



**CHILDREN AND FAMILIES OVERVIEW AND SCRUTINY COMMITTEE**  
**22 JANUARY 2019**

**SPECIAL EDUCATIONAL NEEDS AND DISABILITIES PROVISION -**  
**HIGH NEEDS BLOCK DEVELOPMENT PLAN**

**REPORT OF THE DIRECTOR OF CHILDREN AND FAMILY SERVICES**

**Purpose of the Report**

1. The purpose of this report is to set out the High Needs Block Development Plan to develop local Special Educational Needs and Disabilities (SEND) provision, and to seek the views of the Committee on this, as part of the consultation process agreed by the Cabinet at its meeting on 18 December 2018.

**Policy Framework and Previous Decisions**

2. The proposals support the Council's SEND Strategy to develop sufficient high-quality SEND provision across Leicestershire and to address the significant overspend which has arisen due to the failure of national funding formulae to meet local needs and greatly increasing demand.
3. In December 2017 the County Council approved the Strategic Plan 2018 - 2022 and the Single Outcomes Framework. These outline the Council's long-term vision for Leicestershire and are underpinned by other key policies and strategies, including the Medium Term Financial Strategy (MTFS) (reviewed annually) and the Council's Transformation Programme.
4. The Children and Families Act 2014 introduced a number of new duties for local authorities and Clinical Commissioning Groups (CCGs). The County Council's SEND Strategy 2017-2020, agreed by the Cabinet on 10<sup>th</sup> April 2018, outlines these responsibilities and sets out how the Council and its CCG partners will work together to meet these.
5. In March 2017 the Cabinet received a report on the proposed responses to the second stage of consultation issued by the Department for Education (DfE) on the implementation of the National Funding Formula for Schools and the introduction of a formulaic basis for the distribution of the High Needs Block of the Dedicated Schools Grant in 2018/19. At that time, the Cabinet expressed concern about the low levels of High Needs funding in the Dedicated Schools Grant.

6. The financial position of the Council is challenging. To balance the budget, strong financial control plans will be essential. The High Needs Block Development Plan savings are in addition to those contained within the MTFS and will support the delivery of savings by investing in local provision to accommodate current and future demand.
7. At its meeting on 18 December 2018, the Cabinet noted the current overspend and forecast deficit for the High Needs Block budget and agreed that the Director of Children and Family Services be authorised to consult on the High Needs Block Development Plan, specifically the development of Special Educational Needs and Disabilities provision. A further report will be submitted to the Cabinet in early summer 2019 to advise of the outcome of the consultation and seek agreement on how the proposals should be progressed.

### **Background**

8. In September 2014 the Children and Families Act 2014 came into force. Part 3 of the Act sets out the duties required to be met by local authorities and other partners for children and young people in England with Special Educational Needs and Disabilities (SEND). Local authorities have legal duties to identify and assess the special educational needs of children and young people for whom they are responsible. Local authorities become responsible for a child or young person in their area when they become aware that the child or young person has or may have SEN.
9. High Needs funding provides the funding for support packages for an individual with SEN in a range of settings, whilst avoiding perverse incentives to over identify high needs pupils and students. It is also intended to support good quality alternative provision for pupils who cannot receive their education in schools. The High Needs funding system supports provision for pupils and students with SEND from their birth to 25 years.
10. The High Needs Block includes funding for;
  - Placements for children and young people with SEND (£57.4m)
  - Specialist Teaching Services (£2.5m)
  - Secondary Education Inclusion Partnerships – supporting secondary aged pupils excluded, or at risk of exclusion, from school (£2.1m)
  - Oakfield – primary Pupil Referral Unit (£1m)
  - Children and young people unable to access school because of medical needs (£0.6m).
11. The High Needs Block part of the Dedicated Schools Grant (DSG) has overspent and has been funded from DSG reserves built up over a number of years. For 2018/19 there are insufficient reserves to offset the overspend and an overall DSG deficit is forecast. Under the grant conditions for DSG, the County Council may carry forward a deficit to the following year's funding with the approval of the Schools' Forum. Should this not be approved, it has the right to apply to the Secretary of State for permission to transfer money between funding blocks (this has not been considered in Leicestershire to

date). The Leicestershire Schools' Forum approved the carry forward of a 2018/19 deficit on 26 November 2018, and annual approval will be required through the proposed Development Plan.

