

---

**NORTHWOOD SCHOOL PROJECT**

---

**Responsible Cabinet Member - Councillor Cyndi Hughes,  
Children and Young People Portfolio**

**Responsible Director –Murray Rose – Director of People**

---

**SUMMARY REPORT**

**Purpose of the Report**

1. This report advises Members about the final account on the Northwood capital project. It also seeks approval for a funding strategy and an approach to the next stages.

**Summary**

2. Following a successful Primary Capital Programme pathfinder bid in 2006, a total funding package of £7.361 M was developed to enable the rebuild of North Road Primary School, since renamed Northwood Primary School.
3. The construction phase commenced in January 2009 and the main rebuild was completed in December 2009 with the school occupying its new premises in January 2010. The second phase of the project, to demolish the old school and provide playing fields and landscaped grounds, was completed in June 2010.
4. Members have been informed through previous reports about the progress of the scheme. There are differences of view between the parties regarding the value of the final account; necessitating a clear strategy on managing the next stages. There are a range of possible funding options that could be considered. It is prudent to set aside funding to manage the difference of view in relation to the financial outcome.

**Recommendation**

5. It is recommended that Cabinet:
    - (a) Agrees the sources of funding recommended in the funding strategy.
    - (b) Authorises the Director of People to vire sums to the project budget in accordance with the approach set out in this report.
-

- (c) Grants all necessary delegations to the Director of People to manage the next stages in accordance with the approach set out in this report.
- (d) Authorises the Assistant Director (Resources) to procure necessary legal and technical expertise as a non-strategic procurement and to take any steps to resolve the contractor's claim in the Council's interest.

**Reasons**

- 6. The recommendations are supported by the following reasons:-
  - (a) To ensure prudent financial management.
  - (b) To allow the Council to protect its position in relation to the contracts.

**Murray Rose**  
**Director of People**

**Background Papers**

No Background papers were used in the preparation of this report.

Murray Rose

S17 Crime and Disorder	There are no specific implications other than those detailed in paragraphs 23 to 33.
Health and Well Being	There are no specific implications other than those detailed in paragraphs 23 to 33.
Carbon Impact	There are no specific implications other than those detailed in paragraphs 23 to 33.
Diversity	There are no diversity impacts arising.
Wards Affected	All Wards equally.
Groups Affected	Children, Parents and Schools.
Budget and Policy Framework	This report does not affect the Budget and Policy Framework
Key Decision	This is a key decision.
Urgent Decision	This is not an urgent decision.
One Darlington: Perfectly Placed	This report is designed to ensure the Council has necessary funding arrangements to manage impact on the Sustainable Community Strategy.
Efficiency	This report is designed to ensure prudent financial management of a potential risk.

## MAIN REPORT

### Contents

7. This report is under the following headings:-
  - (a) Background
  - (b) Roles and Responsibilities
  - (c) Current Position
  - (d) Approach to the Next Stages
  - (e) Funding Strategy

### Background

8. Following a successful Primary Capital Programme pathfinder bid in 2006, a total funding package of £7.361 M was developed to enable the rebuild of North Road Primary School, since renamed Northwood Primary School. There have been previous reports to Members in relation to the project.
9. The construction phase commenced in January 2009 and the main rebuild was completed in December 2009 with the school occupying its new premises in January 2010. The second phase of the project, to demolish the old school and provide playing fields and landscaped grounds, was completed in June 2010.

### Roles and Responsibilities

10. Darlington Borough Council is the employer on the construction contract and has a contract with Atkins for design and contract administration.

#### Architect Contract

11. Darlington Borough Council entered into a contract with Atkins in October 2007 to provide services as Lead Architects at North Road School, Darlington. Faithful and Gould were employed by Atkins and were named as the Quantity Surveyor.

#### Construction Contract

12. Following a competitive tender exercise Darlington Borough Council entered into a contract with Kier Northern for the construction of a new primary school and demolition of the old North Road Primary School. The contract value was £5,503,622. Atkins was named in the contract as contract administrator with project management reporting mechanisms into the Council.

### Current Position

13. The contract finished on site in June 2010 and a final account was issued to Kier. The value of the account was based on the Quantity Surveyor's assessment of the value of the work undertaken in accordance with the terms and conditions of the contract. The final account was issued on 3rd September 2010 with a value of £6,031,308 the agreed construction budget is £5,924,450.

