

Committee: Cabinet

Date: 14 September 2015

Wards: All

Subject: Adult Education Commissioning Update

Lead officer: Simon Williams, Director of Community and Housing

Lead member: Councillor Martin Whelton, Cabinet Member for Education

Contact Officer: Gareth Young / Karin Lane, Community and Housing Business Partner

Recommendations:

- A. That Cabinet note the progress made so far in moving to a commissioning model for adult education and the recent Skills Funding Agency announcement of further in year budget cuts
 - B. That Cabinet agree to the procurement exercise commencing as outlined in this paper
 - C. That the Whatley Avenue site is not made available as part of the procurement process for the newly commissioned adult education service
 - D. That the Integrated Property Team (IPT) looks at alternative uses for the site.
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. Subsequent to the Cabinet decision on the 16th February to move to a commissioning model for adult education, officers have been working to implement that decision.
- 1.2. This paper provides an update of progress made so far and provides details of a soft market testing exercise which has given the council a better sense of the market available to provide these services
- 1.3. The soft market test confirmed that there is a vibrant market for the council to commission adult education services, and that a formal procurement that involves a mix of small procurement lots and a larger lot was reasonable.
- 1.4. As part of this exercise the Council tested whether the market needed the Whatley Avenue site to be included within the tendering process in order to make bids viable.
- 1.5. The results of this exercise, further procurement advice, and other wider considerations lead to the recommendation that officers should launch the formal stage of the procurement process without including the Whatley Avenue site. These are outlined in detail in paragraph 2.23 and in summary are as follows:
 - Through our soft market testing exercise some potential providers acknowledged interest in the site but all bidders confirmed that a decision about the inclusion of the site would not influence their intention to bid.
 - In light of this, undertaking a process where it isn't clear whether a major asset is included or not leads to complications in the fair assessment of the bids
 - The site maintains a considerable cost either to providers or to the council, and including it within the bidding process is likely to make the bids offer less value for money or leave residual cost with the local authority. This is particularly relevant in the context of successive reductions in funding for the service.
 - There are potential wider opportunities from releasing the site for other purposes
- 1.6. Since carrying out the soft market testing the Skills Funding Agency (SFA) have announced a further in year funding cut of £118,540. This further supports the doubts about the financial viability of the in-house service and supports the decision for a commissioned service which can drive financial efficiencies and provide the widest

range of provision for the available funding... This “more for less” principle” is central to the commissioning process.

2 DETAILS

- 2.1. On the 16th February Cabinet agreed that the Council move to become a commissioner of adult education.
- 2.2. This decision was subsequently confirmed at the Scrutiny Commission on March 10th.
- 2.3. Subsequently, officers have been working to implement this decision.
- 2.4. Activities undertaken since that decision in March include:
 - (i) Appointment of a Project Manager
 - (ii) Launch of a restructure to form a new commissioning function
 - (iii) The establishment of a soft market testing exercise which has engaged with 29 potential providers
- 2.5. Officers are now approaching the point when they intend to launch the formal Invitation to Tenders (ITT) for the various tenders. The intention is to launch these, subject to Cabinet approval, in September.
- 2.6. As part of that tender process we are required to indicate to the market whether or not the Whatley Avenue site is available as part of any provider’s bid. After consideration of the issues we are recommending that the site is not included as part of the tendering process.

Funding update

- 2.7. On the 20th July the Skills Funding Agency (SFA) announced an in year reduction of funding for Merton Adult Education (MAE) of £118,540. This is in addition to the £71,000 cut made in December 2014.
- 2.8. This reduces the amount of funding that Merton has available to spend on adult education and will impact the amount of services that can be commissioned. It should be noted that these are in year reductions and may be followed by even more reductions when the SFA announces their 2016/17 funding in spring 2016 following the Government’s Comprehensive Spending Review (CSR) in the autumn of this year
- 2.9. As such, officers have taken the following actions:
 - Kept one role within the commissioning team vacant allowing us to keep the costs of commissioning as low as possible whilst still meeting Ofsted requirements
 - Kept a number of vacancies within the MAE structure, thus reducing staff costs and the size of the transferring liability
 - Revisited the tender structure to ensure that the process is delivering as efficient a service mix as possible
- 2.10. The service, and indeed many of the providers within the market from which we are commissioning, is facing an unprecedented funding challenge. We hope that the above actions will help us manage this uncertainty as smoothly as possible.

