



FOR PUBLICATION

DERBYSHIRE COUNTY COUNCIL

CABINET

4 May 2023

Report of the Executive Director - Children's Services

Expiry of the Derbyshire Schools 1 Private Finance Initiative Contract
(Cabinet Member for Education)

1. Divisions Affected

1.1 Chapel and Hope Valley and Clay Cross North

2. Key Decision

2.1 This is a key decision because it affects two or more divisions.

3. Purpose

3.1 To inform Cabinet of the impending expiry of the Derbyshire Schools 1 (DS1) Private Finance Initiative (PFI) contract.

4. Information and Analysis

4.1 The Council operates 3 PFI contracts for schools each covering 2 schools. The first – DS1 commenced in 2003 and the contract is due to expire on 28 April 2029. The contract covers the following schools:

- Tupton Hall School – an academy with Redhill Academy Trust
- Chapel en le Frith High School – currently a maintained school

It is recommended practice that preparation for the expiry of the contract commences 7 years before the expiry date.

- 4.2 The Infrastructure and Projects Authority (IPA) is the government's centre of expertise for infrastructure and major project delivery. The PFI Centre of Excellence is run by the IPA and provides support and advice to departments and contracting authorities in respect of PFI projects, to drive value for money across the government private finance portfolio.

The IPA carries out health checks on the Council's progress at 7, 5 and 3 years and produces a rag rated chart of actions. Any actions listed as red or red/amber are followed up after 6 months. The IPA made its initial contact with DCC in the Summer of 2022 and the first engagement meeting took place in November 2022.

The IPA also offers training and the Head of Development, PFI Contract Manager and project officer have all attended the 3-phase course. Additional training is offered by CIPFA and finance members of the working party are planning to attend.

The IPA identifies the following as key requirements:

- Recognised as a complex process.
- Planned as a long-term project.
- Subject to good governance and senior leadership.
- Structured and resourced appropriately.
- Understood as a journey over time.
- Dealing with PFI contract expiry demands that the authority makes some fundamental decisions. As a result, it is important that its leadership has a strong sense of its objectives and a clear strategic vision of future service delivery.
- Significant risks will need to be managed, diverse expertise and resources will need to be applied, and additional budgets will likely need to be made available.
- The whole process will require more and different contract management support than is currently being provided to the PFI project.

4.3 The generic timeline is explained below:

7+ years - Building a good base for expiry:

- Know and manage your contract.
- Understand your asset base, its condition and forward maintenance plans.
- Understand the exit provisions and requirements.

7-5 years - Expiry initiation:

- Establish and resource your expiry workstream activities.
- Engage with the PFI Co to initiate joint expiry planning.
- Develop your future services strategy.
- Initiate an early asset condition survey.

5-3 years - Expiry planning and decision-making:

- Develop and implement detailed plans and strategies.
- Agree processes and contract interpretations with the PFI Co.
- Ensure full integration with future procurement plans.

3-0 years - Delivering:

- Deliver final asset survey, final remediation and handback.
- Review and transfer data, TUPE and systems.
- Run future service procurement.
- Conduct transition planning and mobilisation.

0+ years - Post-transition and close:

- Complete all hand back certification.
- Finalise accounts and close out residual PFI contract issues.
- Bed in new services.

4.4 A working party has been formed with representatives from Finance, Legal, Property and Development. It has also been established that support from HR and Procurement will be required as well as external specialists in legal, estates and PFI management. The IPA expects there to be a project board and that a Senior Responsible Officer (SRO) be appointed. The current working party will become the project board and it has been agreed that the SRO will be the Executive Director of CST initially at least.

4.5 At the start of the process, it is essential that DCC understands the terms of the contract in respect of the expiry. A specialist firm of lawyers have been engaged to provide a summary of those terms. As this is an early PFI contract, it will be necessary to identify areas which

are not covered by the contract and need further clarification with the PFI provider.

