

**CABINET – 29 MARCH 2019****SPECIAL EDUCATIONAL NEEDS AND DISABILITIES PROVISION –
PROGRESS WITH DELIVERY OF THE HIGH NEEDS BLOCK
DEVELOPMENT PLAN****REPORT OF THE DIRECTOR OF CHILDREN AND FAMILY SERVICES****PART A****Purpose of the Report**

1. The purpose of this report is to advise the Cabinet of progress with the delivery of the High Needs Block (HNB) Development Plan to develop local Special Educational Needs and Disabilities provision (SEND).
2. Specifically, the report outlines the feedback received to date from the consultation and the expressions of interest from maintained schools and academies for the development of new places for pupils with SEND and seeks agreement for the Director to proceed with the statutory approvals process to progress these further.

Recommendations

3. It is recommended that:
 - (a) The progress with the High Needs Block Development Plan is noted, in particular -
 - (i) The encouraging response from maintained schools and academies to the call for expressions of interest to develop new SEND places, which shows a real commitment to help deliver change in partnership with the County Council;
 - (ii) That the responses to date to the consultation indicate a high level of support for the proposals for to develop new SEND provision;
 - (iii) The success of the bid to the Department for Education for targeted capital funding to establish a new build 50-place Free School for pupils with Social, Emotional and Mental Health school on the Iveshead campus in Shepshed;

- (b) The Director of Children and Family Services be authorised to issue Statutory Notices for the development of additional SEND places in the ten maintained schools identified in the Appendix to this report, and to subsequently determine the Notices where no significant objections are received;
- (c) The need for Department for Education (Regional Schools Commissioner) to give consent for “significant change” to the eleven academies identified in the Appendix to this report to develop additional SEND places be noted;
- (d) A further report be submitted to the Cabinet on 24 May 2019 on the outcome of the consultation exercise and, if necessary, to seek determination of the statutory notices.

Reasons for Recommendations

- 4. The HNB Development Plan proposals would provide the basis for planning, commissioning, and delivering SEND services, improving the quality and sufficiency of provision and addressing the overspend. They would ensure that the growth in demand for places could be met and that best use is made of the available resources.
- 5. The consultation exercise is ongoing (it closes on 31 March), but in order to enable the proposed changes to come into effect at the start of the 2019/20 school year in September 2019 the Cabinet’s agreement is being sought to issue the necessary Statutory Notices now so that the prescribed process can start. Once the consultation exercise is completed a further report will be submitted to the Cabinet.
- 6. Statutory Notices are required to enable the development of SEND places for maintained schools, and the consent of the DfE through the ‘significant change’ process for the development of SEND places within academies.
- 7. The full consultation responses and any objections to the Statutory Notices need to be considered by the Cabinet prior to final approval of the proposals.

Timetable for Decisions (including Scrutiny)

- 8. Subject to approval by the Cabinet, it is intended to issue Statutory Notices for changes to the ten maintained schools in early April.
- 9. The results of the current public consultation on the development of the new SEND provisions, which is due to end on 31 March 2019, will be reported to the Cabinet on 24 May 2019 for consideration.
- 10. The outcome of the Statutory Notices will be determined by the Director of Children and Family Services following consultation with the Cabinet Lead Member at the end of May unless there are significant objections in relation to

any particular proposals in which case the matter will be referred to the Cabinet meeting of 24 May 2019 for further consideration.

11. The Children and Families Overview and Scrutiny Committee considered the HNB Development Plan proposals at its meeting of 22 January 2019 and will receive a further report on 4 June 2019.
12. The Schools' Forum discussed the proposed HNB Development Plan at its meetings on 26 November 2018 and 12 February 2019 and will consider further reports as necessary.

Policy Framework and Previous Decisions

13. 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 April 2018, outlines these responsibilities and sets out how the Council and its CCG partners will work together to meet these.
14. The Council's Medium Term Financial Strategy agreed on 22 February 2019, includes significant savings to be made from 2019/20 to 2022/23. To balance the budget, strong financial control plans and discipline will be essential. The HNB 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.
15. The Cabinet considered the proposals for the HNB Development Plan on 18 December 2018 and, noting the overspend and forecast deficit for the High Needs Block budget, authorised the Director of Children and Family Services to commence consultation on the development of Special Educational Needs and Disabilities provision.

