

EAST RENFREWSHIRE COUNCILCabinet3 December 2020Report by Director of EnvironmentEARLY LEARNING AND CHILDCARE (Expansion 2020)**PURPOSE OF REPORT**

1. The purpose of this report is to provide an update in relation to the progress of the project to deliver the expansion of Early Years provision in East Renfrewshire to meet Scottish Government requirements.

RECOMMENDATIONS

2. The Cabinet is asked to:-

- a) Note the delay in the opening of the nurseries due to the impact of the Covid virus on the construction industry;
- b) Homologate the decision by the Director of Environment to vary the relevant contracts to accommodate additional works in particularly challenging circumstances in an effort to open the nurseries as quickly as possible;
- c) Recommend to the Council that additional capital expenditure of £910,000 be approved to cover the additional committed works; and
- d) Recommend to the Council that a compensation payment of £803,000 in relation to coronavirus issues be made to Heron Bros as outlined in the report.

BACKGROUND

3. The Early Years building programme is a major capital programme comprising the construction of six nursery buildings required to meet the Scottish Government's increased Early Years entitlement of 1140 hours for all eligible children. Overall the ELC expansion programme will provide around 600 additional places for 3 and 4 year olds. The main new build nurseries are situated at the following locations;

- Glenwood, adjacent to Glenwood Family Centre
- Crookfur, at the Parklands pavilion
- Overlee, at the Overlee Park pavilion
- Busby, at Busby Primary School
- Eaglesham, at Eaglesham Primary School
- Cross Arthurlie at Cross Arthurlie Primary School

4. The construction of the nurseries has necessarily involved from the outset some considerable disruption for children and their parents including the temporary registration of additional indoor and space with the Care Inspectorate, changed hours operating models and some children having to travel further to obtain available space. In that respect it was always important that the new nurseries could be completed and opened as quickly as possible.

5. The building contractor for the projects listed above, with the exception of Cross Arthurlie, is Heron Brothers Ltd. (HB). The contracts commenced at Crookfur on 10th June 2019 with completion originally expected in July 2020.

6. Various potential issues around the implications of the Covid virus for projects and in particular the Early Learning and Childcare Expansion have already been highlighted to the Council.

7. In a report to the Cabinet on 27th August and to the Council on 9th September 2020 on the General Fund Capital programme it was highlighted that;

“The impact of COVID-19 is having a significant effect on the timing and cost of projects and on the timing and value of capital receipts due to market forces, inflation and new safe ways of working. officers continue to review the Council’s capacity to deliver planned projects in the current year and will provide further updates in the next capital report as matters become clearer.

Early Learning and Childcare Expansion – COVID-19 has had a significant impact on this project with the standstill causing delays. The cost of standstill alone is estimated at £0.500m. In addition to this, the design proposals to connect storm drains to Scottish Water combined sewers have been rejected with the proposed solution to connect storm drain to nearby water course adding significant costs to the project. Across the five main sites, this amounts to £1.882m

Officers continue work to mitigate these costs and are also identifying savings elsewhere in the programme to support these cost increases. A further update will be provided in due course.”

8. This report provides an update on the current position with regard to Early Learning and Childcare Expansion.

9. Unfortunately, as explained above due to the impact of the Covid virus and Scottish Water issues work has been delayed. However, staff have managed to help recover the situation and work is now ongoing with completions at an advanced stage and currently anticipated from November 2020 through to December 2020.

10. The current capital sum approved is £27,372,000. However, there is a requirement to increase the sum approved to take account of additional costs relating to the Covid virus, unexpected Scottish Water costs and a number of other additional items specified below.

REPORT

Covid Issues

11. As recommended by the Scottish Government HB stopped construction on 24th March 2020 and secured the nursery sites on 26th March 2020. All steps were taken to mitigate cost, retaining only necessary staff, services and plant. This situation prevailed until June 2020 when the sites were allowed to reopen.

12. Since reopening on 15th June 2020 HB has been working to complete the nurseries in accordance with Scottish Government Covid guidance and therefore under a restrictive regime of reduced staffing, constrained working practices and supplier and sub-contractor issues. This has resulted in an extended construction period and also additional costs for the contractor.

