
Exempt or confidential information

The following paragraph of [Part 4b Section 10 of the constitution](#) applies in respect of information redacted in this report and it is therefore exempt from publication: Information relating to the financial or business affairs of any particular person (including the Authority holding that information).

Members and officers are advised not to disclose the contents of the redacted information. The information is contained in the exempt appendix.

Committee: Cabinet

Date: 11 December 2017

Agenda item:

Wards: Merton Hall is located in Abbey ward

Subject: Harris Academy Wimbledon – Contract award decision for Merton Hall construction works

Lead officers: Yvette Stanley – Director of Children, Schools and Families
Chris Lee – Director of Environment and Regeneration

Lead members: Cllr Caroline Cooper-Marbiah – Cabinet member for Education
Cllr Mark Allison – Deputy Leader and Cabinet Member for Finance
Cllr Martin Whelton - Cabinet Member for Regeneration, Environment and Housing

Contact officer: Tom Procter – Head of Contracts and School Organisation

Recommendations:

- A For Cabinet to consider the benefits and risks identified in this paper with regard to implementing the construction contract to enable the works to Merton Hall and therefore the delivery of a permanent site for the new Harris Academy Wimbledon school. This includes the application for the statutory listing of Merton Hall by the Secretary of State for Digital, Culture, Media and Sport, following an assessment by Historic England, the nomination to list Merton Hall as an Asset of Community Value (ACV), and an application to the Planning Court for a judicial review of the decision to grant planning permission.
- B Agree to enter into a construction contract with [REDACTED] for works to Merton Hall agreed in the draft contract with the Elim Church, to a contract value of [REDACTED], but only subject to the following conditions:
- (i) That the Council has entered into a conditional contract with the Elim Trust Corporation as trustee for Elim FourSquare Gospel Alliance (Elim Church) that will bind Elim Church to transfer the freehold of their land at High Path to the

Council upon completion of the specified construction works and for the Council to transfer the freehold of Merton Hall to Elim Church

ii) The Secretary of State for Digital, Culture, Media and Sport (DCMS) determines to decline the application made to add Merton Hall to the list of buildings of special architectural or historic interest maintained by the DCMS (The National Heritage List for England), whether or not any subsequent request is made for the DCMS to review that decision

1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 The purpose of this report is for Cabinet to award a contract for works to Merton Hall following a competitive tender process. The paper outlines the contract process and considerations for a major construction contract at Merton Hall, consistent with the agreement of Cabinet on 4 July 2016 including the budget agreed for the works.
- 1.2 The Merton Hall scheme is one component to enable a clear site at High Path for the Education and Skills Funding Agency (ESFA) to build Harris Academy Wimbledon school. The scheme enables Elim Church to vacate the site and it is currently the main risk to the delivery of the new school project.
- 1.3 The recent school admissions application information confirms that there is a clear and urgent need for a new secondary school to open in September 2018. The temporary site at Whatley Avenue is only suitable for two year groups so the permanent school must be built by September 2020. If a clear site at High Path is not provided by early 2019 for the permanent school construction to commence there will be significant financial consequences for the Council. Without significant extra cost this can only be delivered by the commencement of works at Merton Hall in January or early February 2018 for completion in early 2019.
- 1.4 However, Cabinet also needs to take into consideration that commencing works at Merton Hall is now complicated by challenges on three aspects outlined below:
 - An application has been submitted to Historic England for National Heritage listed building status of Merton Hall. Historic England is currently considering the application with a decision by DCMS due in mid-January 2018.
 - A nomination has been submitted to the Council to list Merton Hall as an Asset of Community Value (ACV). The nominator has been advised that the Council did not have sufficient information to determine whether to list Merton Hall and has therefore been invited to submit further information by 15th December 2017.
 - An application has been filed at the Planning Court seeking permission for a judicial review of the Council's decision to grant planning permission for the certain development works to Merton Hall.
- 1.5 The contract award to a single contractor has followed the required processes to enable officers to recommend the award to the contractor with the lowest priced compliant tender. However, the implementation of these works needs to consider the above three matters. The full details and background is provided in the main report, but in summary the advice of officers is as follows

