



# Cabinet Member Report

<b>Decision Makers:</b>	Cabinet Member for Economic Development, Education and Skills Cabinet Member for Finance, Property and Regeneration Cabinet Member for Housing Services
<b>Date:</b>	02 March 2020
<b>Classification:</b>	General Release
<b>Title:</b>	St Marylebone Bridge Special School
<b>Report of:</b>	Director of Education, and Executive Director of Growth, Planning and Housing
<b>Cabinet Member Portfolio</b>	Economic Development, Education and Community Finance, Property and Regeneration Housing Services
<b>Wards Involved:</b>	Queen's Park
<b>Policy Context:</b>	City for All <ul style="list-style-type: none"><li>• Choice – a choice of excellent schools for Westminster residents</li><li>• Heritage – a well maintained school buildings portfolio</li><li>• Aspiration – high performing schools</li><li>• Building cohesive mixed neighbourhoods</li></ul>
<b>Key Decision</b>	Yes
<b>Financial Implications</b>	<ul style="list-style-type: none"><li>• The costs of constructing the new Special School are within the DfE budget</li><li>• Planning fees will be borne by the Council</li><li>• The Council will contribute up to £1.875M towards refurbishment at Wilberforce Primary Academy</li></ul>

**Report Author and  
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**1. Executive Summary**

- 1.1 Planning permission was granted for the new special school to be built at the site of Wilberforce Primary Academy on 12 November 2019. The Council has entered into a Self-Delivery Agreement with the DfE to construct the school within the DfE's budget. Tenders have been invited and a contractor has been selected. The Council has agreed the terms for a surrender of that part of the existing Wilberforce Primary Academy site required for the special school, and for two new 125-year leases, one for Wilberforce Primary Academy and the other for St Marylebone Bridge Special School. Approval is sought for a series of actions required to give effect to the project.

**2. Recommendation**

- 2.1 That Cabinet Member for Economic Development, Education and Skills, Cabinet Member for Finance, Property and Regeneration, and Cabinet Member for Housing Services:
- i. Note the grant of Planning Permission on 12<sup>th</sup> November 2019 for the new special school on part of the site of Wilberforce Primary Academy,
  - ii. Approve the Heads of Terms agreed by the Council and United Learning Trust (ULT), including payment of up to £1.875M to ULT for building works at Wilberforce Primary Academy (including VAT if charged) together with additional contributions from SEN capital grant and Community Infrastructure Levy.
  - iii. Approve taking a surrender of the existing 125-year lease of the Wilberforce Primary Academy school site and the grant of new 125-year leases to Wilberforce Primary Academy and St Marylebone Bridge Special School.
  - iv. Terminate the Agreement for Lease of a small parcel of land in the Housing Revenue Account which is within the curtilage of the school site, and approve its appropriation from the Housing Revenue Account to the General Fund,
  - v. Authorise the Director of Law to negotiate and sign the Agreement for Lease on the terms set out by the Secretary of State for Education in respect of the Special School,
  - vi. Note that the Council has invited tenders and selected a contractor from the DfE Framework and a further recommendation will be brought forward in accordance with the Council's usual procedures.
- 2.2 That Cabinet Member for Economic Development, Education and Skills, Cabinet Member for Finance, Property and Regeneration, and Cabinet Member for Housing Services delegate further negotiations to the Executive Director of Children Services, the Executive Director, Growth, Planning and Housing and the Director of Law.

- 2.3 That Cabinet Member for Economic Development, Education and Skills, and Cabinet Member for Finance, Property and authorise the Executive Director, Growth, Planning and Housing, and the Bi-Borough Director of Law, to implement the recommendations set out in this report.