14. In accordance with the interim certificates issued to date, payments have been made to Kier totalling £5,836,845.
15. The contract allows a period of 6 months from completion for the contractor to challenge the final account value. On the 24<sup>th</sup> December 2010 Kier submitted a challenge to the account with substantial volumes of supporting documents.
16. This triggered a 3 month assessment period to consider the challenge. Kier have put a value on the final account of £7,225,131, which is significantly higher than the assessments undertaken by the Quantity Surveyor.
17. This results in significant differences of view between the parties necessitating a clear strategy on managing the next stages. The following table summarises the current difference in position between the parties. There is a reassessment underway which may result in an increase in the assessed value.

	Final Account value September 2010	Kier Claim 24 <sup>th</sup> December 2010
Project Budget	£7,361,000	£7,361,000
Construction Budget	£5,924,450	£5,924,450
Assessment	£6,031,308	£7,225,131
<b>Financial outcome</b>	<b>£106,858</b>	<b>£1,300,681</b>

18. The other project costs are forecast to be on budget. An exercise of assessing uncommitted funding sources and residual amounts from other projects has been ongoing to identify sources of funding to provide Cabinet with options to mitigate the final outcome.

### **Approach to the Next Stages**

19. There is a contractual timeline to deal with matters associated with the construction contract and settling the final account. Work is ongoing to assess the validity of this challenge but there is a 3 month time scale to undertake this process.
20. Following the issue of the final certificate both parties then have 28 days to notify of intentions to take the matter to adjudication. Adjudication is not legally binding and there is another avenue for further challenge to the Technology Court should either party be dissatisfied.
21. Once triggered adjudication processes can have extremely tight timelines to prepare and present the Councils case. Preparations will be made for the potential for adjudication engaging specialist legal or technical expertise where necessary to act robustly to manage the final outcome.
22. Priority must be afforded to defending the claim and preparing for the possible next stages. Members are asked to approve the following approach to manage the final outcome to

ensure the Council can protect its position in relation to the contracts:-

- (a) The contract Quantity Surveyor will undertake the independent assessment of Kiers Claim.
- (b) An internal project team will scrutinise the independent assessment, utilising any specialist legal or technical expertise deemed necessary.
- (c) Preparations will be made for the potential for adjudication engaging any specialist legal or technical expertise deemed necessary.
- (d) The final certificate will be issued to Kier before 23rd March 2011.
- (e) Officers be authorised to manage the final outcome within the limits of the funding strategy set out in this report.

### **Funding Strategy**

- 23. The difference of view in relation to the financial outcome and the fact that there are contractual deadlines requires a flexible funding strategy to be put in place that authorises officers to manage a range of outcomes to ensure the Council is able to protect its position in relation to the contracts.
- 24. An assessment has been undertaken to identify potential funding sources that could be used to develop a funding strategy for Members to consider. These are:-
  - (a) Uncommitted funding sources or residual amounts from projects within the 2010-11 capital projects.
  - (b) Primary Capital Programme Schemes.
  - (c) Capital Maintenance monies 2011/12.
  - (d) 14-19 Diploma Funding
  - (e) Prudential Borrowing.

#### Uncommitted funding sources or residual amounts from projects

- 25. As previously mentioned an assessment has been undertaken on the Capital programme to identify areas where there are uncommitted projects or funding sources which are under-utilised this financial year. This has identified the following sources of funding:-
  - (a) 2010-11 School Access Initiative funding is provided to support access requirements for individual children. This is an amount of £60,154 that has not been drawn upon this year. Any new requests for individual child support would need to be supported from Schools Devolved Formula Capital (DFC) or Capital Maintenance Funding from 2011/12.
  - (b) In July 2010 the Council received notification that the play builder capital grant had been cut and was no longer ring-fenced. A decision was taken by Cabinet on 28<sup>th</sup> July 2010 that no further schemes would be implemented, which has resulted in £216,718 of uncommitted capital.

- (c) There is also a contingency held for the modernisation programme relating to work on any of Darlington's 40 School properties during 2010-11. £56,388 is not yet committed. There is a small risk that this may vary slightly.
26. The total amount of funding identified from uncommitted funding sources or residual amounts from projects amounts to £333,260. This identified funding would have been sufficient to provide Cabinet with options to accommodate the September 2010 final account position. However, it is not sufficient to support the Kier claim.

