

Report to:	Cabinet	Date: 14 December 2022
Subject:	Millwood Primary Special School: Update on Remediation Programme & Expansion Proposal	
Report of	Cabinet Member for Children and Young People	

1.0 Summary

- 1.1 Millwood School is a primary special school accommodating pupils aged 2-11 with very complex medical needs; severe learning difficulties and delays; autism; challenging behaviour; epilepsy; communication difficulties; sensory and multi-sensory impairments.
- 1.2 In 2010 a replacement building was designed to provide the school with facilities based on a design comprising a central hub, three teaching wings and a hydrotherapy pool. The building was constructed in 2011/12 under a design and build contract by ISG Ltd. The Council commissioned the construction contract and funded it utilising a number of capital grants.
- 1.3 Due to increased demand for specialist provision, additional capacity was created in 2019 through a modest extension under a different contractor. There are currently 161 pupils on roll at the school. Continuing demand pressures requires further additional specialist capacity to be constructed at the school.
- 1.4 There have been ongoing issues with the building linked to the original design and construction, in particular with the roof. Following extensive investigation by specialist structural engineers, and ongoing discussions with ISG Ltd, a full programme of remediation has been developed.
- 1.5 In 2022 ISG commenced a substantial roof replacement scheme at the school, initially focused on the hydrotherapy pool, with phased works to the entrance, hub and three wings. The phasing needs to have regard to the operational needs of the school and is therefore planned to be completed over an extended period. This is due to be completed early 2025.
- 1.6 This report provides an update on the remediation programme and sets out a proposal to expand capacity at Millwood in order to meet increasing demands for local specialist provision.
- 1.7 ISG Ltd have extensive knowledge of the design and construction of the existing building and will be carrying out the works on the building over a protracted period of time. It is therefore proposed to commission ISG to construct the extension to the building to provide the necessary additional capacity, to be implemented in parallel to the remediation works.
- 1.8 In accordance with their defects obligations under the terms of the original 2011 contract, ISG Ltd are currently meeting the cost of the remedial work

to the existing building. The Council will fund the costs of constructing the extension and funding has been identified within the Children's Services capital programme for this purpose.

- 1.9 In order to enable ISG to be appointed to carry out the extension project requires a specific procurement approach on which the Council's Legal Services and Procurement Team have advised.
- 1.10 Cabinet is requested to approve the submission of a business case to the North West Construction Hub (NWCH) requesting that a direct award be made to ISG for the Millwood expansion project.
- 1.11 Cabinet is also requested to note the progress in relation to the roof remediation scheme.

Recommendation(s)

That Cabinet:

- Note the progress made to date in relation to the roof remediation scheme.
- Approve the submission of a business case to the North West Construction Hub (NWCH) requesting that a direct award be made to ISG for the Millwood expansion project

Reasons for recommendation(s)

There are extenuating circumstances applicable in this situation that support proceeding with this method. These are outlined in section 4.4/4.5 below.

Alternative options considered and rejected

It would not be possible to have two main contractors on site simultaneously from a health and safety perspective, site management, and the efficient running of the school during construction works.

If this project was not awarded to ISG the new build accommodation works would not be commenced until 2025 and completed until 2026, this does not respond to the urgent need for the additional accommodation.

2.0 Roof Remediation – Liability and Progress to Date

- 2.1 The continuing unresolved roofing issues resulted in a number of areas within the school being closed over an extended period of time. This included the hydrotherapy pool and the rebound room, with limited use of the theatre and the hall, and has reduced the facilities available for the school and the provision it was able to offer pupils.
- 2.2 In May 2021 having taken advice from structural engineering consultants, Thomasons, on remedial options and legal advice on liability from external Counsel, the decision was taken to apply pressure on ISG to accept their contractual defects obligations. ISG were informed that if they failed to do so, a third-party contractor would be appointed to carry out the necessary

works, with legal action taken to recover all costs in that connection and those previously incurred in making temporary repairs as well as consequential costs.

