



## CABINET

13 June 2017

**Subject Heading:**

Loan to and Acquisition of Land from Havering College

**Cabinet Member:**

Cllr Roger Ramsey - Leader of the Council & Cabinet Member for Value

**SLT Lead:**

Andrew Blake-Herbert - Chief Executive Officer

**Report Author and contact details:**

Garry Green, Head of Property, oneSource  
[Garry.Green@onesource.co.uk](mailto:Garry.Green@onesource.co.uk)

**Policy context:**

Economic Development

**Financial summary:**

The immediate purchase of the freehold of the Quarles Campus by the Council from HCF&HE for an amount as set out in the Exempt part of this Report, and the potential to make a loan of £2,800,000 to the College by the Council.

The terms of any loan will need to ensure that the Council's costs are covered as a minimum; that adequate security for the loan is in place; that the loan does not constitute unlawful State Aid and that the College's financial arrangements are such that the Council can be assured that repayment of the loan is realistic and affordable for the College; and that it is not directly linked to the lease agreement, as confirmed by a specialist VAT adviser.

Detailed financial implications can be found in Section 4 and the Exempt part of this Report.

**Is this a Key Decision?**

Yes

**When should this matter be reviewed?**

Spring 2018

**Reviewing OSC:**

Towns and Communities

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

Communities making Havering	[ X ]
Places making Havering	[ X ]
Opportunities making Havering	[ X ]
Connections making Havering	[ X ]

**SUMMARY**

A Report to Cabinet on the 18 January 2017 outlined a proposed loan from Havering Council to Havering College of Further & Higher Education (HCF&HE) for the purposes of facilitating proposed improvements to the College's Rainham Campus in New Road, Rainham, RM13 8GP and Cabinet agreed, in principle, subject to due diligence:

- a. to enter into an option from Havering College [*for the Council*] to acquire the Quarles Campus site (which can be assignable to another body or party of the Council's choice).
- b. the provision of loans up to £10,000,000 (ten million pounds) from the Council to Havering College.

Subsequently, in April 2017, it was formally announced that the Barking & Dagenham College (B&DC) and HCF&HE are considering a possible merger.

The respective Boards of Governors of the Colleges have launched a public consultation to obtain views on the proposal. A final decision on the merger is expected to be made by July 2017, with implementation in August 2017. Any outstanding liability would be automatically assigned to a new College Corporation existing after the merger.

For the reasons set out in the Exempt part of this Report, it has been necessary for the College to propose a different approach to this transaction that would involve the Council acquiring their Quarles Campus immediately rather than having an option to do so. Additionally, the need for a loan previously sought by the College from the Council is under consideration but if required would be reduced to £2,800,000 (two million & eight hundred thousand pounds) as the Quarles Campus land receipt and possible other funding from the merger arrangements would be available to the College, removing the need for an additional loan amount.

The land sale would permit Havering College to secure match funding in order to take advantage of a Local Enterprise Panel (LEP), now renamed as London Economic Action Partnership (LEAP), for the development of a proposed Construction Infrastructure Skills and Innovation Centre (CISIC) and improvements to an existing building all at HCF&HE's Rainham Campus, New Road, Rainham.

It is now proposed that, subject to further due diligence:

1. Havering Council will immediately purchase outright HCF&HE's freehold interest in the Quarles Campus at Tring Gardens, Harold Hill and would acquire and hold the property for 'planning purposes' under the Town & Country Planning Act 1990; and
2. the Council will simultaneously lease back the site to HCF&HE for a term up to September 2019 at a peppercorn rent, contracted outside of the security of tenure provisions of the Landlord & Tenant Act 1954, with a provision for HCF&HE to be able to break the lease early once they have vacated the site.
3. using part of the proceeds from the sale of the Quarles Campus to the Council, HCF&HE will simultaneously discharge both of the following existing loan arrangements -
  - (a) a bank loan, which is currently secured by a Legal Charge against the freehold title of the College's Ardleigh Green Campus; and
  - (b) a Dept. for Education loan, administered by the Education and Skills Funding Agency (ESFA), currently secured by a Legal Charge against one of the freehold titles of the Quarles Campus.
4. that the possible involvement of the Council's wholly owned company, Mercury Land Holdings Limited (MLH), in seeking planning permission and/or acquiring and redeveloping the site to be the subject of a future decision.
5. The Council will, if required, loan to HCF&HE's up to £2,800,000 (two million & eight hundred thousand pounds) for a period of up to 10 years. Irrespective of the amount of the loan, the Council will be protected by a first legal charge against the entirety of the College's Ardleigh Green Campus as security.