- *Application to add Merton Hall to the National Heritage List for England (the List)* – the DCMS is due determine the application in mid-January 2018 and the Council should wait for this decision before seeking to implement the construction works. If the DCMS decides that the building be added to the List a re-appraisal will be required.
 - *Asset of Community Value (ACV) listing* – for the reasons detailed in the report, this does not need to be a reason to delay implementation of the construction works.
 - *Judicial Review of the Planning Application Decision* – By mid-January, and so by the time of the DCMS's decision on National Heritage listing, the Council should know whether the Planning Court has granted permission for the application for the judicial review to proceed on the papers
- 1.6 The financial implications section of the report confirms that the construction cost is within the budget agreed by Cabinet in July 2016, and that the total net liability to the council for the new school scheme including costs associated with Elim Church is £8.75 million including all fees and contingencies. Therefore, if the council had not negotiated for the new school to be part of the Free School programme it would have cost the council approximately £35 million more. If the council had delivered the extra places at existing schools it would have cost the council approximately £15 million more.
- 1.7 The financial implications section of the report also confirms the view of the Director of Environment and Regeneration from the Cabinet decision on 4 July 2016 that the land swap of Merton Hall and Elim Church land with the construction project at Merton Hall represents best value for the Council.

2 DETAILS

The need for a new school by September 2018

- 2.1. The school improvement work carried out by the Council in recent years has been significant. All of the state funded secondary schools in Merton are now rated 'good' or 'outstanding' and 2017 provisional Progress 8 results puts the Borough's schools as the best performing schools in the country¹.
- 2.2. A new school with high standards would add to the Council's positive journey in being a good place for families to live and to receive secondary education. The essential need for a new secondary school to open by September 2018 has been identified for some time.
- 2.3. Following previous increases in demand, six of our eight schools are now substantially full in year 7, with two schools (to the east of Mitcham town centre, and to the west close to the RB Kingston border) making up most of the current 156 surplus places in year 7 (9%). It is recommended that at least a 5% surplus is allowed.

¹ Progress 8 scores, published by the Department for Education, show how much progress pupils make between the end of Key Stage 2 and the end of Key Stage 4 compared to other teenagers across England who achieved similar results at the end of Key Stage 2

- 2.4. The Council has been aware for some time that there is a particular issue for September 2018 in that there is a substantial growth of pupils in the current year 6 entering secondary school in 2018/19 that will be sustained for a number of years.
- 2.5. The admissions applications closing date for September 2018 secondary school entry was on 31 October 2017. This shows that the Council's requirement to provide additional year 7 secondary school places for September 2018 is certain and in addition to the predicted extra children, there is proportionally more preferences for LB Merton schools, so the Council will not be able to place the same reliance on out borough schools:
 - The Council has received 268 additional resident applications compared to last year; 209 of these residents have stated a LB Merton school as a first preference.
 - LB Merton schools have received 255 additional first preference applications for September 2018 compared to last year (i.e. including applications from out-borough residents)
- 2.6. There will therefore be serious consequences for the Council in providing sufficient places if Harris Academy Wimbledon does not open in September 2018 as advertised. The Council may also need to provide some additional places in addition to the new school on order to meet its sufficiency duty, which would need to be confirmed between school admissions offer day on 1 March 2018 and the start of term in September 2018.

Background to secondary school site issues.

- 2.7. On 4 July 2016 Cabinet authorised the Director of Environment and Regeneration to complete the freehold purchase of land for the provision of a new Harris Academy Wimbledon secondary school. This included land at High Path owned by Elim Church to transfer in exchange the freehold of Merton Hall and to adapt and re-build the majority of the Merton Hall building for use by Elim Church to a maximum cost of [REDACTED].
- 2.8. The secondary school is scheduled to open in September 2018 at a temporary site in the former Adult Education building, Whatley Avenue SW20. The site only has sufficient space for two year-groups of pupils so it is necessary for the permanent site at High Path to be ready for September 2020. With 18-20 months of construction time to build the school, the High Path site needs to be clear in early 2019 to enable completion of the school on time and avoid the complexities of a third year in temporary classrooms; otherwise the opening of the school is likely to be deferred.
- 2.9. The building works for Elim Church at Merton Hall are scheduled to take 12 months. To meet the above timescale the construction works therefore need to commence in January or early February 2018.
- 2.10. The Council granted planning permission for the construction works on 27 September 2017 and, subject to complying with the pre-commencement planning conditions and the award of the contract, works would normally be implemented. However, there are some complications outlined below

