

Corporate Policy and Strategy Committee

10.00am, Tuesday 17 May 2016

Edinburgh schools

Item number

Report number

Executive/routine

Wards

Executive summary

As a result of a wall collapse at Oxfords Primary in January 2016, structural issues have been identified at schools built under the Public Private Partnership programme ("PPP1") in Edinburgh between 2002 and 2005. This led to the temporary closure of affected schools and alternative arrangements for children in nearly all the schools having to be urgently put into place.

Edinburgh Schools Partnership have been working to identify and remedy the defects identified in order that the children can return to the schools as quickly as possible.

This report updates Committee on the background to this matter and provides detail on the current position and planned activities. It also outlines the Council's intention to instruct an independent inquiry into this matter.

Links

Coalition pledges

Council outcomes

Single Outcome Agreement

Edinburgh schools

Recommendations

- 1.1 It is recommended that the Committee:
 - 1.1.1 note the content of this report;
 - 1.1.2 note the intention to instruct an independent inquiry into this matter; and
 - 1.1.3 refer this report to the Governance, Risk and Best Value Committee for scrutiny.

Background

- 2.1 At its meeting on 12 April 2016, the Committee agreed the following emergency motion by Councillor Burns:-
 - “1. Committee notes, with regret, the recent necessity to close several Edinburgh Schools – all of which were designed, constructed, and continue to be managed, by the Edinburgh Schools Partnership (ESP).
 2. Committee also notes that the Council Leader has apologised for the significant inconvenience these closures have caused.
 3. Committee further notes that the safety of children, and our staff, has to be the top priority and the Council cannot take any risks with such. Thus, given the professional advice from the Edinburgh Schools Partnership (ESP) – received on Friday 8th April – the Council had no option but to close these facilities.
 4. Committee understands that the most immediate tasks which will be carried out as a matter of urgency will be: the continuation of educational-provision; ensuring the safety of the affected buildings; and seeing the facilities safely re-opened.
 5. Committee thereafter calls for an urgent update report concerning this series of events, including a full update from the Edinburgh Schools Partnership (ESP), subject to an independent peer review, on the reasons for the identified defects; and instructs that the overall update report goes to the next meeting of the Corporate, Policy and Strategy Committee on Tuesday 17th May 2016.”

- 2.2 The Committee also accepted the terms of the Conservative Group amendment “That the update report include an update on the wider project/ governance issues such as the Council's management of the contract and the role of building control from the outset.”
- 2.3 A Green Group addendum was referred to this meeting for consideration: “Committee also calls for a full inquiry into the failure of ESP buildings, including the contractual and other arrangements with the ESP regarding the quality assurance of the construction of the buildings; any responsibility CEC had during the construction phase including through Building Control; whether contractual terms have been adhered to; the management and maintenance of the buildings since construction; an assessment of costs incurred by the Council and by families and options for recovery.”
- 2.4 The Council contracted a public-private partnership with The Edinburgh Schools Partnership (“ESP”) for the design, build, finance and maintenance of ten primary, five secondary, two special schools, a community centre and a secure unit on 14 November 2001 (known as the PPP1 project).
- 2.5 The agreement related to the following schools:

Phase 1	Phase 2
Pirniehall and St David's Primary Schools Craigroyston Primary Broomhouse and St Joseph's Primary Schools Rowanfield Craigour Park Primary School Castlevie Primary School Gracemount High School Forthview Primary School Drummond Community High School (refurbish existing building) Craigmount High School Goodtrees Neighbourhood Centre The Royal High School (refurbish existing building) Howdenhall Children's Unit	Oxgangs Primary School Firrhill High School (refurbish existing building) St Peter's Primary Braidburn School

- 2.6 ESP is the special purpose vehicle which was set up for the purpose of building and operating the PPP1 project. ESP subcontracted construction of the phase 1 schools to a joint venture between Miller Construction (UK) Ltd (“Miller”) (now known as Galliford Try Construction (UK) Ltd (“Galliford”)) and Amey Asset Services Ltd (now known as Amey Programme Management Ltd) (“Amey”) and construction of the phase 2 schools to Miller. ESP subcontracted facilities management services in respect of the phase 1 schools and the phase 2 schools to Amey BPO Services Ltd (now known as Amey Community

Ltd)(“Amey FM”). The project was debt funded jointly by the Bank of Scotland and the European Investment.