<b>RECOMMENDATIONS</b>
------------------------

It is recommended that the Cabinet:

1. Agree 'in principle', the following revised proposals –
  - (a) in respect of the Quarles Campus –
    - (i) for Havering Council to immediately purchase from Havering College the freehold interest in the Quarles Campus, Harold Hill site on the terms set out in the Exempt part of this Report and to acquire

and hold the property for 'planning purposes' under the Town & Country Planning Act 1990; and

- (ii) the Council will simultaneously lease back the Quarles Campus site to HCF&HE for a term up to September 2019 at a peppercorn rent, contracted outside of the security of tenure provisions of the Landlord & Tenant Act 1954, with a provision for HCF&HE to be able to break the lease early once they have vacated the site; and
- (iii) that the possible involvement of the Council's wholly owned company, Mercury Land Holdings Limited (MLH), in seeking planning permission and/or acquiring and redeveloping the site to be the subject of a future report.

(b) in respect of a loan to the College –

- (i) the Council entering into a Loan Agreement, if required, for a loan of up to a total of £2,800,000 (two million & eight hundred thousand pounds) from the Council to HCF&HE; and that
- (ii) the Council's security for such a loan will be a first legal charge against the freehold title of the entirety of HCF&HE's Ardleigh Green Campus, Hornchurch.

all on the terms set out in the Exempt part of this Report.

2. Agree to meet the capital financing costs associated with the acquisition of the Quarles Campus from the Transformation Reserve (formerly Strategic Reserve) in 2017/18 and future budgetary provision to be built into the proposed base budget for 2018/19 to be subsequently considered for approval by Council.
3. Delegate to the Section 151 Officer:
  - (a) the carrying out of the degree and extent of due diligence they consider necessary having regard to the proposals, in particular having regard to assessing the ability of the College to repay any loan provided to it by the Council;
  - (b) the release of loan monies to the College in accordance with the terms of the proposed Loan Agreement which, irrespective of the amount of the loan, will be protected by a first legal charge against the title of the entirety of the College's Ardleigh Green Campus in favour of the Council, as security.
4. Delegate to the Head of Property, oneSource, following consultation with the Director of Legal and Governance and the S.151 Officer and after undertaking any necessary property due diligence the preparation and entering into all

necessary legal documentation to bring the proposed arrangements in Recommendation 1. into effect.

**REPORT DETAIL**

**1. BACKGROUND**

- 1.1. Havering College of Further and Higher Education (HCF&HE) is an independent organisation. It currently provides education to around 8,500 students and has around 476 full-time equivalent staff.
- 1.2. HCF&HE currently operates from three campuses within the Borough. Its main campus is at Ardleigh Green, Ardleigh Green Rd, Hornchurch. It also operates a Rainham Campus at New Road, Rainham (near Dovers Corner) and the Quarles Campus, Tring Gardens, Harold Hill.
- 1.3. HCF&HE 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 Instruments and Articles.
- 1.4. HCF&HE wish to expand their Rainham Campus have successfully applied for funding from the Local Enterprise Panel (LEP) to build a Construction Infrastructure Skills and Innovation Centre (CISIC) on the site costing £10,800,000 (ten million & eight hundred thousand pounds).
- 1.5. The Further Education sector is under financial pressure due to a combination of the falling numbers of 16-18 year olds in many areas of the country; reducing funding rates; increasing cost pressures such as on 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 Higher Education in FE.
- 1.6. 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.
- 1.7. In London, the review process is being undertaken in conjunction with the London Mayor and the 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 Further Education sector more resilient.

- 1.8 The November 2016, the Government's Comprehensive Spending 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 Further Education funding rates compared with other parts of the education sector.
- 1.9 Barking & Dagenham College (B&DC) have their main site in Dagenham Road, Rush Green, one mile to the south-west of the centre of Romford. HCF&HE and B&DC have co-operated over a number of years, and have a strategic relationship. It is likely that the two Colleges will agree a formal merger from August 2017.