13. The relevant building contracts contain various provisions which the contractor may argue are relevant to entitle them to additional construction time or in some cases additional financial payments in respect of the works. In anticipation of possible claims, advice received

from legal services during the early stages of the pandemic was to adopt a cautionary position with regard to potential claims so as to control the Council's exposure to further costs. On this basis, delays caused by unforeseen circumstances were accepted but additional costs were not conceded. However, in light of the general objective of protecting the economy (including the construction industry) and the certainty of an agreed figure following preliminary discussions it is now proposed that ERC shares the additional Covid related costs with the contractor.

14. This approach has the following benefits;

- Avoids the uncertainty and costs of potential litigation
- Maintains a good working relationship and the co-operation of the contractor
- Protects the remaining period of the contract by reducing the risk of unreasonable and/or disputed claims

15. The Council's project managers Gardiner and Theobald (G&T) have negotiated a provisional compensation agreement with HB which G&T can support in terms of the tendered costs associated with the contract, subject to Council approval. In addition, Property and Technical Services staff have negotiated terms with the contractor for Cross Arthurlie and the other works packages in a similar manner. The total sum is £803,000.

16. The costs during the shutdown period relate to prelims, rent of site cabins, utilities, security, insurances, some staffing and plant such as generators etc. (i.e. the things requiring to remain in place).

17. The costs since restart are caused due mainly to prolongation due to only being able to have some 50% of workforce on site therefore the work has taken longer and the site needs to function for longer with more of the associated costs referred to above but with fully operational staff and the inefficiencies of the workflow and supply problems etc.

18. These additional sums have not yet been committed. If the additional sums are not approved it is possible that ERC could face a potentially costly legal dispute. The Cabinet is therefore being asked to recommend to the Council approval of payment this amount.

Scottish Water Issues

19. Scottish Water's Surface Water Policy guidance provides a hierarchy of five solutions for surface water drainage, ranging from the preferred option of "storage and re-use" to option five, where surface water is drained to a combined sewer. In densely developed urban situations dedicated surface water drainage is often available and in rural situations it can be possible to take rainwater to watercourses. However, in semi-urban areas often the only viable solution is to use the combined sewer.

20. The Council's engineering consultant had anticipated SW would allow a relaxation of the regulations as was SW's historical practice and so no allowance was made for this cost. Unfortunately, it transpires that SW has toughened its stance in this regard during the design and construction period and lessons have been learned for future projects.

21. The Council's request to Scottish Water (SW) to allow a connection to the combined sewer in all five new build nurseries was initially refused. However, it has been possible, over an extended period, to negotiate SW's acceptance in principle to connect to the combined sewer at Crookfur, Eaglesham and Busby on condition that at least an equivalent amount of surface water is removed from the combined sewer from within the same catchment (by means of diverting road gullies to watercourses). The cost of these works is £196,000.

22. In the remaining two nurseries at Overlee and Glenwood it has been possible to connect the buildings to water courses thereby negating the need to connect to the combined sewer. The cost of these works is £380,000.

23. Given the urgency of getting the nurseries open and the advanced stage of construction and the clear need for all nurseries to connect to the sewerage system these works have already been instructed at a total additional cost of £526,000 for all of the nurseries. Without these sewerage works the nurseries could not open.

24. SW has been slow to respond to the current situation (they too have Covid related issues) which has been challenging. Consequently, there remains a small risk of further delay and associated expense with regard to sewerage issues. Additional contingency resources of £50,000 is also being requested to cover this potential situation and the potential risks within the remaining period of the building contract.

25. The Cabinet is therefore being asked to homologate this action in relation to the increases in contract values and recommend to the Council, in terms of the Council's Scheme of Administration), that additional resources of £526,000 and the contingency of £50,000 (total £576,000) be approved to cover the exceptional circumstances.