The construction works

- 2.11. Officers worked in partnership with Elim Church representatives to provide a construction scheme that met their needs within the maximum cost agreed by Cabinet in July 2016. An original scheme was refused by Planning Applications Committee in April 2017 so the scheme design was moderated and subsequently agreed by Planning Applications Committee on 21 September 2017.
- 2.12. The scheme maintains the front section of the Merton Hall building, with some enhancements to the original features. However, the rear hall section is demolished to provide a new fit for purpose hall for Elim Church that meets their size and acoustic requirements. There is a glass side extension set back slightly from the original building.
- 2.13. Merton's Design Review Panel gave the Council's proposed design the highest possible 'Green' rating with the replacement of the old hall section justified. Their minutes stated "The Panel were very impressed with the progress and evolution of the design.... It was felt that the new addition had got to the point where it was now enhancing, improving and lightening up the existing building, the modern extension complementing the original."

Application to add Merton Hall to the National Heritage List for England

- 2.14. In September 2017 a member of the public submitted an application to Historic England to add Merton Hall to the National Heritage List for England (the List), as being a building of special architectural or historic interest under section 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990. The application is determined by the Secretary of State for DCMS. In the event the building is added to the List then the planning permission could not be implemented without a further application and approval for listed building consent given its enhanced protection.
- 2.15. While the Council could lawfully commence the works before the listing decision expected in January 2018, officers do not consider it appropriate to do so whilst the matter is under consideration. It is therefore proposed that the contract order is placed after the Secretary of State's decision, providing that decision is not to add the building to the List. There is an appeal process for the applicant should the building not be listed but this could take many more months and, in view of the timescale, it is not suggested the Council waits for this due to the impact on sufficiency of secondary school places.
- 2.16. If the Secretary of State decides to list the building then there would be a minimum 12-week delay whilst an application for listed building consent is determined, depending on the detail of the listing. A revision to the design would add to this timescale. Even a 12- week delay would mean that a clear site at High Path could not be provided to the required timescale with the implications outlined in this report and a re-appraisal will be required.

Contract with Elim Church and application for Asset of Community Value.

- 2.17. The Council has agreed a form of draft contract with Elim Church to enable the land swap to take place. In light of the application to add Merton Hall to the List, the contract will now be conditional on Merton Hall not being added to the List and the construction works being completed in accordance with the contract.

- 2.18. To ensure that the Council has certainty that it will get the benefit from the investment in undertaking the construction works, it will be necessary for conditional contracts to be exchanged prior to the construction works commencing. This will ensure that Elim Church is under a legal obligation to complete the land swap upon completion of the construction works in accordance with the contract. The intention is for contracts to be exchanged as soon as practical.
- 2.19. An application for Merton Hall to be listed as an Asset of Community Value was submitted by a group calling itself 'Friends of Merton Hall' (the Applicant) in September 2017, but the Applicant has been advised that the Council did not have sufficient information to determine whether to list Merton Hall. The Applicant has therefore been invited to submit further information by 15 December 2017.
- 2.20. Should Merton Hall be listed as an ACV, any subsequent decision of the Council (and associated notice) to dispose of the building triggers a six-week interim period for local groups to declare an interest in buying the property. A further six-month moratorium is triggered if a group expresses any such interest. However, the ACV does not compel the owner to sell to a community group and the Council is required to receive "best consideration" in accordance with section 123 of the Local Government Act 1972.
- 2.21. The ACV listing does not place any restrictions on the owner to carry out works to the building. Counsel's advice has confirmed that the Council would therefore be able to lawfully implement site works at Merton Hall while undertaking the ACV process in parallel.
- 2.22. However, Cabinet needs to be clear that there are good reasons for committing to the construction works when the ACV listing is in place, which compels the Council to give consideration to applications from community groups to purchase the building in accordance with the "best consideration" requirements of section 123 of the Local Government Act 1972.
- 2.23. In this instance, as outlined in this report, there is an urgent and compelling need to provide a clear site to enable works to build a secondary school in a tight timescale. The implications of not doing it is that children may be without a statutory school place or doing so through alternative means for September 2018 is estimated to cost the Council in the region of £1 million in temporary buildings. Prior to the ACV listing the Council has committed extensive resources to deliver the clear site at High Path for the secondary school, and the Elim Church site is the remaining portion of land required to deliver it.
- 2.24. It is theoretically possible for a community group to offer a price for the facility that would meet "better consideration" than the proposal with Elim Church, but given the wider need for the secondary school scheme, it is difficult to see how this would occur without a major change of circumstances. The investment in the facility will also provide an improved asset.
- 2.25. For the above reasons it is recommended that, the Council should commit the construction contract to provide an extended Merton Hall facility despite the likelihood of the building being listed as an ACV before the building works contract is implemented.