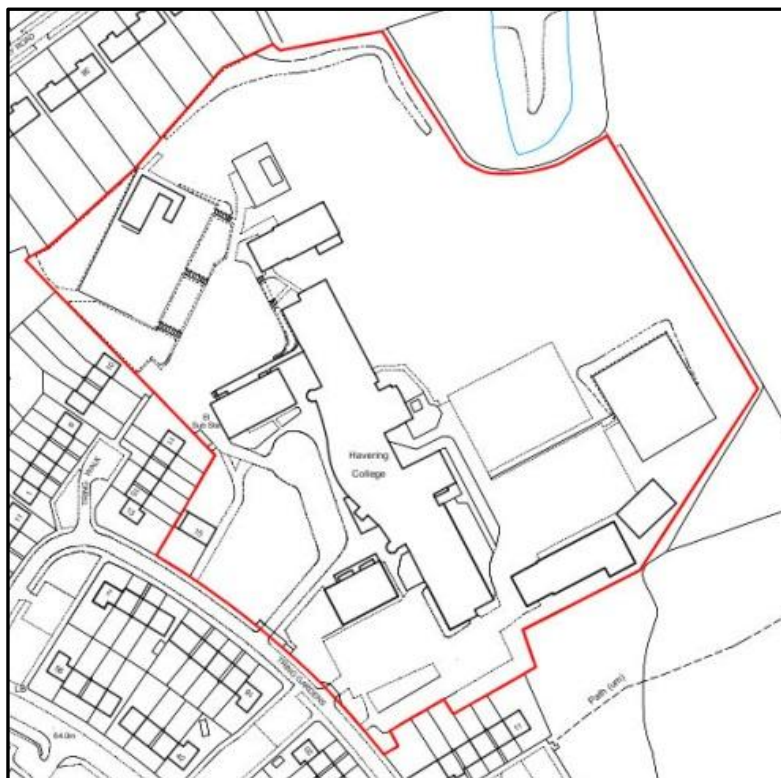
## **2. HAVERING COLLEGE OF FURTHER & HIGHER EDUCATION**

- 2.1 HCF&HE's main site is the **Ardleigh Green Campus**, which is intended to remain the case.
- 2.2 The **Quarles Campus** in Tring Gardens is a large developed site located at the northern edge of Harold Hill, within the Borough. Prior to the existence of the National Planning Policy Framework, the site had the planning designation of a Major Developed Site in the Green Belt.
- 2.3 Currently, HCF&HE 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. For the 2016/17 academic year Quarles Campus has 1,515 students and around 200 staff.
- 2.4 HCF&HE has had a long-standing wish to relocate their provision from this site, due to the age of the premises. The main building was erected for the Quarles Secondary School, which opened in 1955. There are seven additional buildings situated throughout the remainder of the site.
- 2.5 The total gross internal area of all of the buildings is circa 8,350 m<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.

2.6 The illustration below shows the extent and types of building currently on the Quarles site –



2.7 The extent of the Quarles Campus site is as edged on the plan below -



- 2.8 HCF&HE would require time to re-organise and relocate their education provision from the Quarles Campus site, and the Council's proposed immediate freehold purchase of the site from HCF&HE and simultaneous grant of a short-term lease back to them would give them sufficient time to relocate from the Quarles Campus.
- 2.9 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.
- 2.10 In discussions with HCF&HE, the Council and HCF&HE have both agreed that continued provision of Further Education 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 Council's proposed agreement with HCF&HE.
- 2.11 The **Rainham Campus at New Road, Rainham** currently provides 55 construction courses from a large three-storey detached building at the rear of the site known as 'Burnside House' and HCF&HE wish to expand the facilities by building a Construction Infrastructure Skills and Innovation Centre (CISIC) on the site, with the total project costing £10,800,000 (ten million & eight hundred thousand pounds).
- 2.12 The CISIC concept was developed through employer and stakeholder consultation and includes potential ground breaking technology in the Further Education sector of Building Information Modelling, Computer Aided Design with a Virtual Engineering, Virtual Reality offer. The provision would support on an annual basis extra c.500 learners. Given the expected construction activity in this part of London, such an offer should greatly support Havering residents into construction related employment.
- 2.13 In early 2015, with assistance from Havering Council, HCF&HE applied for funding to the London Local Enterprise Panel (LEP) for their proposed CISIC Project and also submitted a planning application (Ref: P0196.15) for -

*Havering College of Further and Higher Education, New Road, Rainham, RM13 8GP*

*"Erection of a part two, part three storey 'Construction and Infrastructure Skills and Innovation Centre' with covered pedestrian link, external alterations to the existing building and alterations to the existing servicing arrangements and car parking provision along with associated landscaping and a cycle / pedestrian path."*





2.14 In March 2016, HCF&HE was allocated capital funding of ‘up to £5,446,191’ by the London Local Enterprise Panel (LEP) for 50% of the cost of their proposed Construction Infrastructure Skills and Innovation Centre (CISIC) project, for:

*Skill: Infrastructure and Construction Engineering*

*Funding will help create a Construction & Infrastructure Skills & Innovation Centre at the site in Rainham, as well as 2,762 m<sup>2</sup> of essential additional learning space for professional and trade skills in infrastructure (rail) and construction engineering. The project will also see the refurbishment of the college’s existing construction centre and the installation of a Virtual Reality, simulated learning environment, unique in construction FE in the UK.*

2.15 The LEP grant was approved on the basis that HCF&HE matched such funding. With the grant funding, together with the receipts from the immediate sale of the Quarles Campus to the Council and, if needed, a secured loan of up to £2,800,000 from Havering Council, HCF&HE intends to deliver a Rainham Construction Infrastructure Skills and Innovation

Centre (CISIC), refurbish the existing facilities at the Rainham Campus and restructure their existing loans.

- 2.16 The planning application had been 'on hold' at the applicant's request since April 2015. However, revised information was submitted and received by the Council's Planning Department on the 15 February 2017 in respect of the strategic Rainham cycle / pedestrian path running through the site and on the 21 April 2017 the Flood Risk Assessment and the application was considered by the Regulatory Services Committee on the 11 May 2017.
- 2.17 It was Resolved that consideration of the report be deferred to allow officers to contact the applicant to explore –
- Whether more parking spaces could be provided on site.
  - Whether the land to the north of the site was within the applicant's control.
  - Whether there was a highway safety issue in Passive Close arising from the proposal.
  - Whether the new building could be located further away from the existing building to facilitate vehicular access from New Road instead of Passive Close.
- 2.18 In December 2016, the LEP was renamed the London Economic Action Partnership (LEAP) and has the aim of bringing entrepreneurs and business together with the Mayoralty and London Councils to identify strategic actions to support and lead economic growth and job creation in the capital.
- 2.19 In order to provide the match funding that would be needed for the re-development of the Rainham Campus, New Road, Rainham; HCF&HE are seeking to sell their freehold interest in the Quarles Campus, Tring Gardens, Harold Hill to the Council.
- 2.20 There are currently approximately 318 students registered Rainham Campus. On completion of the CISIC, HCF&HE will be able to accommodate approximately 732 full-time students and 551 part-time students. The expansion will also create a further 60 full time jobs, taking the numbers of employees from 30 to a total of 90.

### **Recommendation**

- 2.21 This Report recommends that the Council purchases the freehold interest of the 9.345 acres (3.782 ha) Quarles Campus from HCF&HE and leases the Campus back to HCF&HE on a short-term lease contracted outside of the security of tenure provisions of the Landlord & Tenant Act 1954 for a

period whilst they build their proposed CISIC at their Rainham Campus and then transfer courses and students from the Quarles Campus.

**REASONS AND OPTIONS**

**Reasons for the decision:**

- 3.1 That a loan from Havering Council, if required, together with the acquisition of the Quarles Campus will ensure that HCF&HE has the match funding it needs to take up the LEP / LEAP grant funding allocation of up to £5,446,191 to build the proposed CISIC facility & refurbish the existing facilities on their Rainham Campus and restructure their existing bank loans will ensure HCF&HE is in a stronger position to continue to provide educational provision within the Borough and will assist in securing suitable and sustainable further education provision for residents of the Borough.
- 3.2 The provision of a loan to HCF&HE would also assist them to improve their facilities within the Borough and plug a construction skills gap in the region.
- 3.3 The acquisition of the Quarles Campus by the Council would enable that site to be held and used 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, in due course.
- 3.4 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's costs and the level of return the Council can currently achieve through its Treasury Management activities.

**Other options considered:**

- 3.5 There exists the do-nothing option. It is possible in this position that the Quarles Campus site would be disposed of by HCF&HE to a third-party, subject to restrictive covenants on the site in the Council's favour; however, the Council's influence on the site's future may well be limited.
- 3.6 A more likely option is that, if the immediate acquisition of the freehold interest in the Quarles Campus and a loan of up to £2,800,000 (if required in addition) was not offered by the Council to enable the HCF&HE to discharge existing bank and DfE loans to HCF&HE and to meet the match funding requirement for the LEP / LEAP grant allocation of up to £5,446,191, then the opportunity to provide a state of the art construction facility in Rainham is likely to be lost. 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:**