Soft Market Testing Exercise

- 2.11. As the first stage in the commissioning process officers conducted a soft market testing exercise. This involved engaging with potential bidders to test the potential approaches and ensure that there is both a robust market for the services we wish to procure and that the market approach is designed to optimise the amount and quality of bids and ensure the best outcome to the procurement process.

- 2.12. In this case, the soft market testing exercise consisted of three elements: an online survey sent to potential providers, a bidders' day held in the Civic Centre and a series of follow up conversations with providers who expressed an interest.
- 2.13. The soft market testing was a successful exercise demonstrating that there was indeed interest from the market in bidding to provide adult education services in Merton. Key findings from the work included:
- Roughly 70% of the potential providers are registered in the UK Registered Learning Providers (UKRLP) list and 25% of that group are local providers already based in the Borough.
 - There is a strong interest from the market in many of the course offerings but particularly around the employability, Adult Skills Budget (ASB), neighbourhood learning and personal community development areas.
 - Likewise, there were no areas of potential curriculum where there was no interest and many providers were interested in all, or nearly all, provision.
 - Approximately 60% of the potential providers acknowledged an interest in utilising the Whatley Avenue site at a commercial rate, but confirmed that unavailability of the site would not be a barrier to bidding. (see 2.27 below)
 - Many of the providers who expressed an interest in the site (all but 3 or 4) were those who were interested in parts of adult education provision and thus likely to be bidding for the smaller lots. This both explains why they were interested and also whilst they were content to proceed with a bid that didn't involve the Whatley Avenue site. The few larger providers who were interested in the site either already had alternative sites in the Borough or were content to investigate alternatives.
 - The market testing also indicated that the proposed approach – which involves a mix of small procurement lots and a larger lot - was reasonable.

Engagement with learners

- 2.14. Subsequent to the soft market testing we have been engaging with service users to develop the service requirements that will be used to structure the procurement. User engagement will continue throughout the commissioning process.
- 2.15. Engagement to date has involved:
- Initial meetings with LDD representatives (including Mencap, Adult Social Care, Merton CIL) to discuss the shape and scope of existing provision and to determine the elements that should be retained and developed as far as possible within the new commissioned model. Further meetings to discuss the specification are planned for September including a presentation to the LD Partnership Board on the 8th September. The user group with other students will commence after term starts on the 14th September.
 - Invitations have been put out to learners through the MAE Newsletter and discussions will take place at the beginning of the new term. Further meetings to discuss the specification are planned for September.
 - Staff have been engaged through a series of briefing and Q&A sessions during July with further planned sessions at the staff conference on 8th and 9th of September. Staff at risk have had one to one discussions with HR. Finally, staff have also been involved in providing specific inputs to the service specification.
- 2.16. This work has helped us to structure the specifications documents for the procurement and have confirmed the approach proposed in this report.