- 2.7 The phase 1 schools were completed between August 2002 and October 2003, with the phase 2 schools completed between March and June 2005.
- 2.8 On 29 January 2016, an external wall leaf at Oxgangs Primary School (“Oxgangs”), part of phase 2 of the PPP1 project, partially collapsed during extreme adverse weather. This resulted in the temporary closure of the school. Subsequent investigative works identified a construction defect in relation to wall ties as the primary cause of the collapse. Remedial works were undertaken and the school reopened on 3 February 2016.
- 2.9 Intrusive building surveys were instructed across the PPP1 estate and a further structural defect relating to wall header ties (ties which connect the top of walls to roof structures) was subsequently identified across PPP1 schools. All PPP1 schools were closed from 8 April as a result, with approximately 7,600 primary and secondary and 740 nursery pupils affected.
- 2.10 This report provides:
 - 2.10.1 the background to the school closures;
 - 2.10.2 an update on the measures being put in place to allow for the ongoing provision of education to affected pupils;
 - 2.10.3 a summary of the remedial works being carried out to allow the affected schools to re-open;
 - 2.10.4 detail on the role of Building Control;
 - 2.10.5 information on the proposed inquiry; and
 - 2.10.6 further details on related matters.

Main report

Initial incident

- 3.1 On the morning of 29 January 2016 (before school hours), a partial collapse of the external gable wall of Oxgangs occurred as a result of the effects of Storm Gertrude. An immediate decision was taken by ESP, and agreed by Council officers, not to open the school.
- 3.2 On 29 January, Will Rudd Davidson Ltd (“WRD”), structural engineers, inspected the collapsed section of wall. WRD advised that remedial work required to be undertaken to make the wall safe. The work was undertaken by Amey and the school re-opened on 3 February 2016.
- 3.3 On 29 January WRD were also instructed to undertake non-intrusive inspections of the remainder of the Oxgangs building and the three other phase 2 PPP1 schools (St Peter’s Primary, Braidburn and Firrhill High School). These

inspections did not identify any further defects and WRD advised that, on the basis of these non-intrusive surveys, the schools were safe to occupy.

- 3.4 On 31 January it was agreed that non-intrusive visual surveys be conducted by WRD across all other PPP1 schools. On 12 February, inspection reports were received for all the sites and showed that no further defects were identified as a result of these visual surveys and the PPP1 schools were deemed safe to occupy.
- 3.5 Running concurrently with the abovenoted inspections, ESP instructed WRD to provide a causation report into the wall collapse at Oxgangs. The report was provided on 2 March, with WRD concluding that poor construction workmanship was the principal cause of the collapse. A copy of this report by WRD was shared with the Council on a confidential basis by ESP. WRD advised that a 'high wind protocol' should be implemented in relation to Oxgangs and that an intrusive survey be carried out within a three month period at Oxgangs.
- 3.6 ESP instructed intrusive surveys at Oxgangs and, to identify whether there were similar concerns at other sites, also across the entire PPP1 estate. These surveys commenced on 14 March and were instructed by the Council to be carried out on an accelerated timetable of 2-3 weeks rather than over the suggested three month period.
- 3.7 During the course of these intrusive surveys, WRD reported any defects to ESP upon discovery. When any defects were identified as requiring attention, WRD recommended and ESP implemented appropriate exclusion zones.
- 3.8 On the basis of initial reports from WRD on 17 March, all four of the Phase 2 PPP1 schools were closed as a precautionary measure due to wall tie issues being identified. Pending the outcome of further inspection reports, all other schools remained open until the Easter holidays which commenced on Friday 24 March.
- 3.9 Over the Easter period the Council received assurances from ESP that all exclusion zones recommended by WRD as a result of their inspections would be in place before the start of the school summer term on 11 April (unless required remediation work had already been undertaken). This would allow all schools to be opened safely for the summer term and this was confirmed by ESP in a letter to the Chief Executive dated 5 April 2016.