- 4.1 The immediate purchase of the Quarles Campus by the Council would represent capital expenditure.
- 4.2 The purchase would be from the £100,000,000 (one hundred million pounds) capital budget allocated within the 2016/17 capital programme (as agreed by Council / Cabinet in February 2016) for regeneration and development, subject to the completion of due diligence and approval of the business case. There will be capital finance costs incurred in the financial year the property is acquired and subsequently. There is currently no budget identified to meet revenue costs. There are insufficient unallocated capital receipts available within the Council's capital programme to purchase the site. There will also be Stamp Duty Land Tax, Minimum Revenue Provision and VAT implications.
- 4.3 It should be noted that whilst the £100,000,000 capital budget was approved in 2016/17 to be financed from borrowing, the assumptions made in establishing the capital budget were that the whole of the £100,000,000 of expenditure would be incurred in respect of granting of loans to third parties for regeneration and development projects e.g. Mercury Land Holdings Limited (MLH).
- 4.4 On that basis, the Capital Financing Regulations do not require the Council to provide for the repayment of principal via the Minimum Revenue Provision (MRP) as a charge in its revenue accounts where a loan agreement and repayment schedule provide for the payment of interest and the repayment of capital. In these circumstances, the interest on the Council's external borrowing would be met from interest charged to the borrower (the College) who would also pay an additional margin on the rate of interest to generate a net revenue income stream for the Council.
- 4.5 As a result of the assumptions set out in paragraph 4.3 & 4.4 (above), no revenue budget has been provided in relation to the capital financing costs (principal and interest) that may be associated with the £100,000,000 of capital expenditure if financed by borrowing over the Medium Term. Therefore, where proposed schemes are subsequently developed which vary from these key assumptions, there will be a need to make revenue budgetary provision in the year of acquisition and future years to meet the associated capital financing costs (both principal and interest) in order to

comply with Capital Financing Regulations. Examples where the Council is required to make revenue budget provision for capital financing costs include acquisition of assets (such as the Quarles Campus) and/or investment of equity in third party deals such as in Mercury Land Holdings Limited (MLH).

- 4.6 Whilst this will place pressures upon the Council's revenue budget in the short term, the business cases associated with such capital investment will be required to demonstrate the ability to realise capital receipts to repay the principal and/or revenue income streams to return an acceptable surplus to the Council after meeting its capital financing costs as a return on its investment over the medium term. A fundamental review of the Council's Capital Programme is currently being undertaken alongside due diligence on a range of pipeline schemes in development to ensure that the Council's Medium Term capital investment plans are financially robust both in capital and revenue terms.
- 4.7 Further, it should be noted that the financing of the Capital Programme is managed flexibly on the basis of the expenditure and resources available to the whole Council Programme. The Chief Finance Officer will seek to apply other available capital resources such as capital grants and capital receipts before resorting to financing, through borrowing, to manage the overall cost efficiency and affordability of the Programme for the Council and to mitigate the impact upon its revenue budget. Financing decisions will be kept under review throughout the financial year and finalised as the 2017/18 accounts are produced in 2018.
- 4.8 Whilst there is a possibility that the Council may want to sell the Quarles Campus to Mercury Land Holdings Limited (MLH) at some stage, this is not yet determined and therefore the prudent accounting treatment requires it to make revenue budget provision to meet the capital financing costs. Where capital receipts are available, the purchase of the Quarles Campus will be financed by those, as the first call upon resources. Where they are not available it will be necessary to finance this expenditure by borrowing.
- 4.9 Details of the capital financing costs associated with this acquisition are contained within the Exempt part of this Report. An adjustment to the Capital financing revenue budget will be required to reflect the principal and interest costs associated with the acquisition. This will be met from the Transformation Reserve (formerly Strategic Reserve) in 2017/18 and future budgetary provision will be built into the proposed base budget for 2018/19 onwards to be subsequently considered for approval by Council.
- 4.10 The Council will acquire the Quarles Campus from the College and it will initially be leased back to the College at a peppercorn rent for a period of just over two years, which has the effect of giving the lease a 'non-business' status for VAT purposes. If linked to a potential future loan by the Council to the College, there is a risk that the lease agreement has potential to impact upon the Council's partial exemption from VAT.

