

NORTH ELY – DEVELOPER CONTRIBUTIONS TOWARDS THE CAPITAL COST OF PROVIDING NEW PRIMARY SCHOOLS

To: Children and Young People Committee

Meeting Date: 29th July 2014

From: Executive Director: Children, Families and Adults

Electoral division(s): Ely South and West
Ely North and East

Forward Plan ref: 2014/027 **Key decision:** Yes

Purpose: To:

- Consider the current position relating to developer funding of education provision for the two housing sites which comprise the major development areas to the North of the City of Ely
- Provide guidance to officers to enable the conclusion of a section 106 agreement with the developers of these two sites
- Note the option agreement negotiated with Endurance Estates to secure the early transfer of the identified site of the Isle of Ely Primary School and for reclaiming the up front infrastructure costs which would, in other circumstances, be borne by the housing developer.

Recommendation: The Committee is requested to:

- a) Provide advice to the Environment and Economy Committee on the level of education contributions to be sought as a basis for concluding the section 106 agreement with the developers of the two sites
- b) Note the terms of an option agreement and cost recovery agreement negotiated with Endurance Estates to allow for the transfer of the Isle of Ely Primary School site. {The agreements are within the scope of officers' delegated authority as the cost of land acquisition and site infrastructure are included in the overall cost of the capital project approved as part of the 2013/14 Annual Business Plan.}
- c) Agree that the financial implications of recommendations (a) and (b) above which are set out in paragraph 4.1 of the report should be reflected in the annual review of the Council's Children, Families and Adults (CFA) 5-year capital programme which will form part of the Council's Annual Business Plan.

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1. BACKGROUND

- 1.1 The emerging Local Plan for East Cambridgeshire sets out a revised requirement for up to 3,000 houses across the northern edge of Ely. East Cambridgeshire District Council (ECDC) has also produced Supplementary Planning Guidance and a masterplan to establish the principles for how that development should come forward. Planning applications have been submitted on two sites being promoted by Endurance Estates (land to the west of Lynn Road) for up to 1,200 dwellings and the Church Commissioners (land to the east of Lynn Road also known as Highflyer Farm) for up to 800 dwellings; a combined total of 2,000 dwellings. A second phase of up to 1,000 dwellings on Highflyer Farm may be added. A location map is attached as Appendix 1.
- 1.2 The need for 630 primary school places (3 forms of entry (FE)¹) has been identified to serve the 2,000 homes proposed in the two initial planning applications. A further 420 primary school places would be required to provide for the needs arising from 1,000 homes proposed for the Church Commissioners' land, a combined total of 1050 primary school places (5 FE). Given the long term requirements, a primary school site has been identified within each of the housing development areas as part of the aforementioned masterplan.
- 1.3 There is also an existing need in Ely for an additional 210 (1 FE) primary school places. This need will be met through the early delivery of the primary school on the Endurance Estates site. The Council agreed to provide the capital funding (alongside targeted basic need funding allocated by the Department for Education (DfE)) for the first phase of the school, which will be completed in September 2015. The developer agreed to contribute towards the capital costs of any subsequent expansion of the school as houses are built and occupied in order to mitigate the impacts of the development.
- 1.4 Given that primary pupil pressures in Ely have in recent years increased above what was previously anticipated, the Council has recognised that it may be better to deliver the first primary school in a single building phase. Therefore, plans have been drawn up to deliver a 630 place (3FE) school in a single phase at an expected cost of £15.2m (£1.5m less than the cost of the original two phase construction proposed). However, the cost of £15.2m is £1.3m more than is identified in the 2014/15 Business Plan for this project. This currently provides £9.8m for the period up to 2016 for a first build phase 210 places (1FE), with core facilities for a 3FE school and a further £4.1m for a 420 place (2FE) extension to the school over the period 2017-2020. Total funding already approved is, therefore, £13.9m. There would be a requirement to borrow funds in advance of the agreed £3.16m section 106 contributions being received. These contributions are set out in paragraph 2.4. A detailed breakdown of the funding components is provided in paragraph 4.14.
- 1.5 The Council's approach to meeting the existing need in Ely has been informed by a detailed site search and appraisal of existing school sites. This work concluded that the existing school sites were restricted and any further expansion would be difficult. It further concluded that there were no suitable alternative sites either within or outside the Council's ownership.