Resource Implications

16. In order to deliver the change required to implement the HNB 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 4 years (2018/19 to 2022/23). These costs will be built into the HNB overspend and will be fully recovered in Year 5 (2022/23). The MTFs makes provision for £22.27m of capital investment, this excludes the potential new area special school estimated to be Circa £10m which is noted as a future development if required. The overall capital requirement includes provision for the new Social Emotional and Mental Health (SEMH) free school¹ to be funded directly by the DfE, the cost of which is anticipated to be circa £8m.

¹ Free schools are non-profit-making, state-funded academy schools which are free to attend but which are mostly independent of the local authority

17. The finances associated with this development plan are reflected in the MTFS. These may need to be updated to reflect the more detailed work to follow to determine the actual cost of each new SEND provision.
18. Progressing the 'free school presumption process' to determine who will run the new DfE-funded SEMH school will have a cost to the County Council but this can be met from existing resources within the School Organisation Service.
19. The High Needs Block is part of the Dedicated Schools Grant (DSG) which is paid to local authorities in support of Schools Budgets. As a result of additional government funding announced in July 2018 and the carry-forward of unused funding to support growth in mainstream schools, an overall deficit on the DSG reserve for 2018/19 will be avoided, but this is not expected to be the position for the future. A DSG deficit can only be carried forward with the approval of the Schools Forum and without such approval future overspends would fall to the Local Authority to make up.
20. Further information on the financial background to the HNB Development Plan and potential funding requirements for new SEND provision is given in Part B of this report, below.
21. The Director of Corporate Resources and the Director of Law and Governance have been consulted on the content of this report.

Circulation under the Local Issues Alert Procedure

22. As this is a matter which will affect most areas of the County, a copy of the report is being circulated to all members of the County Council.

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PART B

Background

23. 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.
24. High Needs funding provides the funding for support packages for an individual with special educational needs (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 SEN and disabilities (SEND), from their birth to 25 years.
25. The Children and Family Services High Needs Block DSG Budget for 2017/18 was £61m and overspent by £1.1m. In 2018/19 the SEN placement budget is overspent by circa £4m, however additional High Needs funding of £1.4m in December 2018 reduces the overall High Needs overspend to £2.4m. The DSG reserve is expected to remain in overall surplus by £1m for 2018/19, this is the result of an underspend in the Schools Block from school growth not required in 2018/19 which will be retained to fund future year costs.
26. The projected High Needs overspend arises 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 Council must make provision, potentially up until age 25), and an increase in the number of children accessing independent provision because there are insufficient local authority units.

SEND Provision - Current and Future Demand

27. The total projected increase in provision demand (excluding those pupils expected to attend mainstream schools) over the five years 2018 to 2023 is expected to exceed 22%; from 2,167 pupils having EHCPs in 2019/20 to 2,652 by 2022/23.
28. There is currently in Leicestershire a range of high quality provision for children with special educational needs and disabilities. This includes the core offer of support to children and additional support to children with SEND attending mainstream schools; in total there are 6 Special Schools, 14 SEN Units and Resource bases located within mainstream schools, and 3 specialist nurseries.

There are also 5 local Further Education (FE) Colleges and two Independent Specialist Colleges in the County providing support for post-16 SEND learners.

29. 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 -
 - a) The requirement to increase the provision for children with communication and interaction difficulties (primarily autism) and those with SEMH issues to meet the current and projected demands.
 - b) 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 and make the most efficient use of available resources.

Proposals in the High Needs Block Development Plan

30. The HNB 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.

Expressions of Interest Process

31. Over the next four years it is proposed that SEND provision in Leicestershire will be increased significantly. With this in mind, expressions of interest (Eoi) were invited from all Leicestershire maintained schools and academies between 2 October and 23 November 2018 with a view to establishing up to 5 new Communication and Interaction (C&I) and 10 SEMH unit/resource bases across the County.
32. The Eoi process comprised two parts; firstly a detailed written application setting out the vision, capacity, experience etc. being submitted by the school (the 'proposer'), and secondly a visit to each school undertaken by C&FS officers, to provide further understanding and assess in particular the school's approach to providing an inclusive education for all learners.
33. The response shown by schools to the call for Expressions of Interest has been extremely encouraging, showing a real and genuine commitment to help expand SEND provision. By the closing date of 23 November, 30 applications had been received with preference to establish the following Units/Resource Bases:

Type of Provision	Type of School	Academy/Maintained	No of Applications
C&I	Secondary	Academy	6
SEMH	Secondary	Academy	3
SEMH	Secondary	Maintained	1
SEMH	Secondary	Leicestershire Inclusion Partnerships	2
C&I	Primary	Maintained	3
C&I	Primary	Academy	6
SEMH	Primary	Maintained	4
SEMH	Primary	Academy	5

Assessment of Applications

34. The applications have been assessed by a joint panel comprising senior officers within the Children and Family Services and Corporate Resources Department, and head teacher representatives from the primary secondary and special school sectors, as well as a health representative. Each applicant was given an overall mark out of 40 available based on a number of factors including;

- Evidence of an understanding and commitment to the vision to establish new units/resource provision for pupils with SEMH needs and C&I primarily Autism Spectrum Disorder (ASD) needs.
- That the proposals offer good potential for the establishment of new units, and generally meet the expectations set out within the application process (and so are worthy of further consideration).
- Evidence that the proposer can develop and successfully deliver provision for pupils with SEMH and C&I (primarily ASD) needs with Local Authority or other agency support in certain areas.
- The school's capacity and its inclusive practices (for supporting vulnerable pupils) to deliver units for pupils with SEMH and C&I (primarily ASD) needs in accordance with the Council's expectations set out within the application process.

35. Based on the assessments undertaken, 15 schools were considered appropriate for progression to develop the following resource bases;

Type of Provision	Type of School	Academy/Maintained	No of New Provsions	No of Places
C&I	Secondary	Academy	1	10
SEMH	Secondary	Academy	4	60
SEMH	Secondary	Maintained	1	0
C&I	Primary	Academy	1	12
C&I	Primary	Maintained	3	25
SEMH	Primary	Academy	4	40
SEMH	Primary	Maintained	1	10
TOTAL			15	157

The Appendix to this report provides further detail on the schools selected for the development of new resources bases, the expected opening date, number of places to be provided, and the statutory process to be followed to achieve their development.

36. The new provision will provide a generally good geographic spread across Leicestershire and should therefore in the longer-term also help to manage pressure in relation to school transport budgets, although pupil numbers will nevertheless continue to grow. It should be noted that there have been no successful bids for the North East (Melton) area and the Council is now seeking further discussion with the schools in this locality to explore the potential further.
37. In order to progress matters, mindful that certain of the new provisions are expected to open in September 2019, the schools identified in the Appendix have been contacted to advise of the intention to progress their proposals (subject to Cabinet approval at this meeting), the necessary statutory/DfE consents to follow, and planning approvals where necessary.

Expanding Capacity in Existing Special School and Units

38. As part of the HNB Development Plan discussions have also taken place with each of the Council's six special schools to assess their capacity to expand, as a result of which proposals are being progressed to add a further 125 places. This will enable for most of these schools the early addition of places in the new school year, however will require in some cases either the issue of a Statutory Notice by the Local Authority or (for those that are academies) approval of significant change by the DfE. Details of the schools to be expanded are given in the Appendix.

Statutory Process

Local authority maintained schools and existing special schools

39. The process for the addition of SEND provision to local authority maintained schools, or the expansion of existing local authority special schools is defined by the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 and requires the publication of a Statutory Notice where certain criteria are triggered.
40. The publication of a Statutory Notice and details of full proposals, as defined by Schedule 3 of the Regulations requires that:
 - a) The proposals must be published on the County Council's website.
 - b) The Local Authority must publish a notification of the proposals (including the address of the website where the proposals are published) in a local newspaper.

- c) The publication of the proposals on the website must contain a statement setting out how copies of the proposals may be obtained, how a person may object or comment on the proposals, and a date by which said objections or comments must be sent.
- d) Within one week of the publication of the proposals, a copy of the proposals and the above statement must be sent to:
 - The governing body of the schools forming part of the proposals.
 - The parents of every registered pupil at each school.
 - Any other body or person that the proposer thinks appropriate
- e) Within one week of receiving a request for a copy of the proposals the Local Authority must send a copy to the person requesting it.
- f) Following the publication of the Statutory Notice there is a four-week representation period for further comment or objection to the proposals.
- g) The Local Authority must take a decision on the implementation of the proposals within two months of the end of the representation period.

