offer of a capital grant of £922,250 from the EFA to facilitate the improvement of provision of 16-19 classroom accommodation at Trinity School.
- 6.2 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.
- 6.3 The EFA grant offer is subject to certain conditions set out in the Funding Terms and Conditions. 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 Trinity School.
  - (b) The improvement works must be completed latest by 31 March 2013, and EFA will not be responsible for payment in respect of any works undertaken after that date.
- 6.4 Due to the value of the proposed improvement works, the procurement of the contract will need to be approved by Cabinet.
- 6.5 Bearing in mind the time constraints imposed by the EFA deadline of 31 March 2013, it is proposed that the construction works be procured either via the Government Procurement Service (GPS) EU-procured Construction Framework Agreement or via Thames Partnership for Learning Limited (the Council's EU-procured Building Schools for the Future Local Education Partnership (BSF LEP)).
- 6.6 The GPS Framework Agreements have been tendered in the EU on behalf of UK public bodies, and are therefore available for use by the Council.
- 6.7 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.

- 6.8 The Legal Practice confirms that there is no legal reason preventing Cabinet from approving the acceptance of the grant offer from the EFA. 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 EFA deadline of 31 March 2013 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.
- 6.9 The Legal Practice should be consulted in relation to terms and conditions of the construction contract to be entered into with the successful contractor.

## 7. Other Implications

- 7.1 **Risk Management** - 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.

It is proposed to identify, manage and minimise these risks through a methodical approach ensuring, in particular, that the procurement route responds appropriately. The preferred contractor must have a proven record of delivery of this type of scheme. The Council will also establish good communication links with EFA so that they are fully informed during the whole process.

This is a matter which is directly linked to the identified Corporate Risk Register and listed at Corporate Risk 31 – Provision of School Places.

- 7.2 **Contractual Issues** - Details of the EFA's contractual requirements relating to the grant are detailed in the document "EFA Demographic Growth Capital Fund 2011-2012 - Terms and Conditions for Local Authorities receiving YPLA Funding" attached at Annex A to this report.

In terms of procurement at the current time there are two options being pursued to either use the GPS Framework for system buildings or as an alternative through the Council's Local Education Partnership provider (Thames Partnership for Learning Limited). 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 GPS framework, and the deliverability of the project relating to the Council's own rules.

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

- 7.3 **Staffing Issues** - There are no specific staffing issues, but with more pupils in the system there is likely to be additional teaching opportunities and the increase in building area will lead to additional facilities management demands.
- 7.4 **Customer Impact** - More young learners will have improved opportunity to study, at Trinity in the Further Education Centre. Additional and improved facilities will give a better experience for the Borough's young people.

- 7.5 **Safeguarding Children** - As part of the build programme improved facilities will ensure a better learning environment, make the experience for young people much improved and to an extent improving safety for those young people attending the FEC.
- 7.6 **Health Issues** - 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. The school will be asked to consider the increased school size and to advise partners from health about any extra demands there are likely to be.
- 7.7 **Crime and Disorder Issues** - 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.
- 7.8 **Property / Asset Issues** - This proposed decision would expand the provision of a Council asset.

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

- 16-19 Demographic Growth Capital Fund (DGCF) 2012 – 13 Guidance Note for Local authorities and Other Applicants
- 16-19 DGCF Bid document
- 16-19 DGCF Letter from YPLA dated 21 June 2012 (Grant Advice Letter)
- 16-18 DGCF Proposed Works Form

#### **List of appendices:**

- **Annex A** – EFA Demographic Growth Capital Fund 2011-2012 - Terms and Conditions for Local Authorities receiving YPLA Funding

**16-19 Demographic Growth Capital Fund 2012-2013  
EFA Demographic Growth Capital Fund 2011-2012  
Terms and Conditions for Local Authorities receiving YPLA Funding for projects in  
Schools**

**Introduction**

1. **LB Barking and Dagenham** (“the Local Authority”) has submitted to the Education Funding Agency (“the EFA”) a proposal, described on the Demographic Growth Capital Fund (“DGCF”) Form A, for eligible capital works (“eligible works”), to increase the capacity for additional places for education and training for young people as a result of population growth, participation increase and/or the need for more places for learners with learning difficulties and/or disabilities.
2. The EFA has applied the DGCF assessment criteria, as published with the application information on the Department for Education (DfE) website, and has allocated funding, as set out in the Conditions of Funding letter (attached), to support the Local Authority’s proposal in relation to the eligible works.
3. By signing and returning this document, along with a completed Form B (Project Plan), the Local Authority agrees to apply the allocated funding solely for the purposes of the eligible works, as described in the DGCF Form A, according to the provisions of this agreement.
4. “Allocated funding” refers to the funding allocation identified in the Conditions of Funding letter (attached) that the EFA has allocated to the Local Authority to support the Local Authority’s proposal pursuant to this agreement.
5. This agreement comprises
  - The DGCF Form A;
  - The DGCF Form B;
  - The Conditions of Funding letter and
  - These Terms and Conditions that apply to the use of the allocated funding provided by the EFA for the purposes described by the Local Authority on the DGCF Form A.