¹ A form of entry (FE) is a class of 30 children. A 1FE primary school with 7 year groups age 4 to 11 would provide 210 places, a 2FE primary school 420 places and a 3FE primary school 630 places

- 1.6 To meet the pressing existing need for pupil places in Ely, the new primary school will open in September 2014 in temporary accommodation on the site of Ely St Mary's Voluntary Aided Church of England Junior School. It will relocate to the permanent accommodation being provided on the Endurance Estates site in September 2015. The new school will be known as the Isle of Ely Primary School and is sponsored by the Active Learning Trust.

2. MAIN ISSUES

(a) Development Viability

- 2.1 In March 2014, ECDC resolved to grant outline planning permission to both of the housing developments, subject to the conclusion of section 106 agreements to provide appropriate mitigation for the impacts of these developments.
- 2.2 Both applicants have sought to demonstrate that their sites are unviable given the current level of planning obligations being sought by the County and District Council. The costs associated with the new primary schools are a significant part of the overall section 106 funding requirement.
- 2.3 The viability appraisals are being independently verified. This exercise has identified a potential gap between what the developments can afford and what they are required to provide. The gap for both sites together is in the region of £23m, even allowing for a reduction in the percentage of affordable housing to 15% from the 30% policy requirement in the Local Plan.
- 2.4 The greatest risk to the County Council is the potential financial impact for the funding and delivery of the two primary schools. The table below sets out the current primary school requirement to mitigate each application, the cost of provision and the current offer from the applicant. It also shows the deficit for which funding will need to be identified.

Applicant	Primary School Cost	Developer Liability	Offer	Deficit
Endurance Estates*	£15.2	£4.1m (2FE extension)	£3,158,794	-£941,206
Church Commissioners	£9.8m	£9.8m (1FE school + 3FE core)	£4,480,000	- £5,320,000

* £4m additional cost arising from provision of upfront infrastructure which will also serve the housing development. This cost is recoverable through a separate agreement (see paragraphs 2.10 to 2.17)

- 2.6 Negotiations are continuing with both developers. Senior officers are exploring ways to maximise the level of contribution and affordable housing that can be delivered through, in particular, the inclusion of a review mechanism in the section 106 agreement to capture any uplift in the value of the development over time.
- 2.7 A review will be undertaken as to how the proposed primary school on the Church Commissioners' land, expected build date to commence after 2021, is delivered. If it is possible to avoid building all of the core facilities required by a

3FE school during the first phase of construction the capital cost may be reduced, so too the deficit between that cost and the S106 sum currently offered by the developer. The ability to deliver a reduction in this deficit will be dependent on the planning constraints that will apply to the school site. For example, it will be much more difficult to reduce the amount of accommodation required in the first phase and, therefore the cost, if for design reasons a multi-storey solution is required.

- 2.8 A revised approach would also reduce the Council's risks of potentially providing too many school places at too early a stage, given that the timing of the second phase of the Highflyer Farm development (1,000 homes) remains uncertain.
- 2.9 A separate report will be presented to the Environment and Economy Committee in September. This will consider the wider implications of planning obligations for the Council following the completion of the current viability negotiations with the applicants. The report will also consider the need to secure planning obligations alongside the guidance contained within the National Planning Policy Framework and the delivery of the East Cambridgeshire Local Plan.

