



Building Schools for the Future – Local Education Partnership

SUMMARY

- 1.1 There is an expectation from the Department for Children, Schools and Families (DCSF) and Partnerships for Schools (PfS) that authorities included in the Building Schools for the Future Programme (BSF) transformation programme will adopt the Local Education Partnership (LEP) model. The LEP model includes the requirement for a managed service for ICT for those schools in the BSF programme.
- 1.2 The government's default model for unlocking the £205 million capital investment for Derby as part of BSF is the Local Education Partnership. This is a public / private partnership in a legal form, prescribed by Partnerships for Schools (PfS). The LEP model is detailed further in this report.
- 1.3 There is a complex process in establishing a LEP company in which the Council will be a shareholder, with a right of veto. This is an initial report for Cabinet to approve in principle the LEP model for Derby's BSF programme. There will be further reports to Cabinet in due course, including consideration of the scope of services to be included in Derby's LEP.
- 1.4 Subject to any issues raised at the meeting, I support the following recommendation.

RECOMMENDATION

- 2.1 To approve in principle:
 - the Local Education Partnership (LEP) procurement model for the Building Schools for the Future (BSF) investment programme.
 - an integrated managed service to deliver ICT to schools within the BSF programme as part of the LEP.

REASON FOR RECOMMENDATIONS

- 3.1 The BSF programme represents a huge opportunity to transform secondary education in Derby with substantial levels of investment.

- 3.2 The Council was required to provide a commitment to the LEP procurement model as part of the Readiness to Deliver submission back in 2006, on the basis of which Derby was included in wave 5 of the BSF programme, and then in the remit meeting in October 2007, which formally launched our programme. This report seeks to formally adopt this position.



DERBY CITY COUNCIL

COUNCIL CABINET
18 March 2008

Report of the Corporate Director for Children
and Young People

ITEM XX

Building Schools for the Future – Local Education Partnership

SUPPORTING INFORMATION

- 1.1 Building Schools for the Future (BSF) is the biggest ever investment programme to transform secondary education in Derby, with a currently estimated £180 million to replace or renovate secondary schools at January 2007 prices, plus an estimated £25 million specifically for ICT. This estimated funding is an indicative allocation from Partnerships for Schools (PfS) based on our projected pupil numbers for 2017, and is subject to final agreement on SEN and Post 16 pupil numbers.
- 1.2 The Government's strongly preferred BSF procurement mechanism is the Local Education Partnership (LEP), a company jointly owned by the Council, Partnerships for Schools (PfS), and the chosen private sector partner.
- 1.3 As part of our Readiness to Deliver submission back in October 2006, the Council was required to confirm its commitment to the LEP default procurement model, with an integrated managed service to deliver ICT to schools within the BSF programme. A copy of this is attached at appendix 2. This report seeks to formally adopt this position.
- 1.4 BSF aims to establish strategic local investment programmes to support educational transformation through capital investment in school buildings and ICT. The government wants to harness the best of both the public and private sectors to deliver this outcome. The government's view is that Local Education Partnerships:
 - reduce the number of competitive procurements that have to be carried out and streamline the procurement process;
 - involve a strategic partner to deliver the long-term programme;
 - group schools together into large, high value packages;
 - optimise impact on educational outcomes by integrating building design and ICT;
 - use both design and build and PFI contracts;
 - may deliver more than one phase of work.
- 1.5 The competitive process to select a private sector partner to participate in the LEP includes a small number of "representative" sample schools. This speeds up the initial procurement, and saves public and private sector bid costs. Detailed proposals for the remaining schools are left until the contract has been signed with the private sector partner.