- 4.11 The peppercorn rent nature of the lease is required to assist the College with their cash-flow projections and accordingly other terms have been adjusted in order to reflect this as part of the overall commercial transaction.
- 4.12 The Council has no plans to incur further expenditure on the site and must avoid this, taking further specialist VAT advice if this becomes a possibility. Otherwise, this will impact adversely upon the Council's partial exemption limit in respect of VAT.
- 4.13 The College has requested that the Council agrees to make provision for a loan of up to £2,800,000 (two million & eight hundred thousand pounds) to the College, should this be required. The terms of the loan, remain to be fully 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 HCF&HE.
  - The Council obtains adequate security for the loan in the form of a first legal 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 HCF&HE.
  - An assessment of HCF&HE's financial position and ability to meet the payment terms is realistic and affordable.
  - That HCF&HE will apply the loan solely for the expenditure purposes set out in the loan agreement.
  - The loan is not directly linked to the agreement for the Council to purchase and lease it back to the College for the purposes of assessing the VAT position.
- 4.14 In purchasing the Quarles Campus land at the outset, 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. The Council's decision to acquire is based on valuation advice received and set out in the Exempt part of this report. As the acquisition is proposed to be on an unconditional basis there is greater risk with regard to the alternative use of the site as planning permission is not in place ahead of purchase. However, the land price has been revised to reflect this risk.
- 4.15 Valuation figures for the Quarles Campus site are set out in the Exempt part of this Report. Potential uses for the site include education and/or residential, subject to further due diligence. The land is within the Metropolitan Green Belt and prior to the existence of the National Planning

Policy Framework, the site had the planning designation of a Major Developed Site in the Green Belt.

**Legal implications and risks:**

**(a) General**

- 5.1 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.
- 5.2 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 (the 1972 Act) (though section 111 does not in itself authorise the loan).
- 5.3 However, the Council, may enter into the loan relying on the General Power as set out in Section 1 of the Localism Act 2011 which provides it (subject to a number of limitations) may do anything which 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.
- 5.4 Section 227 Town and Country Planning Act 1990 allows the Council to acquire land by agreement where they think its development, redevelopment, or improvement will promote the economic, social or environmental well-being of their area (a planning purpose). Section 203 Housing and Planning Act 2016 provides that where the Council acquires land and planning consent has been obtained to allow maintenance, building work or a change of use for the purposes for which it has been acquired by the Council then any restriction on carrying out the development or using the land for that purpose will be overridden, allowing the new development or the change of use of the land to proceed. The benefit of this provision extends to subsequent owners of the land. Landowners affected by any interference with their rights or interests in this way are entitled to receive compensation.
- 5.5 The Council may under section 3 of the Local Authorities (Land) Act 1963 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 section 1 of the Localism Act 2011.

**(b) Finance**

- 5.6 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.
- 5.7 To the extent that the Council intends to borrow to lend to HCF&HE, 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 HCF&HE) 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**

**(a) Fiduciary Duties**

- 5.8 The Council's fiduciary duties is a reference to it acting as a trustee of tax and public sector income on behalf of its business 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.
- 5.9 Members in making the decisions concerning a loan to HCF&HE (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 HCF&HE (or any successor combined College body) became insolvent and / or defaulted on its loan.
- 5.10 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.
- 5.11 On a practical level, this means that Members should consider whether the monies they are requested to approve for investment / lending to HCF&HE 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 HCF&HE (or any successor combined College body) become insolvent or otherwise defaulted on a loan provided by the Council.



**(b) State Aid**

- 5.12 State Aid can 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.
- 5.13 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.
- 5.14 HCF&HE meets the criteria of an institution which is providing education aimed at the general public. Providing the arrangements between the Council and the HCF&HE do not involve market activity (e.g. it is for educational purposes) then, from a State Aid perspective, the Council may lawfully provide HCF&HE with a loan on such terms as the Council believes is appropriate (which should also take into account its fiduciary duties).
- 5.15 State Aid compliance does not restrict the terms on which the Council gives support to HCF&HE. If it chose to, Havering Council could, for instance, provide a loan at, either, a market interest rate, or, a subsidised interest rate.
- 5.16 Section 19(4) of the Further and Higher Education Act 1992 empowers a further education corporation (HCF&HE) to acquire and dispose of land. However, property due diligence should include confirmation that there are no conditions of, either, public, or, private funding arrangements to which HCF&HE is a party, or any constitutional or other restriction which would prevent HCF&HE from disposing of the Quarles Campus site to the Council.

**Human Resources implications and risks:**

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

**Equalities implications and risks:**

- 7.1 Through this loan and potential transaction, HCF&HE 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.
- 7.2 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.

- 7.3 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. HCF&HE have expressed their commitment to retain such provision and the Council is committing itself to assist in that endeavour.

**BACKGROUND PAPERS**

None.