(b) Acquisition of the Isle of Ely Primary School Site

- 2.10 To facilitate the completion and timely opening of the Isle of Ely Primary School on the Endurance Estates site, the Council is to commit to undertaking advance infrastructure works required to serve both the school and the housing development. These works are expected to cost in the region of £3.5m - £4m.
- 2.11 The proposal is for the Council to enter into an option to purchase the school site, together with a cost recovery agreement to ensure that the majority of the £3.5m cost of the advanced infrastructure works is recovered. The non-recoverable cost element relates to the advanced infrastructure works on highways and other services which not only benefit the housing development within which the school is located, but the school as well. The Council's contribution towards these infrastructure works is capped at £430,000 under the terms of the agreement. Appendix 2 sets out the detailed Head of Terms.
- 2.12 The Council needs to acquire and access the site ahead of its anticipated formal transfer at nil cost under the section 106 agreement to ensure that the school buildings can be opened in September 2015. For this reason, the Council has also agreed to pay £74,100 to acquire the school site under the option to purchase. This payment will be partially or fully recoverable depending on the cost of archaeological requirements under the terms of the agreement.
- 2.13 The capped contributions ensure that any project cost overruns are recoverable. A restriction on title of the land that is to be sold by the developers to repay the advance cost expenditure would be taken, to ensure that the sales income is directed to the Council.
- 2.14 The recoverable cost of the works would be repaid to the Council by the landowner over, at most, a 5-year period and interest would be charged on the outstanding balance at 4% over the base rate, commencing 12 months from the start of the construction of the school, reviewable at year 3. The repayment would be linked to the sale of land tranches for redevelopment and the Council would recover all advance funds from the land sales up to that including the 1st 400 units of non social housing. Early repayment is permitted.

- 2.15 The consequence of not proceeding is that the Isle of Ely Primary School's permanent accommodation will not be in place for occupation by September 2015.
- 2.16 On approval of these agreements, the Council will move to acquire the site following the grant of planning consent. It is anticipated that construction of the new Isle of Ely Primary School will begin around November 2014 based upon the contractor's current programme. The implications of the option to purchase and cost recovery agreement are reflected in the overall allocation of capital resources to the scheme. The advanced infrastructure costs will be incurred whether the Council constructs the school in a single phase or multi-phased approach.
- 2.17 The inclusion of the cost of site acquisition and advanced infrastructure works for this project in the Children, Families and Adults (CFA) capital programme means that the Director of LGSS – Law, Property and Governance can negotiate and conclude these terms under his delegated powers.

3. ALIGNMENT WITH CORPORATE PRIORITIES

3.1 Developing the local economy for the benefit of all

- 3.1.1 The Council is in general agreement with ECDC's development strategy (the Local Plan) which provides for substantial housing and employment growth. The proposed housing developments to the North of Ely represent two of the major allocations within this overall plan for development in the District.

3.2 Helping people live healthy and independent lives

- 3.2.1 If pupils have access to local schools and associated services, they are more likely to attend them by either cycling or walking rather than through bus or car. They will also be able to more readily access out of school activities such as sport and homework clubs and develop friendship groups within their own community. This will contribute to the development of both healthier and more independent lifestyles.

3.3 Supporting and protecting vulnerable people

- 3.3.1 Providing local schools will ensure that services can be accessed by families in most need within the designated area.

4. SIGNIFICANT IMPLICATIONS

4.1 Resource Implications

- 4.1.1 In January 2014, the Council received a very poor basic need capital settlement from the DfE of only £4.4m covering the period 2015-2017. The Council has lobbied for an improved settlement on the basis that Cambridgeshire faces exceptional pressures, linked to economic and housing growth. A response was received from DfE on 2nd July allocating an additional £3m over the period 2015-17. The improved DfE allocation remains substantially below what the Council anticipated it would receive.
- 4.12 There is, therefore, a significant pressure upon the Council to maximise the level of developer contributions it receives towards the cost of new schools to ensure

its overall level of borrowing is controlled. The latest developer offers received (set out in paragraph 2.5) represent 77% and 46% of the anticipated primary school build costs.

- 4.1.3 The advanced cost of the Isle of Ely Primary School infrastructure works will be recovered under the terms of the proposed cost recovery agreement. The cost of these advanced works is already included in the CFA 5-year capital programme so there is no additional borrowing implication arising from this particular agreement.

