



## CABINET 18 JANUARY 2017

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| <b>Subject Heading:</b>                     | Loan to and acquisition of land from Havering College   |
| <b>Cabinet Member:</b>                      | Cllr Roger Ramsey<br>Leader of the Council and Cabinet Member for Value   |
| <b>CMT Lead:</b>                            | Andrew Blake-Herbert<br>Chief Executive Officer   |
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| <b>Policy context:</b>                      | Economic development  |
| <b>Financial summary:</b>                   | The granting of loans to the college may be met from the Council's capital programme or cash balances dependent upon the purpose for which the loan will be applied. The terms of the loan to be negotiated will ensure that the Council's costs are covered as a minimum; that adequate security for the loan is obtained; and that the college's financial arrangements to ensure repayment are realistic and affordable. |
| <b>Is this a Key Decision?</b>              | Yes   |
| <b>When should this matter be reviewed?</b> | Spring 2018   |
| <b>Reviewing OSC:</b>                       | <b>Towns and Communities</b>  |

### The subject matter of this report deals with the following Council Objectives

Havering will be clean and its environment will be cared for  
People will be safe, in their homes and in the community  
Residents will be proud to live in Havering

X

**SUMMARY**

This report seeks the Cabinet's approval for the Council to enter into an option for the acquisition of the Quarles site owned by Havering College in Harold Hill, the option would be assignable by the Council. Further it is seeking authority for the provision of a loan to Havering College. The potential acquisition and loan are to assist the college to undertake an estate relocation and capital investment plan.

Havering College have been successful in gaining funding through the London Enterprise Panel (LEP)/GLA of £5.4m to develop their construction based site in Rainham, for which they require 50% match funding of £5.4m. Havering College aim to use the proceeds of the disposal of their Quarles site as match funding and to support the further rationalisation of their estate. A loan from LBH will provide the match funding in the interim period until the sale of the site takes place and funding to initiate the wider estate rationalisation Havering College have planned. This is dependent upon the delivery of the site rationalisation plan.

Havering College are looking to concentrate education provision on their main campus at Ardleigh Green, with a construction focused education provision in Rainham and a more limited provision in Harold Hill. This would place the College in a far better position economically. In order for the College to sell and rationalise their estate, Havering College will need to redeem a loan with a commercial bank.

In summary, the College are seeking loan(s) from the Council to meet three objectives:

- a) To provide 50% match funding for the construction works at the Rainham site;
- b) To fund additional capital works to support further rationalisation of the site;
- c) To refinance a commercial loan, which would otherwise not allow them to proceed with the rationalisation of their estate.

It is recommended in this report that the Council provides loans not exceeding £10m to enable Havering College to be able to commit to the Rainham development within the LEP's timescales and to achieve the objectives set out above subject to the completion of due diligence on the part of the Council. Adequate security would be provided in respect of the loans and it is intended that the Council secure an option to acquire the Quarles Campus site as part of the arrangement. The interest rate and repayment terms are to yet to be finalised but will exceed the cost of the Council providing the loan.

The details and heads of terms are discussed further in a exempt appendix to this report.

## RECOMMENDATIONS

Recommendations:

That the Cabinet

1. Agree in principle:
  - a. for an option from Havering College to acquire the Quarles Campus site (which can be assignable to another body or party of the Council's choice);
  - b. the provision of a loan(s) up to £10 million from the Council to Havering College.
2. Note that the Leader (after consultation with the the Section 151 Officer, the Director of Legal and Governance and the Head of Property (OneSource)) shall finalise the terms of the proposed arrangements and if he is satisfied as to their terms (and such other matters as he deems relevant) authorise the Council to enter into such agreements as may be necessary to give effect to the the proposed option and loan.
3. Delegate to the Section 151 Officer the undertaking of financial due diligence on the proposals and for the Section 151 Officer to report to the Leader as to the outcome of such due diligence including:
  - a. the ability of Havering College to repay such loan;
  - b. such other matters as the Section 151 Officer deems appropriate.
4. Delegate to the Head of Property – OneSource (after consultation with the Director of Legal and Governance) the undertaking of property due diligence in relation to the Quarles Campus and to report to the Leader as to the the existance and removal of any impediments which would prevent the option agreement being entered into and/or limit the future uses of that site.