- 1.6 Overall, the suggested benefits of the LEP outlined by PfS, are better design quality, significant cost efficiencies, shorter timescales and improved educational outcomes. There is the longer term potential of the LEP in terms of procuring wider services than those just related to secondary schools in BSF. These might include primary schools and other Council capital procurement if the Council so decided, although there are no such proposals currently under consideration.
- 1.7 The LEP will have exclusive rights for 10 years to develop proposals for and deliver the design and build of BSF secondary schools in a local authority's area, with the potential for this to be extended for a further 5 years. The LEP will also usually provide ICT, maintenance and other premises related services to some or all of these schools on a long-term basis, such as currently happens for support services in our PFI schools (excluding ICT).
- 1.8 The LEP will act as the single point of contact for the procurement, delivery and integration of all services required. It will organise a supply chain comprising the necessary skills and experience, for example, design teams, builders, ICT providers, facilities management companies. The contractual structure of the LEP is shown in appendix 3.
- 1.9 It is currently envisaged that the services to be organised by the LEP might be as follows for all secondary schools in BSF:
- PFI provider for the operation of possible new build schools
 - Facilities management (FM) provider for these PFI schools only
 - Design and Build contractors for remaining schools
 - Design teams for all schools
 - ICT managed service for all schools
- 1.10 Each of the three partners (Council, PfS and Private Sector Partner) will nominate directors to a LEP Board. As the LEP is effectively a private sector-led organisation, the Private Sector Partner (PSP) will have four members and the local authority and PfS one each. The directors will have to deal carefully with any potential conflicts of interest, and both the local authority and PfS have certain minority rights in the conduct of business. The local authority remains the democratically accountable body and the client of the LEP in the Council's role as a 'commissioner'.
- 1.11 As a limited liability company, the LEP issues share capital and has a constitution and structure appropriate to such a company. The Council and PfS will have a veto right over matters including changes to the Business Plan, dividend policy, any new issue of shares and any amendments to the constitution. The initial shareholding of the LEP will be the Council – 10%, PfS – 10% and PSP – 80%.

1.12 The Strategic Partnering Board (SPB) is established to ensure that a number of important stakeholders have some influence over the operation of the LEP in their area. Members of the SPB are:

- one representative nominated by the local authority;
- one representative agreed by the board of directors of the LEP;
- one non-executive, to be the independent non-voting chairman of the SPB, appointed by agreement of the parties; and
- other representatives of key delivery partners within the local secondary education community and any other co-opted persons the local authority may nominate, in a non-voting capacity. This category is where schools can be represented by governors or head teachers.

1.13 The role of the SPB is to:

- act as the primary mechanism for managing the LEP's performance, based on reports provided by the LEP;
- provide a forum for the open exchange of ideas, enabling the local authority and the LEP to discuss forthcoming projects and service delivery requirements;
- give guidance on and approve which new projects should be progressed, by whom and on what basis;
- should it wish to do so, make representations to the local authority as to the identity of the local authority's representative on the LEP board of directors. The role and membership of this body may need to be developed over time to ensure that schools have adequate influence over the ongoing delivery of BSF in their area.

1.14 The delivery of services to schools under the LEP (or through other contractual arrangements), will naturally impact on the schools on a day-to-day basis. Whilst it is the responsibility of the local authority and the LEP to deal with contractual matters, clear protocols need to be established for the school to deal with issues that may arise, for example, in cleaning, grounds maintenance, security, ICT and other matters.

1.15 The LEP is incentivised to provide a high-quality, value for money service by:

- the opportunity for future projects;
- the fact that costs are only recovered from successful project delivery; and
- continuous improvement and benchmarking/market testing provisions in the contract.

The LEP's performance will be monitored by the local authority as client, and at a national level by PfS. The contract contains a number of ways to protect the interests of the client if the LEP's performance is below the required standard. These range from payment deductions, through loss of exclusivity, to termination of the contract.