### **National Situation**

12. Nationally, there are growing concerns about the levels of funding within the High Needs Block;
  - The Association of Directors of Children's Services (ADCS) undertook a survey of financial pressures in 2016/17. It reported that of 85 local authorities only 17 reported spending was in line with the grant and that the remaining 68 authorities had an aggregated overspend of £139.5m.
  - Two local authorities are currently subject to Judicial Review proceedings over savings planned to reduce High Needs expenditure. The High Court has backed campaigners' objections to planned savings of £5m over three years in Bristol for failures in relation to consultation requirements and a failure to properly address the Public Sector Equality Duty. Surrey County Council plans savings of £21m and Hackney LBC £5m, and the decisions made by these two councils are the subject of Judicial Review proceedings with judgements expected later this year. There is also a SEND family group who are using crowd funding to bring an action against the government, arguing that the Secretary of State for Education and the Chancellor of the Exchequer are failing to discharge their legal duties relating to the amount of funding allocated to SEND provision in England.
  
13. The National Association of Head Teachers (NAHT) reports;
  - A shift of 5% of pupils from mainstream to specialist provision between 2010 and 2017. Mainstream curriculum reform is stated to be posing significant challenges to pupils with SEND.
  - An increase of 17% in SEND pupils attending independent schools between 2010 and 2017.
  - An increase of 46% in the number of pupils educated in alternative provision or Pupil Referral Units (PRU) between 2013/14 and 2017.
  - An increase of 151% in pupils being home-educated or educated outside a school setting.
  - A 27% increase in appeals to the First Tier Tribunal (SEND) between 2015/16 and 2017/18, with an 81% increase in the number heard. Almost 80% of the outcomes of the appeals were in favour of the appellant (i.e. the child/ parent).
  
14. There are clear indications that the DfE is aware of the growing financial pressures in this area but to date have offered no solution. The Education Select Committee, on 23<sup>rd</sup> October 2018, heard evidence from people across

the SEND system about the challenges since the SEND Reforms were brought in in 2014.

### **Leicestershire Position**

15. The Children and Family Services departmental High Needs Block DSG Budget for 2017/18 was £61m and overspent by £1.1m. At the end of the first six months of this financial year, the projected overspend on the High Needs Block was £3.6m. The DSG reserve is £2.2m, resulting in an overall deficit of £1.4m.
16. The High Needs Block has been under pressure in recent years and has moved from a position of underspend in 2013/14 to a forecast overspend of £3.6m in the current financial year.
17. To date overspends have been met from funding held in the DSG Reserve but this is now used up and as there is no funding in addition to the grant, it is essential to realign expenditure to the resources available.

<b>Financial Year</b>	<b>Grant Allocation £m</b>	<b>(Under) / Overspend £m</b>
2013/14	49.585	(2.846)
2014/15	52.337	(1.447)
2015/16	52.910	4.431
2016/17	53.950	2.541
2017/18	66.021	1.468
2018/19 Est	65.179	3.623

(Changes in the annual level of grant relate to changes effected by the DfE in the structure of the grant).

18. The projected overspend is as a result of a number of factors; an increase in Education Health and Care Plans (EHCPs), increases in the number of young people over the age of 16 with an EHCP (for whom the local authority must make provision, potentially up until age 25), and an increase in the number of children accessing independent provision.

### **Growth in demand for Education Health and Care Plans**

19. An EHCP is a legal document setting out a child or young person's special educational, health and social care needs and the extra help that is required to meet those needs to support them. EHCPs are drawn up by the County Council after an EHC needs assessment has been undertaken. Over the last four years the number of EHCPs has risen significantly and in particular the number of post-16 EHCPs. This increase is due to the change introduced in the SEN Code of Practice 2014 that extended the responsibility of local authorities to young people with SEND up to the age of 25 years.