Further issues identified

- 3.10 ESP subsequently wrote to the Chief Executive on 8 April 2016 advising that a significant new construction issue had been discovered during the ongoing remedial works at Oxgangs. The absence of wall header ties to the steel structure in certain areas had been identified. The letter advised that Oxgangs and St Peter's Primary School could no longer be considered safe to occupy and that it was impossible for ESP to confirm at that time whether or not the same defects may exist at other PPP1 estate schools. ESP advised that a full investigation to establish the position would be undertaken as a matter of urgency.

- 3.11 On the basis of ESP's letter, the Council had no option but to close all PPP1 schools with immediate effect.

Alternative arrangements

- 3.12 Approximately 7,600 primary and secondary pupils and 740 nursery pupils have been affected by the school closures put in place on 11 April. Alternative education accommodation was arranged for most pupils by 14 April 2016, with all affected pupils having alternative arrangements by 19 April 2016.
- 3.13 The provision of alternative accommodation has involved the use of over 70 coaches daily for pupils, 61 alternative schools (including nurseries and Early Years Centres) and the relocation of 655 teachers. The integration of pupils into alternative schools has gone well and many senior pupils lost only two days of school.
- 3.14 The contingency arrangements place challenges on pupils, parents, and staff and they are kept under continued review and adjusted when necessary. The longer the temporary arrangements remain in place, the more significant the challenges will become, for example to make sure pupils have access to all areas parts of the curriculum.

Wider picture

- 3.15 In 2012, Lourdes Primary in Glasgow, which was built by Miller, was closed as a result of similar issues with wall ties. As a result of this discovery, Glasgow City Council commissioned structural surveys on all schools built by Miller, which revealed no further defects. The Council was not alerted to this at the time. It is understood in light of the findings in Edinburgh, Councils across Scotland are undertaking surveys, including in some cases intrusive surveys, on their PPP school estate.
- 3.16 On 6 May 2016, Stirling Council indicated to parents that precautionary checks carried out by engineers had also identified structural problems with walls in one of its secondary schools.
- 3.17 The position taken by this Council differs to that taken by some other authorities. It is important to note that in this regard problems were identified by ESP across its entire estate and ESP confirmed in writing that the schools could not be considered safe. In addition there was an actual wall collapse which is not the case elsewhere.

Contractual arrangements

- 3.18 The Project Agreement (the "PA") between the Council and ESP was approved by Council on 23 August 2001 and signed on 8 November 2001. It is due to expire on 31 July 2033 (unless terminated earlier).
- 3.19 The PA obliged ESP to construct the schools in accordance with set construction requirements and to operate the schools in accordance with an agreed service specification.

- 3.20 The Council pays ESP a monthly sum of approximately £1.5m for the operation of the PPP1 schools estate.

Certification and inspections

- 3.21 The Council Building Control Officers reviewed applications for building warrant for these schools. They checked the designs in line with their obligations under the Building (Scotland) Act 1959. In relation to the structural design this fell within the scope of a self-certification scheme in place at that time and the Council would have been required by section 6AA of the Building (Scotland) Act 1959 to issue a warrant in relation to the structural design.
- 3.22 The Council periodically inspected the works during construction to be satisfied that the work was carried out in accordance with the drawings and specifications included in the issued warrant.
- 3.23 On receipt of an application for a completion certificate the Building Control department were required to carry out a final inspection within 14 days. The final inspection was to ensure that the building complied with the approved drawings, including any approved amendments. On the satisfactory completion of the final inspection the completion certificate would be issued. It was an offence to occupy or use a building for which a completion certificate had not been issued. Those final inspections would not have identified defects of the nature being discussed because those areas would have been covered up at that stage
- 3.24 In addition to the inspection visits, to comply with the requirement to take reasonable steps to ensure compliance, an Independent Certifier was appointed by both parties to monitor construction and issue associated availability certificates.
- 3.25 Once the schools had been completed it would be for Amey FM (the facilities management company) to carry out ongoing inspections of the schools including regular compliance testing.