Academies

- 41. In the case of academies, these are required to seek the consent of the DfE (via the Regional Schools Commissioner) for 'significant change' where certain criteria are triggered. This process also requires the academy trust to undertake a short period of consultation before the submission of a business case to the DfE to set out their proposals for change, and their capacity, skills and resource/funding arrangements to successfully deliver this. This process should normally follow broadly similar timescales to that for statutory notices for maintained schools and is therefore expected to conclude before the end of the summer term (although remains subject to other DfE priorities at the time of the significant change application).

Bid for SEMH Free School

- 42. In the summer 2018, the DfE invited all local education authorities to bid for targeted capital funding to establish a special or alternative provision free school in their area. The deadline to submit a bid was 15 October 2018.
- 43. On 11 March the DfE confirmed that the County Council's bid to establish a new build 50-place SEMH school on the Iveshead campus in Shepshed had received conditional approval to proceed (subject to confirming the availability of the site and the Heads of Terms). This is a very pleasing outcome, and is in fact the only bid approved from those submitted in the East Midlands region.
- 44. The timescales for the development of the new school have yet to be confirmed but it is expected to bring circa £5m to £8m additional capital investment by the government for pupils with SEND having an EHCP. As the new school will be established as a Free School, the Council will be required to progress the presumption process to identify a suitable academy proposer to run the school

and this work will progress over the summer. The exact nature of the process the Council will follow is subject to further discussion with the DfE. It is expected that the final decision on a academy sponsor will be taken by the Regional Schools Commissioner on behalf of the Secretary of State, however this may require a further report to Cabinet in the early autumn to agree a shortlist of potential providers.

Consultation

45. In parallel with the work outlined within this report the Director of Children and Family Services has been conducting a formal consultation process in to seek the views of parents, schools and others having an interest in provision for SEND pupils. The consultation has sought views on how the new provisions to be developed should look, feel and operate alongside mainstream and/or special schools to ensure a high quality and inclusive education is provided to all pupils having SEND needs.
46. The consultation began on 7 January 2019 and is due to end on 31 March, the responses received online and through meetings with schools, parents and the public that have taken place, at the time of writing indicate a high level of support for the proposals.

Comments of the Children and Families Overview and Scrutiny Committee

47. On 22 January 2018 the Scrutiny Committee considered a report of the Director of Children and Family Services regarding the HNB Development Plan, as part of the agreed consultation process.
48. Members noted the significant increase in the demand for high needs placements and that parents had some choice in the provision that their child received. Wherever possible the Council would seek to include children with SEND in mainstream schools but the child's needs had to be met in accordance with their EHCP. The Committee was pleased to see that the HNB Development Plan sought to expand SEND facilities across the County, making it easier for parents/carers to access local provision.
49. The report detailing the results of the consultation will be provided to the Cabinet at its meeting on 24 May 2019 and a further report will be considered by the Scrutiny Committee on 4 June.

Conclusions

50. The response received from all schools for Expressions of Interest for the establishment of new units/resource bases and to expand existing special schools is extremely encouraging and demonstrates a real willingness to work in partnership to address the rising demand for SEND places. The action taken to develop the new provisions alongside other improvements planned within the HNB Development Plan - including developing the Council's approach to inclusion to enable mainstream schools to better support pupils with EHCPs, and reviewing processes and support for parents when pupils require an EHCP - will

enable a phased and sustainable growth model to be adopted to help meet the demand for SEND places.

Equality and Human Rights Implications

51. The purpose of the HNB Development Plan is to ensure equality and equity of opportunity for all Leicestershire children and young people irrespective of their need or locality.
52. 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. 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.
53. The EHRIA will be kept under review as the proposals for the new provision move through the planning and development stages, and adjustments made accordingly.

Risk Assessment

54. 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.

Background Papers

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

<https://www.leicestershire.gov.uk/sites/default/files/field/pdf/2019/1/9/Leicestershire-SEND-Strategy-2017-20.pdf>

Report to the Cabinet on 18 December 2019 – Special Educational Needs and Disability – High Needs Block Development Plan

<http://politics.leics.gov.uk/ieListDocuments.aspx?CId=135&MId=5793&Ver=4>

Report to the Children and Families Overview and Scrutiny Committee on 22 January 2018 and minutes of that meeting

<http://politics.leics.gov.uk/ieListDocuments.aspx?CId=1043&MId=5681>

Appendix

Summary of proposed new SEND provision

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