

WEST NORTHAMPTONSHIRE COUNCIL CABINET

17TH JANUARY 2023

CABINET MEMBER RESPONSIBLE FOR FINANCE – COUNCILLOR
MALCOLM LONGLEY

Report Title	Private Finance Initiative (PFI) Lifecycle Works
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List of Appendices

None

1. Purpose of Report

- 1.1 To seek approval for capital budget of £1.1m to be fund replacement of failed building fabric items at Northampton PFI schools.

2. Executive Summary

- 2.1 In December 2005 Northamptonshire County Council (NCC) entered a contract with Northampton Schools Limited to refurbish, extend, build new schools and then to operate/maintain them for a period of 32 years. Following extensions, the contract includes 43 primary, secondary and specialist schools.
- 2.2 In 2018 NCC took the decision to vary the Northampton Schools Private Finance Initiative (PFI) contract to obtain £2m of in year savings. As part of this decision, it removed 47 items that were due for replacement that year as part of the lifecycle programme. These items ranged from floor finishes, lighting replacements through to window/door replacements.
- 2.3 The removal of these items led to the Council being responsible for the cost of their future replacement for the remainder of the contract period. However, there is a process to re-add the assets back into the programme and transfer the liability back to Northampton Schools Ltd (NSL). This requires the Council to put them in good condition, typically by replacement.
- 2.4 The School Premises Regulations 2012 sets out general health and safety in school buildings as well as the requirements for lighting, welfare etc. Building Surveyors have undertaken a review of the assets removed and have confirmed that they fail to meet regulatory standards. The condition of the assets is that they pose a health and safety risks and affect the delivery of the statutory curriculum and require replacement.
- 2.5 It is therefore proposed to replace the failed assets. For this purpose, a budget of £1.1m is needed.

3. Recommendations

- 3.1 It is recommended that Cabinet:
 - 3.1.1 Recommend to Council that it approve a capital budget of £1.100m to undertake essential asset replacement works to the Northampton PFI Schools.
 - 3.1.2 Authorises the procurement of these works.

4. Reason for Recommendations

- 4.1 The assets to be replaced do not comply with the School Premises Regulations 2012 and their condition poses a health and safety risk to students, visitors, and staff to the premises.

- 4.2 The Council has an obligation to meet the Regulations in the schools as a result of the PFI arrangements, which include contracts with each school governing body or academy trust.
- 4.3 Replacing these assets will result in the responsibility for them transferring back to the PFI contractor, thus managing the Council's liabilities.

5. Report Background

- 5.1 In December 2005 Northamptonshire County Council (NCC) entered a contract with Northampton Schools Limited (NSL) to refurbish and extend existing schools, and build new schools, and then to maintain them and provide building maintenance and support services for a period of 32 years. The contract includes 43 primary, secondary and specialist schools.
- 5.2 The contract supported the Council's objective of creating a two-tier education structure within Northampton Town. Originally the contract included 42 primary and secondary schools but was varied shortly after contract signing to include Greenfields Specialist School for Communication.
- 5.3 Other than Greenfields since entering the contract the Council has varied the contract on multiple occasions. This has included two waves of extensions (2012 and 2014) to add existing schools and a new primary school at Duston. These 'wave' extensions enabled the Council to meet its statutory duty to meet local demand for school places.
- 5.4 The unitary charge (UC) payment made by the Council to NSL features two elements: (a) availability (cost of borrowing) and (b) services. The lifecycle programme is one component within the services charge. Other components include facilities management, insurance, project management etc. The services element is funded by a combination of recharges to schools, a contribution from the Council's General Fund, and some other smaller elements.
- 5.5 In 2018 NCC took the decision to vary the contract reducing the UC payment by £2m in year. There were three variations; one included removing 47 assets that were due for replacement that year as part of the lifecycle programme. The assets ranged from floor finishes, lighting replacement through to window/door replacements. The removal of the asset replacement after fees provided a services credit of £0.962m at base cost. It is to be noted that only the Council benefited from the reduction in service costs. None was passed on to schools that contribute to the cost of services.
- 5.6 The removal of these assets led to the Council taking responsibility for the future cost of replacement and maintenance for the remainder of the contract period. When the assets failed the variation allowed for the Council to instruct NSL to replace them but at current market cost. Since 2017 inflationary costs have meant that the current value of

replacement will be more than the base cost. Once replaced NSL would then take on responsibility for future replacements and maintenance.