Other Costs

26. In addition to the items above there are a number of further "other" additional costs. These are;

- Allowance for the sum of post contract changes comprising additions and deductions for design development and architect instructions over the contract period together with associates fees and charges (£233,000). This is standard practice in relation to contracts particularly large ones such as this.
- The contingency allowance at the outset was £862,000 on £27,372,000 being an average percentage, over the range of projects, at 3.15%. However, this has proved to be insufficient to deliver the project.
- Examples of contingency expenditure incurred on this project include; removal of contaminated soil, delay and subsequent acceleration in connection with Parklands objections, roads and pathway improvements, re-design of elements within the new pavilions at Overlee and Crookfur to meet both client (Education) and Sport Scotland specifications.

Total additional cost £233,000

- Equipment and services required to operate the facilities comprising;
 - ICT infrastructure: provisional sum £80,000 projected additional cost £59,000
 - IT hardware: additional, not in provisional sum, projected additional cost £29,600
 - Miscellaneous smaller sums relating to decants, fittings and equipment, additional £12,400

Total additional cost £101,000

Overall additional "other costs" regarding both of these issues is £334,000

Overall Additional Committed Project Costs

- Scottish Water related drainage/sewerage costs – £576,000 (this includes additional £50,000 contingency sum)

- Post contract changes regarding design development and architect instructions – £233,000
- “Other Costs £101,000
- Overall project additional committed total – £910,000

Proposed Additional Covid Compensation Payment

- HB proposed additional Covid related costs – £803,000
- Potential overall cost of project – £1,713,000

27. Every attempt has been made to mitigate the additional expenditure and all opportunities to make savings have been considered. However, given the late point in the programme when Covid issues and the Scottish Water problem arose there have been limited opportunities.

28. Other budgets have been considered for potential savings or contributions and a sum of £369,000 has been identified being a £318,000 rebate from Hub West Scotland in respect of Barrhead High School and £51,000 from works at St Cadoc’s.

29. The remaining £1,344,000 will be found from delays and deferrals due to Covid in other projects and therefore no additional borrowing will be required in the current financial year. However, this will result in future increases in loan charges as additional borrowing will have to be incurred in subsequent years to deliver those projects which have slipped.

30. A copy of the relevant extract from the Contract Standing Orders is attached (appendix 1).

FINANCE AND EFFICIENCY

31. As set out above the total additional capital requirement across the various categories as outlined in the report is £1,713,000. If the additional Covid compensation payment to HB is excluded this amounts to around 3.32% of the original capital provision of £27,372,000.

CONSULTATION AND PARTNERSHIP WORKING

32. The Early Years building and expansion programme has been a collaboration between the various departments of the Council. In addition, consultation with the local community and service users has been key to the success of the project.

IMPLICATIONS OF THE PROPOSALS

33. There is a need for the facilities to open and operate as soon as possible in order that children currently displaced can be enrolled at their intended placement. The current situation is limiting flexibility and choice for families while the new centres are unavailable.

34. There are no implications of the proposals in terms of staffing, property, legal, IT, State Aid, equalities or sustainability.

CONCLUSIONS

35. Principally as a result of the Covid pandemic and late emergence of Scottish Water requirements approval of additional expenditure of £1,713,000 is required to deliver the facilities needed to meet the Scottish Government’s increased Early Years entitlement of 1140 hours for all eligible children.

RECOMMENDATIONS

36. The Cabinet is asked to:-

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Director of Environment

Further information can be obtained from: Phil Daws, Head of Environment (Strategic Services) phil.daws@eastrenfrewshire.gov.uk

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Appendix 1

14. CONTRACT VALUE VARIATIONS

Variations greater than £100,000:-

All variations exceeding £100,000 must be reported to Cabinet for approval prior to the variation being instructed. If the variation is urgently required, approval may be given by two members of Cabinet. In that case, the variation should be reported to full Cabinet as soon as practicable after such approval.

Contract value may exceptionally be extended by a sum in excess of the 10 and 15% thresholds provided the appropriate authorisation route as outlined below is complied with.

For any contract above quick quote value:-

Any desired variation in excess of the 10% or 15% limits must be referred to the Chief Officer – Legal and Procurement for consideration of its legal implications. If sanctioned by the Chief Officer Legal and Procurement the proposed variation must be reported to Cabinet for approval prior to the variation being instructed. If the variation is urgently required, approval may be given by two members of Cabinet. In that case, the variation should be reported to full Cabinet as soon as practicable after such approval.

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