## REPORT DETAIL

### 1. BACKGROUND

- 1.1. Havering College of Further and Higher Education (HC) is an independent organisation. It provides education to 8,500 students and has 476 full-time equivalent staff.
- 1.2. HC currently operates from 3 sites in the borough. Its main campus is at Ardleigh Green, it also operates a facility at Rainham near Dovers Corner and at the Quarles site at Harold Hill.
- 1.3. HC became fully independent of the local authority in 1993; it is governed by an independent Board (the Corporation). Governance arrangements are outlined in the college's Instrument and Articles.
- 1.4. The Council and the College have a history of working together, examples include: the specialist centre at the Quarles campus for learning disabilities students which

was the subject of a successful joint capital funding bid to the Department for Education; the council's support for the Construction Infrastructure Skills and Innovation Centre at Rainham; and the joint representation on the CEME Board.

- 1.5.1 HC wish to expand their facility in Rainham and have successfully applied for funding from the Local Enterprise Panel (LEP).

## **2. HAVERING COLLEGE**

- 2.1 The Rainham site provides 55 construction courses from an old warehouse. In 2015 HC applied and was allocated capital funding by the London Local Enterprise Panel (LEP) for the Construction Infrastructure Skills and Innovation Centre (CISIC) project for £5.4 million, (total cost £10.8 million, grant £5.4 million). The Council assisted in the application. The LEP grant was approved on the basis that HC matched such funding. With this funding HC intends to deliver a Rainham Construction Infrastructure Skills and Innovation Centre (CISIC) and restructure existing bank debt.
- 2.2 The CISIC concept was developed through employer and stakeholder consultation and includes potential ground breaking technology in the FE sector of Building Information Modelling, Computer Aided Design with a Virtual Engineering, Virtual Reality offer. The provision would support on an annual basis extra c500 learners. Given the expected construction activity in this part of London, such an offer should greatly support Havering residents into construction related employment.
- 2.3 HC main Campus is on the Ardleigh Green site, which is intended to remain the case, examples of the provision facility include Creative Arts, Media, Computing, Business & Legal Administration, Accounting, Customer Services, Electrical Installation, Motor Vehicle, ESOL and Hair & Beauty.
- 2.3 The Harold Hill site at Quarles provides a range of further and higher education programmes in engineering, plumbing, health and social care, catering, sport and public services and social work and policy. HC has had a long standing wish to relocate their provision from this site, due to the age of the premises.
- 2.4 The FE sector is under financial pressure due to a combination of the falling 16-18 population in many areas of the country; reducing funding rates; increasing cost pressures such as pensions; more competition for post 16 learners from school 6<sup>th</sup> forms, academies, UTCs and free schools; and more competition from HEIs for learners that may previously have attended colleges for HE in FE.
- 2.5 In July 2015 the government published a policy statement setting out its approach to a programme of national Area Reviews of post-16 education and training institutions designed "to establish the appropriate set of institutions (colleges and providers) to offer high quality provision based on the current and future needs of learners and employers within the local area". There is a national process of Area Reviews that are being conducted.
- 2.6 In London the review process is being undertaken in conjunction with the London Mayor and boroughs are working with the government review process on the Area reviews. Area reviews are likely to recommend merging of institutions in order to make the FE sector more resilient. The November 2016 Comprehensive Spending

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Review signalled continuing austerity and the likelihood that non-protected public services such as post 16 further education will continue to experience real reductions in funding for the medium term and, in the current economic environment, there is little prospect of government addressing the unfavourable college FE funding rates compared with other parts of the education sector.

- 2.7 HC and Barking & Dagenham College have co-operated over a number of years, and have a strategic relationship. It is likely that the colleges will agree a formal merger. Barking & Dagenham College have a main site in Rush Green, just outside Romford.
- 2.8 In order to provide the match funding that would be needed for the re-development of the Rainham Campus; the College are seeking to sell the Quarles site. It is recommended that the Council reserves the right to acquire this site, via an option agreement.

### **3 THE QUARLES SITE**

- 3.1 The Havering College of Further and Higher Education Quarles Campus is located at the northern edge of Harold Hill in Havering.
- 3.2 The campus is a large site that essentially comprises a 1950s former school which makes up the main campus building with seven additional buildings situated throughout the remainder of the site. The total gross internal area of all of the buildings is circa 8,350m<sup>2</sup> which accommodate Hospitality and Catering; Sport and Public Services; Foundation Learning (SEND), including a high dependency Bungalow; Engineering (including railway engineering) and Plumbing; Health and Social Care. The diagram below shows an outline of the site.