### **3. Background**

- 3.1 St Marylebone Bridge Special School (SMBSS) is an academy for 70 special needs places, for which there is an increasing need. The School has been in occupation of 17-23 Third Avenue, London W10 4RS since November 2014 on a peppercorn rent, as a temporary arrangement.
- 3.2 The Council and DfE had previously agreed that SMBSS should be permanently housed at Third Avenue by re-building the school with a new bespoke structure constructed behind the façade of the existing building. In order to achieve this, it would be necessary to re-locate the School on a temporary basis in alternative accommodation. The DfE requested that the former school site at Beachcroft House, 111 Shirland Road, should be considered for this purpose on either temporary or permanent basis, whereas the Council had earmarked that site for a new care home. This is now under construction and nearing completion.
- 3.3 As a consequence, the DfE imposed a condition that if the Council was unable to find an alternative decant site, or could not successfully obtain planning permission for the Third Avenue site, then Westmead Residential Care Home at 4 Tavistock Road London W11 1BA would be required for the special school instead. However, Westmead will not be available until late 2020, and could be considered as being available for redevelopment until the Council had taken a formal decision to close it following consultation with the residents. This was done in September 2019. Therefore, Westmead does not enable the special school to open in permanent accommodation within the target timescale (revised to August 2021) and was accordingly regarded as a solution of last resort.
- 3.4 Following the negotiations with the DfE in February 2018, the Council identified Wilberforce Primary Academy, which is an under-subscribed school with surplus space including outdoor space, as a more appropriate decant option. After discussion with the school and the sponsor, United Learning Trust, it became clear that Wilberforce Primary Academy could accommodate all its existing and planned numbers of pupils in the main, original, building, if it was refurbished, together with some new building work, leaving about half the site available for the new special school. The DfE has confirmed that both schools could be accommodated on the site without contravening play space guidelines. The transition from a 2 Form of Entry to a 1 Form of Entry school is in line with the policy of reducing the number of primary school places as a result of lower demand in the area which is not expected to change. Wilberforce Primary Academy and ULT also advised that it would only consider a permanent solution rather than a short term decant arrangement in order to minimise disruption and

achieve a permanent resolution to an underused site. Please see Site Plan in Appendix A. The Third Avenue option was then discontinued.

3.5 When Wilberforce School converted to academy status in 2013, it was agreed to lease to the Academy a small triangle of land which for many years has been included within the curtilage of the site as part of the playground, but remains within the Housing Revenue Account. This was a result of the development of the adjoining housing estate and was never regularised. A valuation was obtained on the basis of ‘amenity land’ at £15,000. The land is not capable of separate development and it is not proposed to seek a new valuation. Please see Appendix B.

3.6 The following terms have been agreed:

- United Learning Trust will surrender that part of the Wilberforce Primary School site (see Appendix A) which is required for the new special school building,
- The Council will contribute £1.5M to the costs of works at Wilberforce Primary Academy to enable the school to vacate the site required for the new building, and provide modern fit-for-purpose accommodation including a new entrance and new kitchen. (£1.875M includes SDLT and a contingency in case VAT is payable), and in addition a contribution of £100,000 from SEN capital grant towards a new lift and a contribution of £83,000 for teaching and learning improvements funded from the Community Infrastructure Levy. These contributions have been approved. (see Appendix C – Heads of Terms)
- The Council will enter into a ‘self-delivery’ agreement with the Department for Education to construct the new special school on the relinquished Wilberforce site, using DfE funds, and also enter into an Agreement for Lease on DfE terms.
- Both schools will have 125 year academy leases at a peppercorn rent.

With the grant of planning permission for the new special school, the Council has applied to the Secretary of State for Education for:

- a release of the condition whereby Westmead is held for a fall-back option,
- unconditional consent to dispose of, or re-use, 17-23 Third Avenue.