- 4.14 The total cost of the proposal to deliver the 630 place (3FE) primary school by September 2015 is £15.2m and can be funded by:

Targeted Basic Need	£2.47m
Basic Need Grant	£1.18m
Advanced Infrastructure – recoverable	£3.5m
Section 106 contributions	£3.16m
Prudential Borrowing Requirement	£4.89m

The total debt charges incurred through the borrowing of £4.89m will be in the region of £9.4m over the 40-year useful asset life at the current cost of borrowing. The borrowing and revenue impacts of the proposal will need to be included in the Council's Business Plan.

- 4.1.5 In determining the approach to these two developments, it should be borne in mind that development viability will return as an issue with other major developments coming forward particularly those in the northern part of East Cambridgeshire and Fenland. The Council is, therefore, likely to encounter this situation and similar requests in the years to come. The report to the Environment and Economy Committee in September will provide a framework for how future requests might be considered.

4.2 Statutory, Risk and Legal Implications

- 4.2.1 The Council, as the local Children's Services Authority, has a statutory duty to provide a school place for every child living in its area of responsibility who is of school age and whose parents want their child educated in the state funded sector. To achieve this, the Council has to keep the number of school places under review and to take appropriate steps to manage the position where necessary.
- 4.2.2 The only option for providing the number of places required in Ely is by the opening of the Isle of Ely Primary School in September 2014. The forecast pupil roll for September 2015 will require the permanent school buildings on the Endurance Estates site to be available for occupation by this date. There are risks involved in the opening of a new school ahead of the housing development coming forward but these are mitigated, wherever possible, through the option to purchase the land and the proposed cost recovery agreements. There is an overriding need for the Council to meet its statutory duty to provide school places.
- 4.2.3 The Local Planning Authority may require the applicant to mitigate the impact of the development (Town and Country Planning Act 1990, Section 106), commonly through securing financial contributions to provide infrastructure or affordable housing. The National Planning Policy Framework (Paragraph 73)

requires that the costs of any requirements sought under Section 106 should not prevent “competitive returns to a willing land owner and willing developer to enable the development to be deliverable”. Paragraph 176, however, states that the development should not be approved if the measures required to mitigate cannot be secured through appropriate conditions or agreements.

4.3 Equality and Diversity Implications

- 4.3.1 The Council is committed to ensuring that children with special educational needs and/or disabilities (SEND) are able to attend their local mainstream school where possible, with only those children with the most complex and challenging needs requiring places at specialist provision. The delivery of mainstream schools in these major developments supports the existing policy of the Council.

4.4 Engagement and Consultation Implications

- 4.4.1 The process adopted by the Council for consideration of Academy or Free School proposals makes provision for a public meeting at which members of the local community can meet the potential sponsors and ask them questions about their proposals. At the public meeting the Council outlines the need for the school, the location and the date of opening (September 2014 in this case). The public meeting for the new Isle of Ely Primary School took place on 1st October 2013.
- 4.4.2 An officer/member selection panel, which included one of the local Members, met on 3rd and 4th October and interviewed all potential sponsors and recommended its preferred sponsor to Cabinet. The Panel membership includes the relevant local member(s).
- 4.4.3 The process for the adoption of any Local Plan includes a number of stages. A number of these stages require extensive consultation on options, proposals and any subsequent modifications arising from earlier consultations.
- 4.4.4 A pre-planning application exhibition was held on the design proposals for the new school. The exhibition was attended by local Councillors and members of the public living in the vicinity of the new school. The event was well attended over the course of the late afternoon and evening.

4.5 Public Health Implications

- 4.5.1 The primary school will be accessible to pupils as either pedestrians or cyclists. This was a significant consideration in the master planning of these two new developments to the North of Ely

4.6 Localism and Local Member Involvement

- 4.6.2 These aspects have been covered under section 4.4 above.

Source Documents	Location
<p>Report to Cabinet on Establishing a New School in Ely 29/10/14 and 09/07/13</p> <p>Revised HOT's 05/06/14</p>	<p>Room B202, Castle Court, Cambridge</p>

Map of Ely showing location of schools and proposed major developments