Commissioning Principles

- 2.17. When approving the move to a commissioning model of adult education Cabinet agreed a number of commissioning principles. These were:
- (i) That commissioning should look to continue the same breadth of courses currently provided. This does not mean that the courses must be the exact same year to year as needs change but that the breadth and variety should be maintained.
 - (ii) That courses should continue to be delivered within the borough
 - (iii) That the economic development and skills agendas of the council should be prevalent through the commissioning process
 - (iv) That TUPE regulations will be followed and every effort made to retain the highly valued tutors.
 - (v) That the environment and support of each provider should be assessed as part of the commissioning process
 - (vi) That adults with disabilities and their carers should be involved in the commissioning process for courses specifically tailored for them
 - (vii) That discussions about the provision of facilities for art and craft courses should involve user representatives from those courses
 - (viii) That a focus on wellbeing and aging well and on helping learners to gain employment should be key elements of the commissioning process to go alongside any focus on qualifications and learning
 - (ix) That hobbies, crafts and non-vocational skills courses should still be commissioned in line with SFA funding
 - (x) That fees should be set by the council as part of the commissioning process and controlled accordingly
 - (xi) That effort should be made to ensure provision is spread around the borough and not just located at one site, although quality and cost will remain key considerations.
 - (xii) That, where possible, services should be commissioned with not-for profit organisations
 - (xiii) That the outcomes for learners should be closely monitored to ensure that job prospects, well-being, support for vulnerable learners and safeguarding aspects are all considered as part of the commissioning cycle.
- 2.18. The procurement process is taking close consideration of these principles. For example:
- The commissioning principles were provided to all of the interested parties who attended the bidders day and were sent to all those who could not attend as part of the introductory presentation. Officers have made it clear that these will underpin their approach to commissioning both initially and on an ongoing basis. However, members should note that legal advice is that principle (xii) should not be an explicit part of the bid evaluation or selection process because of the requirement for equal treatment.
 - Officers have designed the procurement approach (see 2.20 below) to include a variety of lots, both large and small, enabling providers to develop specialist provision where appropriate for groups identified in the principles as requiring special attention. Officers have also made sure that the specification is set at a level which allows bidders to present new courses within the broad curriculum areas that were previously unavailable through a direct provision model. This ability to broaden the offer is one of the key added value aspects of the commissioning process.

- Officers will commission across both the Adult Skills Budget (qualifications) and Community Learning (non-qualification and hobby courses) areas to ensure a mixed provision.
- This approach will also help the council to provide courses that are not only in the Borough but are also spread around the Merton with different providers.
- As referenced in 2.15 officers are establishing a number of stakeholder groups of students and staff to ensure consideration of the diverse needs of our student community prior to entering into new contract arrangements.
- Considerable work is underway to ensure that officers are following the TUPE regulations and ensuring that providers understand what this means for them through the Invitation to Tender documentation.

2.19. Officers will continue to ensure that the commissioning principles underpin their work both during the procurement process and crucially after award of contracts as they work with the providers to establish the services.

Procurement Approach

2.20. As mentioned in 2.9, the proposed procurement approach involves multiple procurements - one large tender and another tender with a number of small lots within it.

2.21. Each tender and lot will be for a different area of adult education and taken together will ensure that we are able to access a diverse provision, achieve specialist providers for specific elements of provision and also provide one large tender that provides for economies of scale and will interest and attract larger providers.

2.22. The proposed lots are still being finalised but currently it is intended to go to the market with the following lots in the smaller tender:

- LDD
- Employability
- Family Learning (English and Maths) and Wider Family Learning
- Apprenticeships and Traineeships
- The large tender which will include all other courses

2.23. Due to the changes in SFA funding, we have made the decision to reduce the number of smaller lots and focus just on those elements where smaller lots will enable us to access a wider market commensurate with the degree of specialism.

2.24. The intention is to launch these, subject to Cabinet approval, in September.

2.25. As has previously been committed, the process will ensure that all changes are made by the summer of 2016 ready for the new academic year.

Whatley Avenue

2.26. The 16th February Cabinet paper – in paragraph 2.124 – says that ‘decisions about the site should follow decisions about the model of adult education we wish to pursue.’

2.27. The soft-market testing exercise has confirmed that on the basis that the site, if offered, would be at commercial terms, some providers expressed interest in providing adult education from Whatley Avenue, but none required the site to enable them to bid. It should also be noted that there was no indication of what commercial terms would represent in actual costs in relation to contract value. For example at current contract levels the combined value of the four smaller lots is likely to be approximately £180,000 which would not sustain the fixed overhead cost of the site.