	2014/5	2015/16	2016/17	2017/18
<b>Total EHCPs</b>	2,770	2,995	3,350	3,703
<b>Of which EHCPs post-16</b>	429	633	849	1,017

### **National Funding Allocation Formulae**

20. The overspend reflects system-wide issues as to how the funding is determined. Whilst the DSG allocation moved to a formulaic basis in 2018/19 and now includes proxy indicators of SEND within the population, a large element of the grant remains fixed on historic spend and includes £4m of funding protection. The gap between the formulaic allocation and Leicestershire spend is increasing, and there is no indication how long the grant protection will remain, making this a future financial risk.
21. The financial performance of the High Needs Block is affected by both the level of grant and the level of expenditure. The High Needs Funding Formula allocates funding against a range of national indicators chosen because of their correlation to the incidence of SEND in the population. Analysis of the DfE's published High Needs benchmarking tool shows that Leicestershire is below the statistical neighbour average for these characteristics, hence the low level of formula funding, although the percentage of young people with EHCPs is similar.
22. A significant issue in the funding formulae is the use of the 2 to 18 year old population within the financial settlement which supports services for the 0 to 25 years population. DfE headlines suggest that local authorities will see an increase in funding, but comparing the per capita funding for the 0 to 25 population shows a decrease in funding per head between 2018/19 and 2019/20 which equates to £5.1m for Leicestershire.

### **SEND Provision - Current and Future Demand**

23. The total projected increase in provision demand over the next 5 years is 22%. On this basis, without any further transfer between the Schools and High Needs Blocks, and assuming a cash-flat DSG settlement, an increase in SEN numbers and the continuation of current provision use, the expected financial position to 2022/23 is a £44m cumulative deficit. This is clearly financially unsustainable.
24. SEND (home to school) transport is funded and managed by the Environment and Transport Department and does not affect the High Needs Block budget or form part of this Development Plan. However, it is worth noting that SEND transport is projected to overspend by £0.5m this year and growth of £1m is required next year.
25. The table below illustrates the previous and expected growth in demand for SEND placements:

Forecast growth	16/17	17/18	18/19	19/20	20/21	21/22	22/23
Leics. Special Schools, Units and Education Resource Provision	1,483	1,562	1,578	1,659	1,693	1,737	1,751
Independent Provision	336	341	387	428	450	472	493
16+ Further Education	173	190	190	200	215	230	245
16+ Specialist FE	66	74	91	109	127	145	163
<b>Total</b>	<b>2,058</b>	<b>2,167</b>	<b>2,246</b>	<b>2,396</b>	<b>2,485</b>	<b>2,584</b>	<b>2,652</b>

### Current Provision

26. Leicestershire has a range of high quality provision for children with special educational needs and disabilities:-
- Mainstream Primary and Secondary Schools: All mainstream schools provide a 'core' offer of support to children and additional support to children with Special Educational Needs and Disabilities.
  - Leicestershire Special Schools: There are five area special schools in Leicestershire, all of which have an Ofsted rating of either Good or Outstanding. They support pupils with significant learning difficulties and other complex needs from age 2 or 3 up to 19 years. As well as the area special schools, Maplewell Hall Special School caters for pupils aged 11 to 19 years with moderate learning difficulties and has provision for secondary-aged pupils with higher functioning Autism Spectrum Disorder.
  - Units and Resource Bases: There is a variety of additional provision across the county delivered in mainstream schools over and above the core offer. These include primary and secondary provision and include bases for Speech and Language, Autism, Moderate Learning Difficulties and Hearing Impairments.
  - Specialist Nurseries: There are three nurseries, in Wigston, Burbage and Loughborough, providing support for children with SEND in early years, including those with social, emotional and mental health (SEMH) needs.
  - Post-16: The five local Further Education (FE) colleges and two Independent Specialist colleges in the county have developed their curriculum offer to meet the needs of SEND learners.
27. Whilst the above provision is of high quality and relatively well spread across the county, analysis of current and future demand shows that there are two key issues. Firstly the requirement to increase the provision for children with communication and interaction difficulties (primarily autism) and children with social, emotional and mental health issues to meet the current and projected demands. Secondly the need to ensure provision is of high quality and locally

placed so as to meet the needs of children and young people with SEN. Furthermore this should make the most efficient use of available resources.