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- 3.3 The Quarles Campus is a developed site within the green belt.
- 3.4 The College would require time to re-organise their education provision from the Quarles site, and the option to purchase arrangements would have timescales that facilitate the relocation period.
- 3.5 It will be important that any re-provision of the Foundation Learning (SEND) ensures that learners are still able to access suitable further education, in appropriate facilities, within a reasonable travel-to-study distance. Places on the Foundation Learning provision are commissioned by Local Authorities and it is important to engage early with the relevant commissioners to ensure any disruption is kept to a minimum.
- 3.5 In discussions with HC, the Council and HC have both agreed that continued provision of FE would be needed within the Harold Hill area, and that in the period in which the College is preparing their detailed relocation plans a suitable location for such provision would be found. This requirement would be part of the loan agreement to the college.

## REASONS AND OPTIONS

### Reasons for the decision:

- 4.1 That a loan (or loans) to ensure that HC has the funding in place to redevelop their Rainham facility and initiate work on the wider estate redevelopment will ensure HC is in a stronger position to continue to provide educational provision in the borough and will assist in securing suitable and sustainable further education provision for residents of the Borough.
- 4.2 The provision of a loan (or loans) to HC would also assist them to improve their facilities and improve the provision of further education in the borough.
- 4.3 The acquisition of the Quarles Campus by the Council (or a body selected by it) would enable that site to be redeveloped for a suitable purpose in accordance with the Council's policies and with the objective of supporting the local economy in order to benefit, improve and develop the Borough.
- 4.4 The interest on any loan and repayment of principal would not commercially disadvantage the Council i.e. the terms of the loan would as a minimum meet the Council costs.

### Other options considered:

- 4.5 There exists the do-nothing option. It is likely in this position that the Quarles site would be disposed of to a third party subject to restrictive covenants on the site in the Council's favour, however, the Council's influence on future may well be limited. If the loan was not made available in the short term to allow the redemption of an existing loan to Havering College, to initiate the Quarles site rationalisation and meet match funding requirement for the LEP grant, then the opportunity to provide a state of the art construction facility in Rainham is likely to be lost. Therefore an important education facility for the future of the borough's residents would not be able to go ahead, which the authors believe would be detrimental to the interests of the borough and its residents.

## IMPLICATIONS AND RISKS

### Financial implications and risks:

- 5.1 The granting of one or more loans to Havering College to meet the cost of construction and site rationalisation as set out in the main body of the report would represent capital expenditure and as such the project would be met from the

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Council's Capital Programme subject to the completion of due diligence and approval of the business case. The redemption of the commercial loan may not meet the definition of capital expenditure and if this the case the Council would need to fund the commercial loan from its cash balances rather than borrowing.

- 5.2 The cost of the loans classified as capital expenditure would be met from the £100m capital budget allocated for regeneration and development included in the Council's approved Capital Programme, which is planned to be financed from borrowing under the Council's Treasury Strategy. A loan advance made for non capital purposes would be met from surplus cash balances of the Council.
- 5.3 The terms of the loan or loans remain to be negotiated between the parties, but will be required to ensure that:
- The Council's administration costs and capital financing costs are at least recovered in full from the College.
  - The Council obtains adequate security for the loan in the form of a charge on specified land and building assets owned by the College in order to mitigate the financial risk to the Council of non-payment of the loan by the College.
  - An assessment of the College's financial position and ability to meet the payment terms is realistic and affordable.
  - That the College will apply the loan solely for the expenditure purposes set out in the loan agreement.
- 5.4 In obtaining an option to purchase the Quarles land, the Council needs to be satisfied that the purchase price represents good value for money and that the site can be utilised for purposes that will be of benefit to the borough. A valuation undertaken of the Quarles land, is set out in the Part B report. Potential uses for the site include education and/or residential but will be the subject of further due diligence in developing a business case for the site, to determine whether the Council exercises its option to purchase.

### **Legal implications and risks:**

#### **General**

- 6.1 Section 15B of the Education Act (the 1996 Act) provides the Council with the power to secure the provision of education for persons over the age of 19. The Council also has a duty under: section 13 of the Education Act 1996 (the 1996 Act) to secure the provision of suitable further education provision for persons under 19 (or 25 for those with learning difficulties). Cabinet should satisfy itself that the proposed loan and option arrangements with Havering College are likely to assist with securing suitable further education provision for residents.
- 6.2 The provision of financial and other support would fall under these powers if they are exercised together with the ancillary power of section 111 of the Local Government Act 1972 (though section 111 does not in itself authorise the loan).
- 6.3 However, the Council, may enter into the loan relying on the General Power as set out in Chapter 1 of the Localism Act 2011 which provides it (subject to a number of limitations) to do anything an individual may do. The Council's purpose is to further its legal responsibilities to secure suitable further education for its residents and



more generally to support a local college. These do not constitute a commercial purpose. The Council would under the general power be entitled to directly provide the proposed loan.

