

NORTH YORKSHIRE COUNTY COUNCIL

DECISION RECORD

Re: Proposed Variation to Project Agreement dated 30 March 2001 to expand Barlby Community Primary School

This record is produced in accordance with the Local Authorities (Executive Arrangements)(Meetings and Access to Information)(England) Regulations 2012

This form should be used to record:

- **EXECUTIVE decisions (key or otherwise) taken by an individual Executive MEMBER; and**
- **EXECUTIVE decisions (key or otherwise) taken by an OFFICER (either alone or in consultation with an Executive Member)**
- **A non-Executive decision taken by an OFFICER which falls into one of the following descriptions:-**
 - (i) under a specific express authorisation; or**
 - (ii) under a general authorisation to officers to take such decisions and, the effect of the decision is to**
 - **grant a permission or licence;**
 - **affect the rights of an individual; or**
 - **award a contract or incur expenditure which, in either case, materially affects that relevant local government body's financial position.**

(One form per decision)

The following decision has been taken: -

Proposed Variation to Project Agreement dated 30 March 2001 to expand Barlby Community Primary School

Authority to enter into the Deed of Variation and related documents comprising

- Deed of Amendment to PFI Project Agreement with further amendments requested by the lenders. The further amendments relate to the following issues:
 1. During construction performance and unavailability deductions will not apply to the whole site.
 2. During the 12 month Defects Liability Period performance and unavailability deductions will apply to the whole site with the exception of the new build areas.
 3. If the Council need to take enforcement action against the builder, the Council would name borrow from the SPV to pursue the builder.
- Contractor collateral warranty to Authority
- Architect Collateral Warranty to Authority
- C&S Engineer Collateral Warranty to Authority
- M&E Engineer Collateral Warranty to Authority
- Certificate issued pursuant to Local Government (Contracts) Act 1997
- Notices of assignment

- i. approving the terms of the variation documents to which it is party and consenting to the transactions contemplated by such documents;
- ii. authorising the Assistant Chief Executive Legal and Democratic or persons authorised by them to seal the variation documents to which the Authority is party, in each case in accordance with its Constitution.

By whom Stuart Carlton, Corporate Director, Children and Young People's Service, in consultation with Cllr Patrick Mulligan, Executive Member for Education and Skills.

On: 13 October 2020

Was this an executive decision? NO
If an executive decision, was it also a key decision? NO

Reasons for decision: -

The Corporate Director – Children and Young People's Service has power to exercise all functions of the LEA and to enter into contracts to facilitate service delivery. (Scheme of Delegation 3.3 and 4.2 (a)).

The County Council's Executive authorised the expansion of Barlby Community Primary School through reports on 24 May 2016 (Planning of School Places – Basic Need Programme 2015-2018 Appendix A) and 24 June 2018 (Planning of School Places – Basic Need Programme 2018-2021, Appendix B) including funding for the scheme and that expansion would be delivered by the Private Finance Initiative company that manage the school.

The Corporate Director gave officers authority to enter into the Deed of Variation and related documents on 11 February 2020 (Key Decision Record Form CYP10/20) when tender evaluation was now underway in relation to the proposed expansion. Prior to the awarding of the contract, the PFI contractor also requires the Council to certify the contract. The proposed expansion is subject to a Deed of Variation to the PFI contract, which it is recommended be approved by Corporate Director CYPs and signed by both parties. This is required by the PFI provider to be certified pursuant to the Local Government (Contracts) Act 1997. A contractor has now been chosen, the contractual documentation is being finalised and a schedule of works produced.

A late request has been received from the lenders to vary terms of the agreement as set out below:

1. During construction performance and unavailability deductions will not apply to the whole site.
2. During the 12 month Defects Liability Period performance and unavailability deductions will apply to the whole site with the exception of the new build areas.
3. If the Council need to take enforcement action against the builder, the Council would name borrow from the SPV to pursue the builder.

While the building contractor will use all reasonable endeavours to prevent the construction works impacting on the operation of the school site, the Lender is seeking protection against this across the whole site during the construction period, and in the new build areas during the 12 month defects liability period following handover.

We have had few unavailability deductions over the years of the contract and consider that the risk of accepting these variations in terms is considered low. Negotiations have taken place with the Lender and it has become clear that if we seek to further negotiate this will not necessarily improve the terms and will have the effect of causing further delay to a time sensitive and high profile project. It is for these reasons that these terms are recommended for acceptance in this case.

Details of any alternative options considered and rejected: -

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Conflicts of Interest

Please record below details of any conflict of interest declared by a Member or Officer regarding the decision and any dispensation granted by the Standards Committee or Monitoring Officer in respect of that conflict.

Conflict	Dispensation?

Background Papers

Please attach to this decision notice, for publication, the background papers that disclose any facts or matters on which this decision, or an important part of the decision, was based and which were relied on to a material extent in making the decision, but this does not include published works or those which disclose exempt or confidential information (as defined in Rule 10).

Signed

Publication Date: 13 October 2020

(Name):
Stuart Carlton, Corporate Director – Children and Young People’s Service

Directorate:
Children and Young People’s Service

Note 1 regarding Executive decisions only: This decision will come into force, and may then be implemented, on the expiry of 5 clear working days after publication, unless any 6 members of the Council object to it and call it in by notice in writing (including e-mail) to The Assistant Chief Executive (Legal and Democratic Services).

Note 2: non-executive and non-key executive decisions by Officers are not subject to call in.

Contact for further information: john.s.lee@northyorks.gov.uk

Contact for copy of report considered marion.sadler@northyorks.gov.uk

To: The Senior Legal and Democratic Technical Support Officer, Legal and Democratic Services - for onward circulation to:

All Members of the Council; All Management Board; All Management Board Secretaries; All Senior Managers; All Democratic Services Officers; All Corporate Development Officers; Senior Press Officer; Communications Officer