- 2.3 ISG agreed to do so and after some considerable delay a phased programme of remedial works to be carried out at ISG's expense was proposed and approved.
- 2.4 In the first phase the roof over the hydrotherapy pool was prioritised for replacement, with work in this area commencing in May 2022. Satisfactory progress has been made to date and completion is due in December 2022.
- 2.5 The second phase of works to the main hub which includes the main entrance, offices, kitchen, hall, and theatre has now commenced. The school will be required to vacate these areas whilst the roof replacement is undertaken, and temporary accommodation is being provided on site to enable the school to remain operational throughout the remediation programme.

3.0 Expansion of Specialist Provision

- 3.1 Working with the DfE as an initial participator in its Project Safety Valve programme, the Council has developed ambitious plans to transform its arrangements in respect of Special Educational Needs and Disabilities (SEND). This programme considers all aspects of the Council's approach to SEND, which includes a comprehensive approach to understanding the sufficiency requirements across the local area, and an extensive programme to deliver increased capacity of high quality, local specialist provision.
- 3.2 The Council has developed a SEND sufficiency strategy which seeks to respond to the lack of sufficient maintained specialist provision to meet the needs of the resident population. From this a programme has been developed to deliver increased capacity. The Council has received additional revenue and capital funding through the Safety Valve agreement to support this programme of investment.
- 3.3 The expansion of Millwood is included within the sufficiency strategy and programme of capital investment.

4.0 Legal & Procurement considerations

- 4.1 Given the current measures in place to address the roof remediation, whilst also having to address the need to expand provision at the school, the Council has explored the options available for a timely solution.
- 4.2 Extensive discussions have taken place with Legal Services and the Procurement Team, and they have provided advice regarding the appropriate course of action. The views of STAR procurement have also been sought.

- 4.3 Based on this advice, it is proposed that a business case is submitted to the North West Construction Hub (NWCH) requesting approval to make a direct award to ISG for the design and build works for the expansion project. If approved, this would be made under the medium value framework (£2m - £5m) sub-regional lot 3 Greater Manchester.
- 4.4 In agreeing to ISG provision of the additional accommodation in a combined programme with the remedial works, the Council would first have to be satisfied that there would be appropriate quality assurance. To this end there would be a number of mechanisms in place. Firstly, ISG are already pre-qualified for the NWCH framework, secondly the framework contract itself will contain very significant contractual remedies available to the Council in the event of any default and thirdly external consultants appointed by the Council will continue to have an ongoing monitoring role. The standard of performance and constructive attitude currently being shown by ISG in the first two phases of the remedial works are also encouraging factors here.
- 4.5 Regarding the proposed direct award to ISG, there are a number of extenuating circumstances applicable in this situation that support proceeding with this method without competition. These are listed below:
- a) ISG are currently on site at Millwood having commenced the substantial roof replacement scheme for the hydrotherapy pool, hub and three wings. These works are not due to be completed until early 2025. It would not be possible to have two main contractors on site simultaneously from a health and safety perspective, site management, and the efficient running of the school during construction works.
 - b) Timescales to accommodate additional pupils are an important factor both for the school and the Council. In appointing ISG an earlier completion of the extension works is achievable as logistical and co-ordination issues can be programmed by ISG accordingly. If this project was not awarded to ISG the new build accommodation works would not be commenced until 2025 and completed until 2026, this does not respond to the urgent need for the additional accommodation.
 - c) Regulation 32 (2) (c) of the Public Contracts Regulations 2015 permits a direct award to be lawfully made for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, where the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with.
 - d) Value for money can be achieved as ISG and their designers are familiar with the school site and accommodation. ISG have already created a temporary contractor's site entrance route and have site accommodation in the vicinity as part of the ongoing works and introducing a second main contractor would merely create a duplication of resource and costs as these areas could not be shared.

- e) Health and safety of the pupils and staff is a major concern at this Special school and ISG have a good understanding of the requirements of the pupils needs during construction works and currently have an established working relationship with the school staff.