- 1.16 This is a preliminary report on the LEP model and further detailed information will follow for Cabinet to consider the scope of services to be included in the LEP both for PFI and design / build schools, LEP exclusivity and implications of an ICT managed service.
- 1.17 The PfS default position requires authorities in BSF programmes to plan for an ICT Managed Service. This will impact directly on schools and governing bodies as it will be necessary for each school to fund the cost of an ICT managed service from their delegated budgets. This is also likely to impact ICT technical staff currently employed by schools. Detailed discussions with schools on the implications of an ICT managed service are now being scheduled in progressing governors' sign up. Specialist BSF ICT consultants have appointed to start this discussion and dialogue, in order for both schools and the Council to develop understanding. These consultants have significant experience in supporting other BSF authorities through the complex and sensitive transition process.
- 1.18 There is a complex competitive dialogue process in selecting a private sector partner for BSF. This process is currently scheduled to start in early 2009, with preliminary planning and soft market testing to take place well in advance.

OTHER OPTIONS CONSIDERED

2. The LEP is the default procurement model as prescribed by the Government for authorities in the BSF transformation process. How this applies to Derby is under full consideration as part of the development process, and further reports will be brought to Cabinet in due course.

<p>For more information contact:</p> <p>Background papers:</p> <p>List of appendices:</p>	<p>Andrew Flack, Corporate Director for Children and Young People, Gurmail Nizzer, Head of BSF, Children and Young People's Services. e-mail: gurmail.nizzer@derby.gov.uk www.bsf.gov.uk</p> <p>Appendix 1 - Implications Appendix 2 - Readiness to Deliver statement Appendix 3 - The Contractual structure of the LEP</p>
----------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

IMPLICATIONS

Financial

- 1.1 The financial complexities in establishing a LEP are currently being considered with our appointed external financial advisors.

The LEP set up costs (which include the private sector partner's bid costs) are usually paid to the LEP by the PFI contractor on contract signature and usually recovered by the PFI contractor from the Council as part of the annual unitary charge arising from the PFI contract over a period of 25 years. Our external financial advisers suggest LEP set up costs may be as high as £3.5 million. Individual bidders will seek to recover different levels of set up costs in their bid submissions. The Council could opt to pay for this up front on contract signature, and fund it in a different way if required.

- 1.2 Our external financial advisers suggest allowing for ongoing LEP running costs of £200,000 inflated. Around 65% of these costs will relate to managing the PFI contract and are recovered by the PFI contractor from the Council as part of the annual unitary charge arising from the PFI contract over a period of 25 years. The remaining 35% of the LEP running charges relate to Design and Build contracts and are paid by the Local Authority as a management fee for these schemes. Individual bidders will propose different levels of LEP running costs in their bid submissions.
- 1.3 Project development costs of later phases are paid for on contract signature by either the PFI contractor who will borrow to finance them and recover in the unitary charge payable by the Council, or by the Council on signature of a D & B contract from the capital grant received for D & B contracts within the funding envelope.
- 1.4 The amount that the Council will be expected to have to invest in the LEP company in shares and as contribution to working capital will partly depend on the underlying capital value of the anticipated PFI contracts, and based on PfS guidance, is expected to be in the range of £100,000 to £200,000.
- 1.5 In addition, the Council will have an option to take a direct investment share in the PFI contract up to the value of around 1% of the total capital investment of the PFI project. Individual bidders will propose different levels of investment in their bid submissions.
- 1.6 ICT funding will be provided in the form of capital grant on the basis of £1,450 per funded pupil place. This funding is also available to recently built secondary schools, where local authorities can demonstrate that this funding will join effectively with other BSF ICT funding as part of a strategic estate wide ICT managed service. It is expected that the ongoing costs of the managed service will be financed from contributions from each school based on a per capita sum from their delegated budgets. This will be subject to consultation and to the agreement of individual governing bodies.
- 1.7 There will be further reports to Council Cabinet on specific financial implications in due course including a report on the overall affordability of the BSF programme.

