

TERMINATION OF DESIGN AND BUILD CONTRACT WITH ECO-MODULAR BUILDINGS LTD FOR ST JOHN HENRY NEWMAN CATHOLIC PRIMARY SCHOOL
Cllr Lynne Ayres, Cabinet Member for Education, Skills and Children’s Services
June 2023
Deadline date: 30 June 2023

Cabinet portfolio holder:	Cllr Lynne Ayres, Cabinet Member for Education, Skills and Children’s Services
Responsible Director:	Alison Bennett, Interim Executive Director Children’s Services
Is this a Key Decision?	YES If yes has it been included on the Forward Plan: YES Unique Key decision Reference from Forward Plan: KEY/19JUNE23/05
Is this decision eligible for call-in?	YES
Does this Public report have any annex that contains exempt information?	NO

RECOMMENDATIONS	
The Cabinet Member is recommended to:	
<ol style="list-style-type: none"> 1. Authorise the termination of the contract with Eco-Modular Buildings Ltd relating to the design and build associated with St John Henry Newman Catholic Primary School, for the reasons set out in this report and with effect from the date of the decision. 2. Authorise the Director of Legal and Governance to take any necessary steps to facilitate the decision in recommendation 1 including enter into any legal documentation on behalf of the Council. 	

1. PURPOSE OF THIS REPORT

1.1 This report is for Cllr Ayres to consider exercising delegated authority under paragraph 3.4.8 of Part 3 of the constitution in accordance with the terms of their portfolio.

2. TIMESCALES

Is this a Major Policy Item/Statutory Plan?	NO	If yes, date for Cabinet meeting	N/A
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3. BACKGROUND AND KEY ISSUES

- 3.1 This report seeks the Cabinet Member's approval to the recommendations to enable the design and build contract with Eco-Modular Buildings Ltd to be terminated.
- 3.2 Eco-Modular Buildings Ltd were appointed via the DfE Modern Methods of Construction Framework (MMC1) to design and build a new three form entry primary school on the Hampton East development in Peterborough. The MMC1 Framework is the presumed route for DfE funded school build projects and was launched in January 2020. It was procured under the Open Procedure of the Public Contracts Regulations 2015 (the "Regulations") and the Council is required to use the Framework as a condition for the external funding to be provided. The Framework structure is divided into two lots. Lot 1 for projects which are more than 6000m² and Lot 2 for smaller projects which are less than 6000m². The St John Henry Newman school project was allocated a Lot 2 contractor – Eco-Modular Buildings Ltd. Projects are allocated to contractors via a performance-based allocation mechanism. The benefit of this is a much-reduced time and cost associated with the procurement and construction period. The project adhered to the established DfE procedures and utilised the standard suite of documents for procurement. The contract was awarded on 1 September 2021, under CMDN [JUL20/CMDN/09](#)
- 3.3 St John Henry Newman Catholic Primary School opened in September 2022. At capacity, the school will accommodate 630 primary age children and 26 nursery places and is located on Aqua Drive.
- 3.4 The Council entered into a JCT Design and Build Contract on 1 September 2021 for the delivery of the works with Eco-Modular Buildings Ltd. The site and buildings were handed over in August 2022 and entered into the 12-month defect liability period, which expires in August 2023.
- 3.5 The budget for the Council's contribution of 10% of the capital cost of the project was allocated in the Medium-Term Financial Strategy (MTFS). The costs will be covered by Section 106 monies relating to the Hampton development.
- 3.6 The Council were notified by the DfE on 12 April 2023 that Eco-Modular Buildings Ltd and their holding company Rawson Brook Group Holding Ltd had appointed administrators, this was formally approved by the filing of the relevant forms at Companies House. The business and assets (but not the contracts) have been sold to Spatial Initiative Ltd (Spatial Initiative) and the majority of the workforce have transferred, under TUPE regulations, to Spatial Initiative also.
- 3.7 Under the terms of the design and build contract between the Council and Eco-Modular Buildings Limited, the Council is permitted to serve a notice of termination upon a company becoming insolvent, this includes a company entering administration.
- 3.8 The school building and site have been open and operational since September 2022. The school currently has 82 children on roll across 5 year groups and 49 on roll at the nursery.

- 3.9 Prior to the company entering administration, Eco-Modular were working with the school and the Council on resolving an agreed list of snags and defects relating to internal and external areas on the school site. These would have been resolved by the contractor in readiness for the expiry of the 12-month defect period in August 2023. The contract allows the Council to appoint a third party to undertake the remaining defective works.
- 3.10 In order to resolve the remaining snags and defects and access the remaining budget allocated for the final retention payment to the contractor upon resolution of the snags and defects, the Cabinet Member is recommended to authorise the contract termination.
- 3.11 Upon termination, the Council will appoint a contractor to resolve the snags and defects at the school site.

4. CORPORATE PRIORITIES

4.1 The recommendation links to the following corporate priority:

1. Prevention, Independence & Resilience
 - Educations and Skills for All

The termination of the Council's contract with Eco-Modular Buildings Ltd will not have a carbon impact.

5. CONSULTATION

- 5.1 Consultation has been undertaken with:
- Roman Catholic Diocese of East Anglia
 - Legal
 - Education Capital Programme Board members

6. ANTICIPATED OUTCOMES OR IMPACT

6.1 The design and build contract with Eco-Modular Buildings Ltd is terminated. The retention monies can be utilised to resolve the remaining snags and defects at the school site.

7. REASON FOR THE RECOMMENDATION

- 7.1
- To enable the Council to commission contractors to resolve the remaining snags and defects at the school site
 - Remove the contractual relationship and utilise the retention monies to resolve remaining snags and defects at the site

8. ALTERNATIVE OPTIONS CONSIDERED

8.1 Do nothing – This is not an option as termination will remove the contractual relationship and enable the Council to utilise the contract retention monies to resolve remaining snags and defects at the school site.

9. IMPLICATIONS

Financial Implications

9.1 The Council is holding retention monies of £144,974 relating to this contract which can be used to resolve the remaining snags and defects.

Legal Implications

- 9.2 The contract was awarded under the DfE MMC1 Framework which was procured under the Open Procedure of the Public Contracts Regulations 2015. The Council was permitted to use the framework. The Council entered into the agreement pursuant to its powers contained in section 2 of the Local Government Act 2000, section 14 of the Education Act 1996, section 22 of the Schools Standards and Framework Act 1998 and section 111 of the Local Government Act 1972 in order to enable investment in certain educational services and facilities.

The Council is permitted to terminate the contract as set out in this report and a formal termination notice will be served to the administrators of the company.

Equalities Implications

- 9.3 None.

10. DECLARATIONS / CONFLICTS OF INTEREST & DISPENSATIONS GRANTED

- 10.1 None.

11. BACKGROUND DOCUMENTS

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985) and The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

- 11.1 [CMDN St John Henry Newman RC Primary Project](#)

12. APPENDICES

- 12.1 None.