- 2.28. The exercise has also demonstrated that there are a wide variety of alternative sites within the Borough available for the provision of adult education – and many providers keen to use these.
- 2.29. There are three options for how to proceed:
- (i) Include the site, and the cost of it, as a condition of the large lot procurement exercise. This would make all providers use the site, regardless of whether they thought it was the best option for their bid.
 - (ii) Offer the site within the large lot procurement exercise but at a pre-agreed commercial cost made public to the whole market, and invite bids that don't include the site as well as bids that do
 - (iii) Specifically do not include the site
- 2.30. The soft market testing has demonstrated that each of these options is possible but has shown that option iii) is preferable as set out below.
- 2.31. Option i) risks limiting the market. Because we know there are providers who are interested in delivering adult education from their own sites, and indeed, no providers who feel that the site is necessary to enable them to bid, it would be counter-productive to make the site mandatory. This is especially the case as there are potential alternative uses or a capital receipt available for the site, and the costs of the site would have to be factored into any bids making them potentially less good value. Additionally, mandating the use of the site, and associated fixed and semi-fixed costs, in the context of a reducing level of SFA funding presents the Council and/or the provider with increased risk. This option is not recommended.
- 2.32. Option ii) has similar risks to option i) if bidders elected to include the site in their bids. The Council could find itself in a conflicted position as both landlord and primary funder of the tenant. Additionally, including the site within the tendering process on an optional basis would present significant procurement challenges and risks. Evaluating site-inclusive and site- exclusive bids on a fair and open basis would be difficult e.g. setting a market price and demonstrating an absence of bias in the selection process. This could open up the prospect of legal challenge.
- 2.33. In addition, if at any point during or after the procurement exercise we decided that we needed the site for an alternative use we would either a) have to stop the tendering exercise and start again or b) displace the tenant provider. This would incur remedial costs and cause major reputational issues.
- 2.34. Finally option i) or ii) would frustrate one of the key benefits of commissioning as set out in 2.18 above i.e. the introduction of new varied provision through new facilities.
- 2.35. Neither option i) or ii) is optimal and option iii) has many positive reasons to support it. It is the recommended option for the following reasons:
- As mentioned above, including the site within the tendering process on either a mandatory or optional basis adds considerable risk and complexity.
 - The market has indicated that, although some providers are interested in the site, the exclusion of the site from the tender process is not a barrier to bidding.
 - On the basis that the site is not a pre-requisite to the provision of adult education there is an opportunity for the council to consider whether the site could be used for alternative purposes.
 - As mentioned in previous reports the site has substantial backlog maintenance costs of approximately £350,000 in total which, taken together with the revenue costs of the building - £140,000 before we add on a significant commercial rent - and in the context of an annual funding agreement would set a very high cost base for any provider with consequent effects on viability. This would present high risks

for both the provider and Council, particularly in the context of a reducing budget from the SFA.

- The pressures on the council's revenue and capital budgets are familiar and the Whatley Avenue site could, if sold, unlock a substantial capital receipt. The Likely Alternative Use Value (LAUV) is estimated between £1.5m and £3m.
- The site does not necessarily have to be sold and could be repurposed.

2.36. After considering the above options the recommendation is for the council to adopt option iii) and rule out the Whatley Avenue site from the procurement process.

3 ALTERNATIVE OPTIONS

3.1. As described above a number of options have been considered to deliver this procurement exercise, and officers have taken procurement advice to ensure that the appropriate decision is made.

3.2. Section 2.17 contains the options as relate to the site.

4 CONSULTATION UNDERTAKEN OR PROPOSED

4.1. Having already consulted with the public before the Cabinet decision as relates to the model of adult education, officers have now consulted the market through a process of soft-market testing. The results of this are detailed in the report.

4.2. In addition, and as detailed in 2.15 additional engagement has been undertaken with staff at MAE and learners to discuss the content of the specifications.