Current position

- 3.26 Early indications are that this remains a construction quality matter as opposed to one relating to a design defect or the operating model employed.
- 3.27 The Council is working intensively with ESP to resolve the current issues and fully reopen the schools as soon as possible. ESP has continued to urgently survey the schools and identify any additional remedial works required. Thereafter it is expected that ESP will write to the Council to confirm that the schools are both safe to re-occupy and compliant with the relevant contractual terms. To bolster this assurance from ESP, the Council will establish the basis upon which ESP is able to give this confirmation, which will likely be the provision of a report from a structural engineer and associated technical documentation. This process and documentation is being independently monitored by Council-appointed technical experts to provide further assurance to both the Council and parents that the buildings are safe for occupation.

- 3.28 It is currently expected that a number of schools will be able to reopen prior to the school Summer holidays with the remainder being opened for the start of the Autumn term on 16 August 2016. The programme is constantly changing and parents are being regularly updated with the most up to date information available.
- 3.29 The Council is taking comprehensive legal advice in order to protect its contractual and legal position, including making appropriate deductions for the unavailability of the defective schools. This is a very complex matter which the Council is dealing with in a robust but practical manner. The Council will continue to pursue all legal and contractual avenues open to it to ensure that it makes the fullest recovery possible in relation to this matter.
- 3.30 The Council is mindful that this matter may lead to legal issues between the Council and ESP and its supply chain and funders respectively and accordingly there is little more detail that can be provided at present.

Costs incurred

- 3.31 The Council has incurred significant costs to date in relation to this matter. This includes decant arrangements (including buses, temporary units, meals etc), as well as external advice and costs of deploying staff who have been involved in dealing with the school closures. As noted above the Council is taking detailed legal advice, but the Council's position remains that it will not be left footing the bill in relation to this matter. Under the contracted terms of the PPP agreement the Council will apply unavailability deductions against the monthly payment made to ESP for the school closures.

Inquiry

- 3.32 The Council has called for an independent inquiry ("Inquiry") into this matter and will seek to appoint an appropriately senior figure to chair the Inquiry.
- 3.33 It is proposed that the Inquiry chair be appointed and the terms of reference agreed with them as soon as possible. It is anticipated that the formal Inquiry would commence in the early Autumn once the schools are fully back into operation and the contractual position with ESP has been concluded with a view to the Inquiry reporting as quickly as possible thereafter.
- 3.34 It is proposed that the Inquiry terms of reference will be consulted on with the Group Leaders and thereafter agreed by the independent chair.
- 3.35 A document data room will be set up for elected members during the Inquiry.

Next steps

- 3.36 The Council is working with ESP and its contractors to ensure that the programme of works is on track to allow children back to schools by the dates set out in the current programme at the latest.

Measures of success

- 4.1 Children are back in a safe environment in their own schools as quickly as possible.

Financial impact

- 5.1 The Council has incurred significant cost in relation to this matter. This includes the cost of buses, temporary units and staff time. The Council's position is that it will not be left out of pocket as a result of this matter.
- 5.2 Deductions to the monthly unitary charge paid to ESP will be made on the terms set out in the contract in relation to non-available schools and the provision of associated services.

Risk, policy, compliance and governance impact

- 6.1 There is a risk that the children are not returned to school as quickly as currently programmed.

Equalities impact

- 7.1 There are no direct equalities impacts arising from this report

Sustainability impact

- 8.1 There are no direct sustainability impacts arising from this report.

Consultation and engagement

- 9.1 Parents, Elected Members, the Scottish Government and various other interested parties have been kept apprised of all developments throughout.

Background reading/external references

- 10.1 None.

Andrew Kerr

Chief Executive

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Links

Coalition pledges

Council outcomes

**Single Outcome
Agreement**

Appendices