5.7 The assets have been assessed by Building Surveyors. The assets in question have now continued deteriorating since 2017 and present health and safety risks to schools and are affecting the delivery of statutory curriculum. Examples of this include:

- Spring Lane Primary School – single glazed sliding sash windows in one block have failed. The glazing is loose as the gaskets have failed and there is a risk of glass falling out, the windows are secured with loose wooden blocks that restrict the windows from opening fully on the second storey.
- Chiltern Primary School – fluorescent lighting and replacement ceilings have failed. 20% of the lights have failed in some classrooms leading to poor light and children having difficulty reading presentations at the front of the class. In some classrooms the lighting fails to meet the requirements of the School Premises Regulations 2012.
- Briar Hill Primary School – taps and doors to sink units in classrooms have failed. Taps cannot be operated by children. Doors are hanging off and have already previously been subject to repair.

5.8 When removing the assets from the PFI lifecycle programme NCC also created a challenging situation to the hand back provisions at the expiry of the contract. The hand back provisions require the contractor hand back the assets with a minimum lifecycle period remaining. Currently the variation removes these assets from hand-back provision therefore the Council would transfer these risks to either the schools or back to itself. Replacing these assets now would remove that issue.

6. Issues and Choices

6.1 The choices available to the Council are.

- A. Do nothing: It is highly likely that individuals would suffer from harm. This could lead to action against the Council for breach of statutory duty and unlimited fines. Civil claims could be made. The Council would suffer reputational damage. Areas in schools would become unsafe to educate pupils in.
- B. Provide £1.1m of capital funding to replace the assets. This option would enable the Council to mitigate harm to persons and the likelihood of action for statutory breaches. It would protect the Council from reputational damage. It would provide pupils, staff, and visitors with safer schools to attend. Replacement lighting would assist schools in mitigating utility cost increases.

- C. Replace the assets prior to contract expiry: this would enable the Council to defer the cost of replacement although the costs of replacement would be higher as inflation increases. In the intervening period the Council would still be at risk of action for breach of statutory duty and unlimited fines. Civil claims could be made. The Council could suffer reputational damage. Areas in schools would become unsafe to educate pupils in.
 - D. The Council could seek to vary the contract to request that the contractor fund and replace and maintain the assets: This option would enable the Council to reduce the cost of its own borrowing but would require it to meet the additional revenue UC costs. The Council's borrowing rate is lower than that which the contractor would charge. Replacement lighting would assist schools in mitigating utility cost increases.
- 6.2 Option B is the most cost-effective option that enables the Council to mitigate harm to persons and the likelihood of action for statutory breaches. It would protect the Council from reputational damage and provide pupils, staff, and visitors with safer schools to attend.

7. Implications (including financial implications)

Resources and Financial

- 7.1 Option B would require a capital budget of £1.100m. Whilst a significant sum this is both necessary to meet the Council's legal responsibilities and justified by the reduced risks flowing from the proposed investment.
- 7.2 The alternative, of not approving the budget, would leave the Council exposed to significant financial liabilities including the costs of potential litigation or Health and Safety Executive action, and any penalties imposed by the courts.

Legal

- 7.3 The School Premises Regulations 2012 set out general health and safety in school buildings as well as the requirements for lighting, welfare etc.
- 7.4 The Council has responsibility to keep its property in safe condition under the Occupiers Liability Acts 1957 and 1984, and the Health and Safety at Work etc. Act 1974. It has duties under its contracts with each governing body or academy trust, and residual duties as the freeholder of all the affected schools.

Risks

- 7.5 The project carries a number of inherent risks, notably:

- 7.5.1 If works are delayed due to material and labour supply issues, then costs could increase and the risk of a breach and harm to persons would not be mitigated. This could be mitigated by urgently requesting that the contractor raise work orders.
- 7.5.2 The cost of the asset replacement could increase above the available budget. This could be mitigated again by the raising of work orders as soon as possible.
- 7.6 The risks of not acting are liability for breach of statutory duty and/or terms of contract, harm to individuals, and reputational harm.

Consultation

- 7.7 No consultation has been undertaken. The request for capital has arisen out of complaints received from schools and assessment made by Building Surveyors.

Climate Impact

- 7.8 The contractor is required to implement a sustainable approach to construction and where possible reuse and recycle. Where practical, sustainable materials would be used.
- 7.9 Modern lighting installed in replacement of failed older systems would be more energy efficient and thus reduce carbon impacts.

Community Impact

- 7.10 By replacing the failed assets, the Council would be providing safer and more suitable places for education to take place in.

Communications

- 7.11 Discussions with schools will be required to ensure that the replacements do not affect curriculum delivery.

8. Background Papers

- 8.1 None.