**Proposed Works**

6. The Local Authority will complete, sign and return to the EFA, by the date specified in the attached Conditions of Funding letter, the DGCF Form B which sets out the following information:
  - The eligible works that the Local Authority intends to carry out;
  - Planned milestones for the project; and
  - The planned maximum expenditure profile and total expenditure.
7. The EFA may request (within any reasonable period of time as specified by the EFA) the Local Authority to provide reports on the progress of the eligible works referring to the information set out in the DGCF Form B 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

EFA in writing with reasons as soon as possible if there are delays in the planned schedule and provide a revised schedule.

8. If the works involve acquiring land or taking out or letting a lease, the EFA requires a copy of the Land Registry Certificate, as soon as it is available, accompanied by a coloured plan that highlights the property acquired or under lease.
9. The Local Authority will need to obtain the EFA's written agreement as soon as it is aware of any changes to the eligible works listed in the DGCF Form B. The EFA will not give consent to any changes which will mean that the proposed works will no longer address the purposes set out in the Form A and B. 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**

10. The Local Authority will ensure that either the eligible works reach practical completion no later than the 31<sup>st</sup> March 2013 or, if works continue beyond 31<sup>st</sup> March 2013, that the EFA allocated funding will have been fully spent by 31<sup>st</sup> March 2013 on the works described in the DGCF Form A and Form B. No further claims can be lodged, nor will payments be made, in respect of expenditure after 31<sup>st</sup> March 2013. Any EFA-allocated funding not paid to the Local Authority by 30<sup>th</sup> April 2013 will not be subsequently available to the Local Authority and will be retained by the Department for Education. The EFA must receive the final Use of Funds statement by 31<sup>st</sup> March 2013 to trigger the final payment. If the EFA determines that the Local Authority has spent allocated funding in breach of this agreement, the EFA may clawback the appropriate level of funding by (as it decides in its sole discretion), for example but not limited to, reducing revenue payments.

### **Procurement and Contracting**

11. The Local Authority will follow best project management and public procurement practices, including, but not limited to, procuring all EFA funded eligible work by competitive tendering, obtaining professional advice where required and securing in a timely manner all planning permissions, legal and financial consents.
12. The Local Authority is responsible for securing all required consents and permissions relating to the proposed works before the eligible works are undertaken. The EFA reserves the right to inspect consents and permissions with less than one week's notice.

### **Right of Inspection by EFA**

13. Subject to notice of at least one week the Local Authority will make arrangements for the EFA, representatives of the EFA or the EFA'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**

14. The EFA may suspend payments if the Local Authority fails to meet the conditions set out in paragraphs 9, 10, 12 and 13.

## **Payments**

15. Subject to compliance with this agreement the EFA will pay the funding allocation to the Local Authority in four instalments through normal BACS transfers as follows:

July 2012 10% of the grant allocation  
September 2012 40% of the grant allocation  
December 2012 40% of the grant allocation  
March 2013 10% of the grant allocation

16. Regardless of the above schedule, and if the project requires planning consent or other approvals, the EFA will not make the second and subsequent payments until the Local Authority has received the necessary consent or approvals.
17. The EFA 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, EFA allocated and paid funds will not exceed the sum stipulated in the attached Conditions of Funding Letter.
18. The final payment will be made when the EFA has received a signed copy of a Use of Funds statement, confirming that the DGCF grant has been fully spent on the DGCF works.

## **Allocation Reduction and Clawback**

19. At its sole discretion, the EFA may require repayment of any EFA allocated funding that the Local Authority has spent either on ineligible works, (see paragraph 2), or for works that have not taken place by 31<sup>st</sup> March 2013 or at all.
20. In the event of a breach of this agreement, the EFA 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 this agreement. The value of withheld or withdrawn funds will be determined by the EFA in its sole discretion and will be based on the extent of the breach – for example, but not limited to, the value of ineligible works.

## **Limitations**

21. This agreement does not impose or imply any obligation on the EFA 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**

22. The proposed works supported by this funding allocation must be used for the purpose of supporting education for 16-19 year olds (or learners aged up to 24 years old where they have a learning difficulty assessment) provided by the Local Authority. The Local Authority must notify the EFA immediately, in writing, of any intended change that would result in said buildings being used for other purposes. The EFA may then determine the level of funding to be repaid by the Local Authority to the EFA, depending on the time elapsed since the completion of the works. If the Local Authority fails to notify the EFA of any change of use, the EFA may reclaim appropriate funds (in the sole discretion of the EFA) from any other funding payable to the Local Authority, at any time.

**Signed:**

**Date:**

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

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**Please complete and return to:**

**Mary Brigden  
16-19 Capital Team  
Education Funding Agency  
Earlsdon Park  
55 Butts Road  
Coventry  
CV1 3BH**