5 TIMETABLE

5.1. Subject to progress on items set out above, officers intend to commence the procurement for all lots in September. It is anticipated that contract award decisions will be presented to Cabinet in January 2016 with the new service launching in summer 2016 in time for the new academic year.

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

6.1. There are funding challenges for the service. Skills Funding Agency have made significant in year budget cuts. There could be further cuts in 2016/17 and future years as a result of the outcome of the CSR.

6.2. MAE is currently forecast to over-spend by £278k.

6.3. The summary of Skills funding agency funding for 2015/16 are detailed in table below:-

Maximum Contract Values	Aug 15 - Mar 16	Apr 16 - Jul 16	Total
Adult Skills ASC-2621	£330,326	£223,594	£553,920
<i>of which must be used for 19+ Apprenticeships</i>	£8,845	£5,761	£14,606
Community Learning CL-2400	£525,585	£262,793	£788,378
Discretionary Learner Support DLS-2631	£13,087	£4,538	£17,625
24+ Advanced Learning Loans Bursary ALLC-2141	£13,330	£4,443	£17,773
Total Funding for this contract			£1,377,696

6.4. Depending on the service model of the winning provider and future grant cuts from the Skills Funding Agency there may be further financial impacts if there are redundancies or additional pension liabilities which cannot be quantified at this stage.

6.5. The recommended proposal for the service is not to offer any accommodation currently used by the Council as part of the tender process. In addition to the Whatley Avenue site, this means that the Marlborough Hall site will not be included in any tenders but potentially could continue to be available for providers to let on an ad hoc basis.

7 LEGAL AND STATUTORY IMPLICATIONS

- 7.1. The main statutory basis for the adult education service is section 15B of the Education Act 1996. This section empowers local authorities to secure the provision for their area of full-time or part-time education suitable to the requirements of persons who have attained the age of 19, including provision for persons from other areas. It includes power to secure the provision of training, including vocational, social, physical and recreational training, and of organised leisure time occupation which is provided in connection with the provision of education or training. The authority may do anything which appears to them to be necessary or expedient for the purposes of or in connection with the exercise of their functions under this section. In exercising their functions, the authority must in particular have regard to the needs of persons with learning difficulties or disabilities.
- 7.2. The authority does not therefore have a statutory duty to maintain an adult education service but must in considering whether to provide a service and what service to provide take account in particular of the needs of people with learning difficulties or disabilities.
- 7.3. In considering changes to service provision the council must also have regard to consultation responses and to its Public Sector Equality Duty.
- 7.4. Case law establishes that the Council must not rule out any alternative options prior to consultation and must take the responses to consultation conscientiously into account in finalising any proposals.
- 7.5. The Council's public sector equality duty is set out in section 149 of the Equality Act 2010, which provides that a public authority must, in the exercise of its functions, have due regard to the need to eliminate discrimination, foster good relations and advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to: (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it; and (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low. Relevant protected characteristics are: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.
- 7.6. To meet the public sector equality duty the authority must assess the risk and extent of any adverse impact of proposals and the ways in which such risk may be eliminated before the adoption of a proposed policy.
- 7.7. When making the decision to move to a commissioning model the council consulted with the public and conducted an Equality Analyses. The outputs from both of these pieces of work were included within the Cabinet report on the 16th February and used as part of the decision making process.
- 7.8. The proposed procurement is for services that fall within Schedule 3 of the Public Contracts Regulations 2015 and accordingly are not subject to the full rigours of the Regulations, but given the overall value of the lots, are subject to the Light Touch Regime and the Councils Contract Standing Orders and procurement must be in compliance with these.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1. A detailed Equalities Analysis was included as part of the Cabinet report on the 16th February. We are following the action plan agreed within that report.

9 CRIME AND DISORDER IMPLICATIONS

9.1. N/A

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

10.1. A detailed risk register is being maintained alongside this procurement project. This is available upon request.

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

11.1. N/A

12 BACKGROUND PAPERS

12.1. Adult Education in Merton - evidence and options for achieving a value for money service – Cabinet Report 16/2/15

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