5.0 Making Alterations to Special Schools - The Statutory Process

- 5.1 The Local Authority has a statutory duty to constantly review the specialist provision available for children and young people with Special Educational Needs and Disabilities (SEND), whilst also ensuring that there are sufficient specialist places available to meet the needs of the growing SEND population.
- 5.2 The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 (*'the Prescribed Alterations Regulations'*) set out the statutory process to be followed when increasing capacity in a special school.
- 5.3 The statutory process for making prescribed alterations to maintained schools has four stages: publication of a statutory notice and proposal, followed by a formal consultation period of four weeks, determination of the proposal and subsequent implementation. Ordinarily the LA will be the decision maker on such proposals.
- 5.4 If approval is given to submit a business case to the North West Construction Hub requesting a direct award to be made to ISG, the detail and timescales for the statutory processes will be the subject of a further report to Cabinet.

Financial Implications

Funding for the expansion project will be funded through the Children's Services Capital programme.

If approval is given to submit a business case to the North West Construction Hub requesting a direct award to be made to ISG, detailed programme and expansion costs will be the subject of a further report to Cabinet.

In the event that ISG had not accepted liability for the remediation works, a contingency allocation from Children's capital programme has been retained should the engagement of a third-party contractor proved to be necessary. As set out in 2.3 above, since ISG have accepted their liability, this contingency sum can now be released to support other capital investment priorities.

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Links with the Corporate Priorities:

The proposed expansion of Millwood Primary Special School has the potential to support key ambitions of the Let's do it strategy:

- A better future for the children of the borough
 - A better quality of life
 - A better future for the children of the borough
 - A chance to feel more part of the borough
 - Building a fairer society that leaves no-one behind
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Equality Impact and Considerations:

The outcomes of the initial equality analysis are positive.

Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to:

eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act.

advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services.

Environmental Impact and Considerations:

The contractor would be responsible for the design and delivery of the project and is committed to lowering the carbon footprint in all its projects.

Assessment and Mitigation of Risk:

Risk / opportunity	Mitigation
Failure to expand capacity at Millwood will result in increasing number of pupils being placed in out of borough provision.	The recommendation to proceed with a direct award will expediate the expansion proposals,

The full extent of capital costs falling to the Council will not be known until more detailed design and planning has been completed	The expansion project will be funded through the schools capital programme. Detailed programme and capital costs will be the subject of a further report to Cabinet.
Incorporating a project to expand the school will extend the current remediation programme	The worst affected areas of the roof have been prioritised for replacement. The condition of the roof in the wings of the school is in a better condition and regular inspections are carried out

Legal Implications:

The proposed procurement route is compliant with the Public Contracts Regulations 2015 in the exceptional circumstances of this case. It offers significant advantages to the Council in terms of cost efficiency and accelerated timescales though use of a single contractor for both the remediation works and the expansion of classroom capacity in a unified programme. The legal considerations are set out in the body of the report.

Financial Implications:

Funding for the expansion project is included within the Children’s Services Capital programme, detailed programme and expansion costs will be the subject of a further report to Cabinet. The expansion is critical to the delivery of project safety valve and increasing in borough capacity for children with SEND.

The acceptance of ISG to undertake the remedial works to the roof also mean that the contingency that was being held within the Children’s Services Capital programme can also now be released.

Background papers:

Please list any background documents to this report and include a hyperlink where possible.

Background Briefing Paper – available upon request

Specialist Provision Place Planning – available upon request

Please include a glossary of terms, abbreviations and acronyms used in this report.

Term	Meaning
DfE	Department for Education
SEND	Special Educational Needs and Disabilities
EHCP	Education & Health Care Plan

Rebound Room	Specialist area designed to deliver rebound therapy - used to facilitate movement, promote balance, promote an increase or decrease in muscle tone, promote relaxation, promote sensory integration, improve fitness and exercise tolerance, and to improve communication skills.
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