Legal

- 2.1 As the LEP model is developed for this project, there will be a number of legal issues to be addressed in the following areas:
- effect of the Council's interest in the LEP on its status for the purposes of Part V Local Government and Housing Act 1989 (local authority interests in companies)
 - governance arrangements to be included in the LEP's Memorandum and Articles of Association
 - relationship between the shareholders, and how they are going to work together
 - relationship between the LEP and the Council
- 2.2 The Council is about to let a long term contract for IT Facilities Management across the Council (through an OJEU competitive dialogue process) which will include some existing elements of service provision to schools. There will need to be careful consideration of the interface between this contract, and the BSF schools ICT managed service contract. Detailed Corporate and Departmental discussions are already underway.
- 2.3 The recruitment process to appoint an internal solicitor for the complex legal aspects of the BSF programme and of appointing external legal advisors is complete. Most BSF authorities have adopted a similar approach. There will be significant legal implications in establishing the LEP, and forming the LEP company. There will be further reports to Council Cabinet in due course.

Personnel

- 3.1 There will be personnel implications in considering the scope of services to be included in the LEP, for example, cleaning, caretaking, grounds maintenance, security and ICT implications for a managed service to those schools within the BSF programme, together with the potential for staff transfer.
- 3.2 There will be full consultation as the Council considers which services are required to be included in the LEP. In general, TUPE will apply to any staff transferring from a school to the private sector partner.
- 3.3 Based on the services it is currently envisaged that the LEP will procure, outlined in 1.9 of the report, it is likely that the staff to be transferred from schools to a private sector partner will be limited to the grounds staff, premises staff, caretakers and cleaners in the possible PFI schools, which is similar to the arrangement under the existing Grouped Schools PFI, and in addition the ICT technicians providing support to BSF schools.

Equalities impact

- 4.1 The BSF programme will provide significant levels of capital funding to improve and modernise school buildings. The overall objective transforming secondary education

will embrace narrowing the gaps in opportunity and achievement.

Corporate objectives and priorities for change

- 5.1 This report supports the Council's key priorities in supporting everyone in learning and achieving, making us proud of our neighbourhoods and giving excellent services and value for money. BSF should also be a catalyst for community regeneration.

Extract from BSF Readiness to Deliver statement submitted in October 2006.**Commitment to BSF model**

Derby City Council welcomes the city's inclusion in the next waves of the Building Schools for the Future (BSF) programme. We are confident that we will be ready to deliver as a Wave 5 authority. In making this assessment we have realistically examined the steps we need to take to be ready to deliver without delay from September 2007.

Derby is recognised as a successful children's service authority and we are proud of the priority we have given to this area of the Council's responsibilities. Through our partnership with schools and a wide range of other providers and stakeholders, we have already made really encouraging progress in raising educational standards in secondary education. We are also very well advanced with the integration of children's services and in delivering the wide ranging outcomes within the Every Child Matters agenda. We see BSF as an opportunity to secure the necessary structural and operational change in secondary education in Derby to implement our strategic vision, building on our well developed collaborative structures and activity.

The Council understands and fully accepts the proposed BSF procurement model and is content with the proposed funding arrangements. We have successful recent experience of completing a substantial PFI build, including two secondary schools, and we recognise that PFI is likely to be the main vehicle for capital funding of new build schools within BSF. We have also demonstrated our capacity to deliver through conventional procurement, including two current school projects totalling some £15 million, funded largely through targeted capital. We are clear that this experience, together with our recently started BSF Pathfinder project, will help ensure our capability to deal with a large amount of refurbishment or remodelling in BSF funded through conventional capital funding.

The Council accepts that the default procurement model is the Local Education Partnership (LEP), unless otherwise agreed. We fully endorse the importance of securing best value, and we would only propose an alternative if we could demonstrate that it offered better value for money in our particular circumstance.

The Council is happy to procure an integrated managed service to deliver ICT to the schools within the BSF programme. We will wish to ensure this is linked effectively to the innovative arrangements we are currently making to ensure that Derby schools have connectivity and services well above the minimum required level.

We are clear that Derby is in an excellent position to take forward this capital investment programme. Building Schools for the Future provides an extremely welcome and timely opportunity for the Council to transform our secondary and special schools to deliver our vision for excellence within a diverse and inclusive system.

Chris Williamson
Leader of the Council

Ray Cowlshaw
Chief Executive

Figure 2: The Contractual Structure of the LEP