### **Proposals in the High Needs Development Plan**

28. The High Needs Development Plan is intended to ensure the better use of available resources in the High Needs Block. The significant capital investment proposed will enable the development of new provision and expansion of existing provision in mainstream or special schools. The fundamental driver for change will be supporting children to be educated locally and developing an inclusive approach within educational settings that meet their assessed needs in a cost-effective manner.
29. Over the next four years it is proposed that SEND provision in Leicestershire will be increased significantly. New provision (detailed in the table below) will be put in place across the county, enabling children to access provision locally to meet their needs.

<b>Provision</b>	<b>Sept 2019</b>	<b>Sept 2020</b>	<b>Sept 2022/23</b>	<b>Total places</b>
SEMH Bases	5 x 10 place units	5 x 10 place units		100
SEMH Special School	50 places	50 places		100
Communication and Interaction Bases	3 x 10 place units	2 x 10 place units		50
Specialist FE	1 x 30 place	1 x 30 place		60
Communication and Interaction Difficulties Special School		80 place school		80
Additional Area Special School or expansion of existing Special Schools			125 places (if required)	125
Expansion of Special Schools/Units/Oakfield PRU	65 Special School Places 25 increased Autism Spectrum Disorder Unit Places (Sept. 2018 onwards)	48		138
	<b>Total</b>		<b>653</b>	

30. Initial discussions with schools (Academies and Maintained) across Leicestershire to support the delivery of the Development Plan have been very

well received. The Plan has also been considered and welcomed by the Schools' Forum at its meeting on 26 November 2018.

31. In order to ensure that the anticipated timescales for the forecasted growth in demand for placements is met, some initial work on the development of the new provisions has commenced. For example, expressions of interest have been invited from schools across Leicestershire to gauge the levels of interest in establishing the new units, and it is intended that the Council will commence work within the coming month on the feasibility of establishing a new special school, under the DfE process for establishing new schools (known as the 'free school presumption').
32. This preparatory work alongside the views of stakeholders arising from the consultation, particularly in relation to how the new provisions should look and function on a day-to-day basis, will help guide the Development Plan proposals as they progress. It should be emphasised that a final decision on the development of the new provisions will not be taken until after the consultation has concluded and the Cabinet has considered the findings and the outcome of any feasibility and other preparatory work necessary to enable the plan to be delivered.

### **Consultation**

33. The consultation helps to meet the statutory duty placed on the local authority under the Children and Families Act 2014, which requires that the local authority must keep under review SEND sufficiency and provision within its area, and in exercising this responsibility consult with a number of people and groups. The local authority is also keen to hear views on the plans from all stakeholders before a decision is taken around the development of new provision.
34. The following groups form the target audience for this consultation –
  - Children and young people in Leicestershire with SEND and their parents/carers;
  - Governing bodies of maintained schools, including special schools and maintained nursery schools;
  - Governing bodies and trustees of academies.
  - Governing bodies, proprietors or principals of post-16 institutions;
  - Providers of relevant Early Years education;
  - Governing bodies, proprietors or principals of other schools and post-16 institutions in England and Wales that is likely to be attended by children and young people from Leicestershire.



- The Schools' Forum (comprising representatives from schools and academies and some non-school organisations, such as the respective Diocesan authorities and 16-19 education providers)
  - The Youth Offending Service
  - Other agencies or organisations providing support for children and young people with SEND, for example health and voluntary services.
  - Professional organisations representing particular areas of SEND need.
35. The Local Authority will also have regard to the relevant Joint Strategic Needs Assessment and Health and Wellbeing Strategy as part of the consultation and developments.
36. The consultation, which commenced on 7 January until 31 March 2019, is being undertaken through a range of channels including online and direct contact with service users and their families, educational establishments and other interested parties.
37. The consultation seeks a view on the general principle of establishing local provision and more particularly how this should work alongside other providers to ensure a high quality and inclusive education is provided to all pupils having SEND needs. The consultation document is attached as Appendix A to this report.
38. The outcomes of the consultation will help inform the final model, which will be presented to the Cabinet for approval in the early summer of 2019.