The key milestones for the project are:

<b>New Special School (by WCC)</b>		<b>Wilberforce School (by ULT)</b>	
Feasibility Study	complete	RIBA Stage 3 and planning application	February 2019
RIBA Stage 2 (concept design)	April 2019	RIBA Stage 4 and tender information	April 2019
RIBA Stage 3 (developed design)	June 2019		
Planning submission	July 2019		
RIBA Stage 4 (technical design)	July 2019		

Planning determination	November 2019	Planning determination	November 2019
		Works commence	January 2020
Contractor appointment	November 2019	Works complete and site vacated	June 2020
Works commence	July 2020		
Works complete	July 2021		

#### 4. Financial Implications

4.1 The Council has budgeted for the SMBSS project within its capital strategy. The total budget envelope is £11.833m comprising:

£9.701m – DfE grant provided in advance upon signing the Agreement for Lease  
£2.132m – Council resources

- 4.2 The Council has paid for the planning application for the new special school building, on the basis that the designs developed by the Council meet the needs of pupils and align to the planning environment for Westminster City Council. The pre-application and full application fees are £0.025m.
- 4.3 The Capital Strategy also includes an expenditure budget of £24.5m for the development of Westmead, which can meet the cost of relocation at Wilberforce Primary Academy. The redevelopment at Westmead will present its Outline Business Case in early 2020, which will financially assess the viability of developing the site, including the cost of providing up to £1.875m relocating SMBSS to the Wilberforce Primary Academy and subsequent receipt from sale of the Third Avenue site as an option to cover these costs.
- 4.4 As part of the wider remit at Wilberforce Primary Academy and SMBSS, the Council has approved the use of SEN Capital Grant and Community Infrastructure Levy funding totalling £0.180m for the provision of a lift and improved seating at Wilberforce Academy. This funding is externally driven and already held by the Council as part of its balance sheet holdings.
- 4.5 The proposed contract award to Galliford Try is within the grant offer from the DfE and within the Council's budgeted resources for this project.
- 4.6 The costings submitted by Galliford Try were part of a competitive tendering process through an approved DfE Framework. The use of the Framework was a condition of the Development Agreement with the DfE. Galliford Try were the sole bidder from a pool of seven.
- 4.7 As such, value for money assurances are limited to a comparison of the bid against the cost plans prepared for the Council by the project's retained cost consultants, Gleeds. As the bid was within the cost plan, it represents value for money insofar as it remained within project resources whilst delivering the required designs.

- 4.8 There are risks the project may increase in costs subject to abnormals that may arise from ground surveys or other construction related items. The DfE has committed additional funding towards abnormals to mitigate against this, and the Council has budgeted for 20% contingency towards the costs if necessary. The funding of contingency will be discussed with the DfE as strategic partner if it is necessary to use it, with the DfE being seen as the funder of first resort.
- 4.9 Additional risks may arise from the wider economic environment subject to the UK decision to exit the European Union. Uncertainty arising from what future trading relationships may be could contribute to rising prices and/or increased scarcity of both materials and labour. The Council has a comprehensive risk register and ameliorating actions, however there is a need to ensure this project is robustly managed to mitigate all financial risks as much as possible.
- 4.10 The delivery of additional spaces at St Marylebone Bridge Special School may provide for efficiencies or increased costs on Passenger Transport in the General Fund. The final impact will only be understood when the Children's Services Executive Directorate has finalised the school place planning for the academic year beginning September 2021.
- 4.11 The delivery of 10 additional places at St Marylebone Bridge Special School from September 2021 will enable more pupils with more complex levels of SEN to be placed within the borough rather than outside the borough which could entail higher transport costs or independent placement costs. This increased provision will help to manage the placement expenditure pressure within the High Needs Block of the Dedicated Schools Grant, which is separate to the General Fund.
- 4.12 Without this project, the use of Westmead as part of the capital strategy is at risk.
- 4.13 Any unforeseen cost pressures arising from the project at the Wilberforce School site will require a further Cabinet Member Report seeking authority to fund pressure in accordance with the Financial Regulations.