Judicial review of the Decision to grant Planning Permission

- 2.26. On 7 November 2017 a claim was filed in the Planning Court for the judicial review (JR) of the Council's decision to grant planning permission for development works at Merton Hall. The Claim has been made on the following grounds:
- "The Council failed to have proper regard to the fact that an application had been made to Historic England to add Merton Hall to the statutory list" (Ground 1); and
 - "The Council failed to give reasons for not deferring determination of the planning application pending determination of the Listing Application, as required by the principle of consistency in administrative decision making" Ground 2.
- 2.27. The JR claim was deemed served on the Council on 17 November; the claimant having rejected the Council's response served in accordance with the Pre-Action Protocol for Judicial Review, in which it refuted the grounds of the proposed claim. The Council intends to contest the Claim and will file an Acknowledgement of Service and Summary Grounds of Resistance (AoS and SGR) by the 8 December deadline.
- 2.28. Before a claim for JR can proceed the Court must determine whether to grant permission and if so, subject to conditions or not. The Court initially determines this on the papers. If permission is refused, the claimant can apply for a reconsideration at an oral hearing. The Planning Court's performance targets require the Court to determine whether to grant permission on the papers within three weeks of the date by which the Rules require the AoS and SGR to be filed (8 December). If permission is refused and a renewed application is made the Court aims to hear such applications within one month of receipt of request for renewal, which must be made within 7 days of refusal.
- 2.29. In the event permission is granted on the papers, or at a renewed application hearing, the Rules require the Defendant (the Council in this instance) to file detailed grounds of resistance within 35 days of service of the order granting permission, unless the court orders otherwise. The Court's target date for the substantive hearing of the JR is within ten weeks of the expiry of the 35 day period. If permission is granted and the JR proceeds to a hearing this is likely to extend the completion date of the Merton Hall works beyond the February 2019 deadline, irrespective of the outcome.

Procurement process

- 2.30. With regard to the procurement strategy, experience from recent tenders suggested that medium sized management contractors are currently providing competitive prices for this value of work. Therefore, in accordance with treaty principles, and in order to ensure good competition, it was decided that a procurement process that was initially accessible to all firms for selection would provide the best value for money.
- 2.31. The works were therefore procured in compliance with Contract Standard orders and the Public Contract Regulations 2015 (sub-OJEU). The process was

undertaken through the ProContract London tenders portal E-tendering system to an advertised estimated construction cost of £3 million.

2.32. The selection stage enabled five suitably experienced construction companies to be shortlisted on the basis of quality through submissions of a Selection Questionnaire, and then the selected contractors were invited to tender on the basis of providing a compliant tender to price.

2.33. The five bidders invited to tender were required to provide a full priced submission based on the Council's tender documents and to provide a formal price offer capable of acceptance by the Council. The lowest priced compliant tender was therefore to be appointed.

2.34. The form of contract for the Works will be the JCT Standard Building Contract without Quantities, 2016 Edition ("the Contract")

2.35. The tender documents were issued to five contractors for return on 2 November 2017.

2.36. The companies and their formal offer prices are summarised in the table below:

Company Name	Tender Figure
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

2.37. The project manager and quantity surveyor analysed the tenders. A summary of his tender report is as follows

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2.44. It is therefore recommended that the Council agrees to enter into a contract with [REDACTED] for the sum of [REDACTED]. The implementation of this decision is subject to the conditions outlined elsewhere in this report.