- 4.6 The PFI provider or Special Purpose Vehicle (SPV), is Amber Infrastructure whilst the facilities management has recently been transferred to MITIE. There is a very good relationship with Amber Infrastructure and 3 members of its team joined the initial meeting to engage with the Council. The Council has experience of working with MITIE on its BSF contract but the relationship with them in respect of DS1 is in its early days. The Development Officers will maintain contact with the SPV and involve them in the process where appropriate.
- 4.7 At the end of the contract, the sites will be returned to DCC. It is imperative that the sites and buildings are returned in a fit condition in line with the contract, to avoid any additional expenditure post-return. In collating the initial documentation, condition surveys carried out by the SPV/FM contractor have been provided. They have raised some concerns, but Development is currently requesting confirmation that all necessary actions have been carried out to rectify the identified shortcomings. These will provide Property with an overview of the current position and allow for planning to take place as to what surveys will be required, when and by whom.
- Tupton Hall School – is an academy and the lease has been agreed for the period beyond the end of the current lease to the PFI provider. This is the only PFI school where the site was leased to the provider, which is why the 125-year lease has been designed to take over immediately after handover i.e., it will pass from Amber Infrastructure via the Council to Redhill Academy Trust.
 - Chapel en le Frith Secondary School – is currently a maintained school however, if it were to convert to an academy ahead of the expiry of the PFI contract it would be transferred to a Trust. In the current situation though, the site and buildings would be returned to the Council to be managed in line with other maintained schools.
- 4.8 The two sites covered by the contract are secondary schools. It is anticipated that the provision of pupil places will be required beyond the end of the PFI contract, but Development will be able to carry out a pupil places planning exercise in due course to confirm that, ahead of any strategic decisions on the sites.

- 4.9 The PFI contract is managed by Finance and their input will be required to report on the current financial position, the position at the end of the contract and any financial risks associated with the expiry. This will be carried out once the terms of the expiry in the contract are fully understood.
- 4.10 The IPA makes it clear that experience has shown that councils are unlikely to have sufficient staff or possibly expertise to undertake the full project and therefore it is likely that a business case will have to be written to seek additional revenue funding. Whilst this represents additional cost to the council, it offsets the financial risks of failing to secure the exit in accordance with the contract. Recent examples where technical advisors have assisted with benchmarking (comparison of soft services), their cost has been far outweighed by the savings achieved.

5. Consultation

- 5.1 Not applicable

6. Alternative Options Considered

This is a contractual liability for the Council and therefore there are no options other than to prepare for the expiry.

7. Implications

- 7.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

8. Background Papers

- 8.1 These are held on file in the Children's Services Development Section and Finance.

9. Appendices

- 9.1 Appendix 1 – Implications

10. Recommendation(s)

That Cabinet:

- a) Notes the process for the expiry of the DS1 PFI contract and acknowledges the need for additional resource to ensure that the process is successful.

11. Reasons for Recommendation(s)

- 11.1 To inform Cabinet of the impending expiry of the DS1 PFI contract.
- 11.2 To identify the need for additional resources to support the expiry to protect the Council's financial interest.

12. Is it necessary to waive the call in period?

- 12.1 No

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Implications

Financial

- 1.1 There are no direct financial implications at this stage however funding will have to be found to employ specialist support. The main financial implication would be if the schools were not returned in a fit condition, however this 7 year process is designed to alleviate that situation.

Legal

- 2.1 The Director of Legal and Democratic Services will provide advice , with support as necessary from external legal advisers in relation to the expiry of the contract and procurement of the replacement contract.

Human Resources

- 3.1 None at this stage

Information Technology

- 4.1 None at this stage

Equalities Impact

- 5.1 No impact

Corporate objectives and priorities for change

- 6.1 Not applicable

Other (for example, Health and Safety, Environmental Sustainability, Property and Asset Management, Risk Management and Safeguarding)

- 7.1 To maintain the schools in a good condition after the expiry of the contract and avoid unnecessary expenditure.