- 6.4 Section 120 of the Local Government Act 1972 (**the 1972 Act**) allows the Council to acquire land for either the the benefit, improvement or development of its area or any of for a purpose relating to its powers or duties under any enactment. The Council has the power to acquire the land providing Cabinet is satisfied that such an acquisition does benefit, improve or develop the the Borough.
- 6.5 The Council may under section 3 of the Local Authorities (Land) Act 1963 (**the 1963 Act**) make a loan to any person (which would include a Council owned subsidiary) to acquire land and/or erect any building of that land. To exercise this power Cabinet should be satisfied that this would benefit or improve the Council's area. Alternatively the Council could seek to rely upon its General Power to make such a loan under Chapter 1 of the Localism Act 2011.

## **Finance**

- 6.6 In accordance with the council's constitution, any capital funding requirements will need to be allowed for in the council's budget strategy which needs to be approved by full council. This will need to be reviewed and updated in subsequent years.
- 6.7 To the extent that the Council intends to borrow to lend to HC regulation 25 of the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (SI 2003/3146) treats the giving of a loan by a local authority to a third party (such as HC) towards expenditure (e.g. works on a new buildings) as capital expenditure providing that if the local authority itself incurred that expenditure (it borrowed to undertake the works itself) it would treat that expenditure (under proper accounting practices) as capital expenditure.

## **Land disposal and financial assistance**

### **Fiduciary Duties**

- 6.8 The Council's fiduciary duties could be briefly summarised as it is acting as a trustee of tax and public sector income on behalf of its rate and tax payers. The Council in effect holds money but does not own it; it spends money on behalf of its business rate and council tax payers.
- 6.9 Members in making the decisions concerning loans to HC (and similar activities) should give proper consideration to the risks and rewards of approving the recommendations. In practice Members will want to consider whether the Council will achieve an appropriate return for its risk and that the Council has minimised the risk and potential cost to it if HC became insolvent and/or defaulted on its loan(s).
- 6.10 Consideration should also be given to whether the Council's involvement in this arrangement is proportionate and properly balanced against the anticipated benefit as well as the wider interests of its local business rate and tax payers. On a practical basis this means that Members should consider whether the monies they are requested to approve for investment/lending to HC could be better used by the

Council for the wider interests of its local tax payers. This should include considering the impact on the Council (and therefore its local tax payers) if HC became insolvent or otherwise defaulted on loans it had taken from the Council.

### **State Aid**

- 6.9 State Aid could be briefly summarised as funding or support from the public sector which has the potential to distort competition and grant an unfair advantage to economic operators.
- 6.10 State Aid generally does not arise from public sector financing of public education (and childcare) which is open to and directed at the general public for social educational or cultural purposes .
- 6.11 HC meets the criteria of an institute which is providing education aimed at the general public. Providing the arrangements between the Council and the HC do not involve market activity (e.g., it is for educational purposes) then from a State Aid perspective the Council may lawfully provide HC with a loan on such terms as the Council believes is appropriate (which should also take into account its fiduciary duties).
- 6.11 State Aid compliance does not restrict the terms on which the Council gives support to HC. If it chose to it could for instance provide a loan at either a market or subsidised interest rate.
- 6.13 Section 19(4) of the Further and Higher Education Act 1992 empowers a further education corporation to acquire and dispose of land. However, property due diligence should include confirmation that there is no conditions of either public or private funding arrangements to which HC is a party or any constitutional or other restriction which would prevent HC from either entering into the option agreement or disposing of the Quarles site.

### **Human Resources implications and risks:**

- 7.0 There are no human resource implications from this report.

### **Equalities implications and risks:**

- 8.0 Through this loan and potential transaction, HC will establish a much more sustainable footprint for delivery of education on behalf of Havering residents. The Further Education offer in Rainham and the provision overall of construction education and skills provision will be strengthened. It is noted that the demand for construction skills is on an increase. Rainham is a relatively deprived area of Havering therefore this investment is welcome. As a Council we would have a concern that the provision in Harold Hill is reduced, especially the provision of programmes up to level two. HC have expressed their commitment to retain such provision and the Council is committing itself to assist in that endeavour.

### **Background papers**

None