2.45. It is proposed to run a voluntary standstill prior to the contract being formally awarded.

3 ALTERNATIVE OPTIONS

Alternative sites to High Path for a new school

- 3.1. In July 2016 the EFSA and Cabinet agreed that High Path was the only viable option for the new school out of the short-listed sites. The full details of the site search and the conclusion for High Path being the preferred site is outlined in the 4 July 2016 report.
- 3.2. Having reviewed again the options identified in the Capita report and the advice to Cabinet in July 2016, officers can confirm that none of the alternative sites shortlisted in the original report presents a viable alternative site for the school.
- 3.3. Officers have also considered whether the Virgin Active site at Battle Close could provide a site for a new secondary school. However, a spatial study confirms that due to adjacent housing only a low rise building could be provided at this site, and so the site is not large enough.

Alternative site for Elim Church

- 3.4. For July 2016 Cabinet officers identified Merton Hall as the most practical solution to enable Elim to move for their present site. While there has been some opposition to this solution, 17 months later this remains the case, and there is even less time to identify any alternative solutions. Any alternative solutions would take too much time to deliver, if it could be delivered at all, and would cost the Council considerably more money. Merton Hall was chosen as the most appropriate facility since:
 - It is a relatively under-used asset for LB Merton to maintain; all 12 of the regular hirers (only 5 of which used the main hall) could be accommodated elsewhere, and the facility is now closed.
 - With the capital investment by the Council it is an appropriate size for Elim to enable them to vacate their present site.

- The restrictive planning permission potential of the Merton Hall site is such that the Council is able to demonstrate the value for money of an effective land swap with Elim's existing site and the payment of construction costs to provide a suitable replacement building.
- A further alternative option that has previously been considered is that the Council exercise its CPO (Compulsory Purchase Order) powers to acquire the site compulsorily. The council would be required to pay the market price for the site plus statutory compensation. However, the use of CPO powers is to be used only very sparingly and is intended as a last resort after all other options have failed. The process is long and can result in a public enquiry, which would delay the process possibly taking up to 24 months to see the CPO through. Consideration needs to be given on when and whether the council would want to go down this route as it is likely to be seen as a hostile act by Elim and the hope of negotiating an early settlement may be lost.

Deferring Harris Wimbledon opening by a year, or deferring opening of the school indefinitely

- 3.5. The next alternative is that the school is either deferred by a year or indefinitely. However, the need for school places is clear - the Council would need to find at least four forms of entry per year for at least six years to meet sufficient provision. The implications of deferring the school are as follows:

Defer opening for a year

- 3.6. If additional places are to be provided in the Wimbledon area, officers would need to negotiate the temporary classroom provision for 2 extra classes each at existing Wimbledon schools to replace the Harris Wimbledon school places. Negotiation would be very difficult as these schools have previously stated they do not wish to permanently expand. Assuming that the schools can be persuaded, the estimated cost is in the region of £1 million.

Defer opening indefinitely

- 3.7. In this instance, the Council would need to provide the expansion for all five year groups of the secondary school. If the "bulge" lasts 6 years, then the schools would need to have some of the accommodation for 11 years until it feeds through the school and for much longer if the retention rate from primary to secondary school reverts towards previous levels. Therefore, it would be very difficult to avoid a solution that is not permanent accommodation, with an approximate cost of approaching £20 million to provide 120 extra places per year. The new school will provide 180 places per year so if demand is towards the higher range, as suggested by the recent admissions applications, then the cost to the Council would be in excess of £20 million. It should be recognised that the DfE would not meet these additional costs as it would not be part of the Free School programme.

Procurement options

- 3.8. As outlined in section two, a review of procurement options concluded that best value for money could be achieved through a restricted competitive tender rather than accessing a compliant framework agreement.