#### Primary Capital Programme Schemes (PCP)

27. There are presently 4 projects which have not yet commenced on site and are not actually contractually committed. All of the project budgets in this programme are made up from a number of different funding sources (Modernisation, PCP, DFC, Kitchen Funding, and Basic Need) all of which have different spending deadlines. There is a total of £989k allocated to these projects. All of the projects in the PCP programme are in an advanced stage. Whilst these have not technically been committed to the implementation phase, Members need to consider the teaching and learning conditions for current and future pupils and that these projects are aimed at ensuring that accommodation is suitable for future curriculum developments.

#### Capital Maintenance Fund 2011/12

28. The 2011-12 capital funding allocation for Darlington provides £1,617,860 capital maintenance funding for LA maintained schools. With the schools DFC allocations significantly reduced in the future and given that this is the main funding stream to support condition needs at schools across the Borough, there is a risk in committing significant proportions of this funding to the Northwood Project.
29. Over £16m of capital investment has been made in 18 primary schools over the past 3 years which has addressed the greatest proportion of condition need, as well as suitability issues, which reduces this risk. However, there is a potential demand for this funding from schools across the Local Authority, with the risk of accommodation being unusable if an emergency situation occurs through lack of sufficient repair and replacement work.
30. Local Asset Management Plan Arrangement (LAMP) visits are to be undertaken before April to discuss and review need with each school for the coming year.

#### 14-19 Diploma Development Funding

31. Four of the seven Secondary schools are in new or refurbished accommodation. The three remaining schools have been allocated £1.5m to address immediate condition issues. The remaining £5,453,974 of 14-19 diploma funding is still uncommitted and could be used to address any further issues in the Secondary Sector should they arise. On 2<sup>nd</sup> November 2010 Cabinet Members approved the remaining £5,453,974 be held in reserve for further planned investment in the three schools once the outcome of the Comprehensive Spending Review is known in detail.

#### Prudential Borrowing

32. Prudential borrowing is an option to fund the financial risk. However, this would require a source of funding to be identified to make the repayments. The repayment costs of borrowing the following amount over a 10 year payback period would be:-
- (a) £106,858 over ten years would be £13,200 per annum, total repayable £132,000
  - (b) £1,300,681 over ten years would be £160,674 per annum, total repayable £1,606,740
33. Given the present uncertainty of future funding sources it is considered prudent to manage the outcome within existing funding, as far as reasonably practicable.

Recommended Funding Strategy

34. There are a range of possible options arising from the funding previously described that could be considered. The table below recommends a prioritised source of funding to manage the difference of view in relation to the financial outcome. It is prudent to set aside funding to cover a situation where the claim is greater than currently estimated and therefore the table below allows for the full value of the claim.

Priority	Funding Source	Amount
1	2010-11 School Access Initiative	£60,154
2	Playbuilder Capital	£216,718
This identified funding would be sufficient to accommodate the September 2010 final account position.		
The amounts below are over the September 2010 requirement but provide scope to procure any necessary legal costs and technical expertise in preparing for the potential for adjudication and manage any financial outcome.		
3	Modernisation programme 2010/11	£56,388
4	The 2011-12 capital funding allocation for Darlington provides £1,617,860 capital maintenance funding for LA maintained schools. For contingency purposes it is recommended that £1,117,860 of this funding is not committed to capital maintenance. This funding is not time limited so could be invested in maintenance at a later date if not required for contingency purposes.	Balance between funding identified and final outcome to a maximum of £1,117,860 allowing £500,000 to be allocated to maintenance in 2011/12 whilst the outcome is finally resolved.
5	It is not recommended that the 14-19 Diploma Development Funding held in reserve for further planned investment in the three Secondary Schools: Branksome; Hurworth and Longfield be used as contingency.	nil
6	Prudential Borrowing is not recommended given the uncertainty of future funding sources to fund repayments. It is considered prudent to manage the contingency within existing funding.	nil
7	Primary Capital Programme Schemes are all in an advanced stage. Whilst, these have not technically been	nil

	committed to the implementation phase they will deliver significant benefits to the teaching and learning conditions for current and future pupils and are aimed at ensuring that accommodation is suitable for future curriculum developments. It is not recommended that these projects are stopped to fund the contingency.	
--	--	--

**Outcome of Consultation**

35. Only internal consultations were carried out and legal advice sought, in preparing this report.