### **Resource Implications**

39. In order to deliver the change required to implement the High Needs Block Development Plan, revenue investment will need to be made alongside the capital investment. The total projected cost of the revenue investment is £3.1m over four years (2018/19 to 2021/22). It is proposed that these costs will be built into the High Needs Block over spend and will be fully recovered in year five. The current estimate of the capital requirement is approximately £32 million overall, £10m of which relates to a new area special school if required. The funding strategy for the programme consists of a mixture of funding sources including Basic Need Grant, a bid to the DfE for funding for a free school, capital receipts and local authority capital.
40. In Leicestershire the Schools Budget, which includes the High Needs Block, is set at zero, so expenditure is set at the level of grant received. The High Needs Block has been under financial pressure in recent years and moved from an underspend of £2.8m in 2013/14 to a projected overspend of £3.6m in 2018/19.
41. To date overspends have been met from funding held in the Dedicated Schools Grant Reserve, but this is now fully expended and, with no funding in addition to the grant, it is necessary to realign expenditure to the resources available. With

no action, the cumulative overspend on the grant in 2022/23 is estimated to be over £40m. The overspend will be recovered from future years' grant with the approval of the Schools' Forum; it is estimated that expenditure aligns with the level of grant in 2021/22 with the deficit fully recovered by 2023/24. It will be necessary to submit an annual report to the DfE on the actions taken to ensure expenditure does not exceed the allocated grant.

42. The finances associated with this development plan are reflected in the MTFs approved by the Cabinet on 18 December 2018. The financial position will be kept under review and may need to be updated to reflect the outcome of the consultation process.

### **Timetable for Decisions**

43. The results of the consultation, including comments made by this Committee, will be presented to the Cabinet in early summer 2019, with recommendations on the way forward.
44. Subject to the above it is expected that the first new SEND provisions will open in September 2019, further details will be provided to members about this as the arrangements take shape.

### **Conclusions**

45. This report sets out the proposals for change to help deal with the increasing demand for SEND places and the pressure this is placing on the High Needs Block budget.
46. For the development of the new provisions proposed to be a success it is important that they are well received by schools, parents and others, and are developed and function in a way that meets their expectations. The consultation now underway is seen as critical to achieving this outcome.
47. The Committee is asked to comment on the proposals in this report.

### **Background Papers**

Leicestershire County Council Special Educational Needs and Disability Strategy 2017-2020.

<http://politics.leics.gov.uk/documents/s136003/Appendix%20A%20-%20Leicestershire%20SEND%20Strategy%202017-20.pdf>

Report to the Cabinet 10 March 2017 - 2018/19 School and High Needs Funding Proposals.

<http://politics.leics.gov.uk/ieListDocuments.aspx?CId=135&MId=4859>

Report to Cabinet 18 December 2019 – SEND Provision- High Needs Development Plan

<http://politics.leics.gov.uk/documents/s143211/SEND%20Strategy%20Report.pdf>

Report to the Schools' Forum on 26 November 2018 – High Needs Block Recovery Plan

<http://politics.leics.gov.uk/documents/s142495/High%20Needs%20Block%20Recovery%20Planv3.pdf>

### **Circulation under the Local Issues Alert Procedure**

48. None.

### **Relevant Impact Assessments**

#### **Equality and Human Rights Implications**

49. The purpose of the Development Plan is to ensure equality and equity of opportunity for all Leicestershire children and young people irrespective of their need or locality.
50. In keeping with the Public Sector Equality Duty, to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations between people who share a protected characteristic and those who do not, a full Equality and Human Rights Impact Assessment for the proposed change has been completed to help address any necessary adaptation to the Development Plan. This is attached as Appendix B. At this stage no immediate matters of concern have emerged however the proposed consultation will help identify where revision to the Plan might be needed to take account of the impact to individual families/pupils, and to ensure continued equality of opportunity for those affected.
51. A more detailed EHRIA will be undertaken for each new provision as the particular development moves through the planning stages, and adjustments made accordingly.

#### **Risk Assessment**

52. The risks to the Council arising from the proposals set out in this report will be kept under regular review by the Children and Family Services Department and reported to Members where necessary.

### **Appendices**

Appendix A – Consultation document

Appendix B – Equality and Human Rights Impact Assessment

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