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1 The Council publicised its plans for the school with land implications in autumn 2016 and a public meeting was held on 21 November 2016. The scheme at Merton Hall required a planning application, which included a representation period. This included a high number of objections to the scheme. A petition has so far raised over 3,500 signatures asking LB Merton: (1) To lead the way in respecting our dwindling heritage and planning law. (2) To shelve its plans for unnecessary demolition of a solid and fit-for-purpose building steeped in history and public legacy, and (3) To find an alternative site for Elim Church or issue it with a compulsory purchase order (CPO).
- 4.2 The Harris Federation ran a 6-weeks consultation on the establishment of the Academy and the Admissions arrangements in February/March 2017. 448 questionnaires were returned and 425 (94.9%) supported the proposal that the school should open.

5 TIMETABLE

- 5.1. The ESFA is responsible for deciding the opening date of the school. They have strongly suggested that the opening will be deferred from September 2018 if a confirmed timescale is not available by the end of January 2018 that provides a clear site at High Path for the permanent school in early 2019, enabling construction works to commence in early 2019 and complete for September 2020. The recommendation to provisionally award the contract in the anticipation that it can be implemented in January 2018 is therefore important to avoid this deferral and the costs outlined in this report.

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

The EFSA is meeting the full cost of adapting Whatley Avenue for a temporary school and to build the new school at High Path (circa £25-30 million). The Council's costs are for site purchases and construction projects to enable a clear site at High Path. The EFSA has also agreed to make a payment to the Council of £5.85 million in return for the 125 year lease. The Council's capital programme currently provides the following funding for the Council's contribution to the new school. This includes all associated costs and fees to provide a clear site, and project contingencies.

	2016/17	2017/18	2018/19	2019/20	Total
Expenditure	6,558,601	1,267,020	5,474,230	1,300,000	14,599,851
Capital grant agreed by the DfE *					(5,850,000)

*Subject to completing the lease - Draft lease confirms 75%: £4,387,500 to be paid on exchange of conditional contracts and 25%: £1,462,500 to be paid on completion of the lease i.e. vacant possession.

- 6.1. The contract price is within the estimated budget for this component of the scheme and the overall budget authorised by Cabinet on 4 July 2016.
- 6.2. If the new build school is deferred to September 2019 it is envisaged the Council would need to provide at least four forms of entry in temporary classrooms at existing schools, which would need to remain at the schools for at least five years. The cost would be in the region of £1 million and it would depend on how these items were sourced on whether they were classified as capital or revenue.
- 6.3. There will be a DSG revenue cost implication as the Council would have to provide schools with “bulge” class funding for these classes at a cost of £80k per class. This will be met from the DSG growth fund

Value for money

- 6.4. The construction cost of a 1,050 place secondary school is at least £25-30 million and, with land costs in London, it is not untypical for the total cost of a new secondary school to be above £40 million. The construction cost of the Harris Wimbledon school is entirely the responsibility of the ESFA but on the basis of it being £25-30 million the total cost to the public sector of this scheme is £40-45 million.
- 6.5. Providing places through existing schools is generally less expensive and depends on the existing infrastructure in the school. The ESFA expectation is that secondary school expansion can be delivered for £20,920 per place, so £21.97 million for a 1,050 place school, but many councils struggle to deliver to this rate and have to supplement such expansions from their local resources. In Merton’s case the non-faith schools in Wimbledon are PFI schools and have already expanded significantly with the associated strain on infrastructure. The cost of these additional 1,050 places could therefore have been around £24 million.
- 6.6. When Free Schools provide Basic Need places the ESFA expects a financial contribution from the Local Authority and would expect the Local Authority to donate its land. However, the council negotiated a contribution of £5.85 million from the ESFA, therefore enabling the net liability to be a maximum £8.75 million
- 6.7. Therefore, if the council had not negotiated for the new school to be part of the Free School programme it would have cost the council approximately £35 million more. If the council had delivered the extra places at existing schools it would have cost the council approximately £15 million more.
- 6.8. The Elim Church site is the remaining portion to be finalised in the much larger site compilation for the new school, and all costs to the council are within the figures outlined above. The ‘land swap’ of Merton Hall and Elim Church land and the construction project meets best consideration of value for money for the Council as the High Path site has the potential to become residential development with its associated land values, while there is no reasonable prospect of Merton Hall being brought out of community use and into commercial or residential use. With the assistance of external valuation advice, the Director

of Environment and Regeneration therefore concluded in July 2016, and is still of the opinion, that this agreement represents best value for the Council.