*Financial Implications completed by:*

*Ashley Hughes, Strategic Finance Manager, 020 7641 1190, ahughes2@westminster.gov.uk*

## **5. Legal Implications**

- 5.1 Paragraphs 4 and 6 of Part I of Schedule 1 of the Academies Act 2010 provides that the DfE's consent is required for disposal and appropriation of land used for education purposes for the last eight years ending with the proposed disposal or appropriation. Paragraph 8 enables the Secretary of State to give its consent subject to conditions. Section 77 of the Schools Standards and Framework Act 1998 makes similar provisions about informal areas used in connection with education establishments as playing fields within the preceding 10 years. The DfE's consent is also required under Section 77 for a change of

use of playing field land whether for another educational purpose or a non-educational purpose.

- 5.2 The Council is liable for payment of Stamp Duty Land Tax of £70K for the acquisition of the site required for SMBSS.
- 5.3 United Learning Trust or the DfE will apply for consent for the disposal and re-use of school playing field land under s77 of the School Standards and Framework Act 1998 at the Wilberforce site for building purposes.
- 5.4 In respect of the Agreement for Lease referred to in this report, the Council is required to enter into an Agreement for Lease with the Secretary of State for Education in order to set out the conditions on which the Authority will construct the new school and the conditions on which the Secretary of State will pay the capital grant as a contribution to the construction costs. The Agreement for Lease will be on the Secretary of State's standard terms subject to any minor amendments that the Council is able to negotiate.

*Legal Implications completed by:*

*James Holliman, Senior Solicitor, 020 7641 2837 and Angela Hogan, Senior Solicitor (Interim),*

## **6. Procurement and Risk**

- 6.1 The DfE has approved the Council's proposal to 'self-deliver' the construction of the Special School. Schemes which are funded by the DfE, usually require a procurement route in which the contractor applies for planning permission following RIBA Stage 3. However, this route would have meant that a planning application was not sought until August 2019, with determination anticipated in December 2019 or January 2020. As the date of planning permission is critical to release Westmead, it was agreed to adopt the 'construct only' route which brought forward the planning application and anticipated determination by two months. This has now been achieved. The risk to this route is that as the DfE is unlikely to agree any additional costs after planning permission. However, the design has evolved to the point where the risks that additional costs are likely to be incurred has reduced.
- 6.2 The Council has used a DfE Framework Agreement for the selection and appointment of a contractor,
- 6.2 The principle risks to the scheme are monitored in a detailed Risk Register. They include:
  - Planning conditions on works at Wilberforce or SMBSS
  - Contractor appointment
  - Construction delays
  - Cost over-runs at SMBSS which cannot be reclaimed from the DfE.

Procurement Implications completed by:  
Sharon Ladva, Procurement Adviser, 020 7641 4693

## **7. Consultation**

- 7.1 Both ULT and Wilberforce Primary Academy, as well as St Marylebone Bridge Special School are enthusiastic about the scheme.
- 7.2 Ward members have been briefed informally on the proposals and are supportive of them.
- 7.3 A public engagement programme has taken place in conjunction with the respective schools which preceded the statutory planning consultation. No negative comments were received.

**If you have any queries about this Report or wish to inspect any of the Background Papers please contact Alan Wharton, ext: 020 7641 2911**  
[awharton@westminster.gov.uk](mailto:awharton@westminster.gov.uk)

## **APPENDICES:**

- Appendix A – Site Plan
- Appendix B – Land to be appropriated
- Appendix C – Head of Terms (WCC and United Learning Trust)

## **BACKGROUND PAPERS**

None



For completion by the **Cabinet Member for Economic Development, Education and Skills**

**Declaration of Interest**

I have <no interest to declare / to declare an interest> in respect of this report

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

NAME: \_\_\_\_\_

State nature of interest if any .....

.....  
*(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter)*

For the reasons set out above, I agree the recommendation(s) in the report entitled **St Marylebone Bridge Special School** and reject any alternative options which are referred to but not recommended.

Signed .....

Cabinet Member for **Cabinet Member for Economic Development, Education and Skills**

Date .....

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment: .....  
.....  
.....

If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Head of Legal and Democratic Services, Strategic Director Finance and Performance and, if there are resources implications, the Strategic Director of Resources (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.