Property

- 6.9. The property implications are in the main body of the report and were included in the report to Cabinet on 4 July 2016.

7 LEGAL AND STATUTORY IMPLICATIONS

- 7.1. The legal and statutory implications arising from the applications received to add Merton Hall to the National Heritage List for England, to list is as an ACV and other matters are contained in Counsel's advice, which has been made available to Cabinet members.
- 7.2. With regard to the ACV the Council must comply with the moratorium provisions but is not obliged to accept any bid made by a local community group or to enter into negotiations with such group and is entitled to simply allow the 6-month moratorium period to expire. The Council will however still be bound by its duty to obtain best consideration to comply with Section 123 of the Local Government Act 1972.
- 7.3. The issue of timing is vital in relation to completion of the works and the land swap with Elim Church to ensure that all can be completed before the 12 month protection period expires. This timing is made even more vital to ensure the delivery of the school project at High Path.
- 7.4. As to the works to be undertaken to Merton Hall, the ACV restrictions do not cut down on the existing planning permission. Accordingly, Counsel is of the view that the works authorised by the planning permission can be carried out in accordance with that permission irrespective of any ACV listing.
- 7.5. This is a below OJEU threshold procurement and accordingly is not subject to the full rigours of the public contract regulations, but has been procured in accordance with the Treaty principles of transparency, equal treatment and non-discrimination and in accordance with the tender documents issued to all bidders.
- 7.6. The tender documents for the construction contract stipulated that the Council reserved the right for the Council not to award the contract so there is no legal issue with withdrawing from the procurement in the event that the conditions are not met regarding the listed building application. The contract is below threshold and provided it has been procured in accordance with the treaty principles and conducted in the manner set out in the tender documents the risk of any successful challenge is unlikely.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1. An Equalities Assessment (EA) was carried out dated 1 July 2017 at the time of the Cabinet decision, although this concentrated on the perceived equalities issues in relation to council services at that time, and so impact on High Path Day Centre and Merton Abbey Primary School rather than South Wimbledon Community Centre (SWCA) at Merton Hall. The 4 July 2017 Cabinet report outlined that SWCA could continue to provide for the majority of its lettings if a

smaller facility could be provided, and progress could be made in facilitating their work with local primary schools to improve lettings of hall facilities. Since this time a new community facility at 3 Pincott Road SW19 has been provided and SWCA now operate lettings to the hall at All Saints Primary School out of school hours.

8.2. A revised EA is Appendix 1 to this report and includes the matter of Merton Hall. The conclusion is that the EA has identified adjustments to remove negative impact and to better promote equality, and the action plan provides the following in relation to potential displacement of existing community groups including religious and other groups in relation to Merton Hall:

- 3 Pincott Road SW19 has been converted from being a vacant office space to provide two community rooms operated by SWCA,
- All Saints Primary school hall is now being operated by SWCA out of school hours,
- The Council has worked with SWCA on any group that may need a community facility;
- Ensure there is confirmation from the Elim Church that when letting the facility it will be available to all persons, including Lesbian, Gay, Bisexual and Transgender people, as required by equalities legislation; and
- Ensure that when built, the new Harris Wimbledon School will open extensive community facilities out of school hours.

9 CRIME AND DISORDER IMPLICATIONS

9.1. There are no specific crime and disorder implications.

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

10.1. This is a complicated project with a series of risks to be managed throughout the process. The various risks are outlined in the main body of the report.

10.2. Cabinet needs to balance the risk of not implementing the Merton Hall scheme as quickly as possible, with the implications of the deferred opening of the school.

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

Appendix 1 – Equality Analysis

12 BACKGROUND PAPERS

21 September 2017 Merton Hall Planning Application Committee Report

27 September 2017 Planning Decision Notice

4 July 2016 Cabinet report approving Harris Wimbledon site assembly

Tender report (confidential)

The Council's website provides further background including the scheme design for Merton Hall

<https://www2.merton.gov.uk/learning/schools/moreschoolplaces/harriswimbledon.htm>

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