

**CABINET – 24 MAY 2019****SPECIAL EDUCATIONAL NEEDS AND DISABILITIES PROVISION –
RESULTS OF CONSULTATION ON THE DEVELOPMENT OF NEW
PROVISIONS (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 the outcome of the public consultation on the development of local Special Educational Needs and Disabilities (SEND) provision as part of the High Needs Block (HNB) Development Plan and the outcome of the publication of the Statutory Notice for the development of new provisions in maintained schools.
2. The report also seeks agreement for the Director to determine the Statutory Notice, and to agree a shortlist of potential academy trusts (proposers) to be recommended to the Regional Schools Commissioner for a decision on a preferred Trust to operate the new 80-place Communication and Interaction school in Barwell which is scheduled to open in September 2020.

Recommendations

3. It is recommended that:
 - (a) The online and written responses to the consultation, and feedback given through public meetings, in particular the high level of support received for the development of new Special Educational Needs and Disabilities provisions, be noted;
 - (b) That the Director of Children and Family Services be requested to take the views of the Children and Families Overview and Scrutiny Committee (due to meet on 4 June) into account in developing the provision;
 - (c) The fact that there have been no objections made to the Statutory Notice (published on 4 April 2019) setting out proposals for the development of new SEND provision in maintained schools be noted;
 - (d) That the Director of Children and Family Services, following consultation with the Cabinet Lead Member for Children, Families and Safer Communities, be authorised to agree a shortlist of potential academy trusts to be

recommended to the Department for Education (Regional Schools Commissioner) for a decision on a preferred Trust to operate the new 80-place Communication and Interaction school to open in Barwell in September 2020.

Reasons for Recommendations

4. The public consultation exercise closed on 31 March and has received a very positive response. Consideration of the responses received is helping to further guide the development of the new SEND provisions and provide assurance for the Council that the actions proposed are appropriate. The Children and Families Overview and Scrutiny Committee will receive a report on the proposals on 4 June.
5. Seeking expressions of interest from suitable academy proposers (sponsors) to operate the new Communication and Interaction school in Barwell, is in keeping with the requirements placed upon the Council by section 6A (the Free School Presumption) of the Education and Inspections Act 2006, as introduced by the Education Act 2011.
6. Authorising the Director to decide on the shortlist of potential academy sponsors to be recommended to the Regional Schools Commissioner, will enable an early decision to be taken, to ensure that the process for the new school remains on schedule for September 2020 opening.

Timetable for Decisions (including Scrutiny)

7. Subject to approval by the Cabinet, it is intended that, in the absence of any objections to the Statutory Notice, that they be determined by the Director of Children and Family Services following consultation with the Lead Cabinet Member at the end of May.
8. The Children and Families Overview and Scrutiny Committee will consider the results of the consultation at its meeting on 4 June 2019.
9. The shortlist of preferred academy sponsors for the new Communication and Interaction school, copies of each application, and the detailed evaluation undertaken by officers, and any accompanying reports will be forwarded in early July to the Department for Education (DfE) (Free School Presumption Team) to enable a decision to be taken by the Regional Schools Commissioner on behalf of the Secretary of State. It is hoped that the Commissioner will advise the Council of the decision before the start of the autumn term 2019, in order that early work with the selected academy sponsor on the opening arrangements for the new school can begin.

Policy Framework and Previous Decisions

10. The Children and Families Act 2014 introduced a number of new duties for local authorities and Clinical Commissioning Groups (CCGs). The 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.

11. On 18 December 2018 the Cabinet noted the overspend and forecast deficit for the High Needs Block budget and authorised the Director of Children and Family Services to commence consultation on the development of SEND provision.
12. 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.
13. On 29 March 2019 the Cabinet noted progress with the HNB Development Plan and authorised the Director of Children and Family Services to commence publication of the Statutory Notice to enable SEND developments in maintained schools and noted that developments in academies would be subject to consent of the Regional Schools Commissioner via the "significant change" process. It was noted that a further report would be submitted to the Cabinet in May.
14. The Education Act 2011 and subsequent DfE guidance sets out the process to be followed by local authorities to establish new schools ('Academy' is the legal term for state-funded schools that are independent of local authority control and are funded directly by the government).

Resource Implications

15. 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 school to be funded directly by the DfE, the cost of which is anticipated to be circa £8m.
16. The finances associated with this development plan are reflected in the MTFS and may need to be updated to reflect the more detailed work to follow to determine the actual cost of each new SEND provision.
17. The 'free school presumption process' to determine who will run the new Communication and Interaction school will have a cost to the County Council but this can be met from existing resources within the School Organisation Service.
18. 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 December 2018 and the carry-forward of

unused funding to support growth in mainstream schools and an underspend in the Early Years Block, 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. The Schools Forum receives regular reports on the financial position and has supported actions within the HNB Development Plan and has approved the carry forward of the 2018/19 High Needs Block deficit at its meeting on 26 November

19. 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.
20. 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

21. 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.

Officers to contact

Jane Moore
Director of Children and Family Services
Tel: 0116 305 6300
email: jane.moore@leics.gov.uk

David Atterbury
Head of Service - Education Sufficiency
Children and Family Services
Tel: 0116 305 7729
email: david.atterbury@leics.gov.uk

PART B

Background

22. The Education Act 1996 places a statutory duty on the Council to ensure a sufficient supply of school places including those for pupils with SEND. The HNB Development Plan proposals provide the basis for planning, commissioning, and delivering additional SEND places, improving the quality and sufficiency of provision and addressing the overspend. This will help ensure that the growth in demand for places is met and that best use is made of the available resources.
23. The report to the Cabinet on 18 December 2018 set out the pressures in relation to provision for pupils having SEND, and the impact to the High Needs Block (HNB) budget.
24. High Needs Block funding provides the funding for support packages for an individual with special educational needs (SEN) in a range of settings. 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 High Needs Block DSG Budget for 2018/19 overspent by £2.3m. The DSG reserve is expected to remain in overall surplus by £1.7m for 2018/19 (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 and an underspend within the Early Years Block).
26. 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.
27. 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.
28. The HNB Development Plan commenced in the autumn 2018 and seeks to address the growing demand for SEND places by the development of; new resource bases and units in mainstream schools, expansion of existing special schools, and the development of new (free) schools in relation to Communication and Interaction (particularly Autism Spectrum Condition) needs and SEMH needs. The list of new SEND provisions to be developed was agreed by the Cabinet on 29 March 2019.

29. 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.
30. In contrast adding new SEND provision to academies is subject to 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 its proposals for change, and its capacity, skills and resource/funding arrangements to successfully deliver this.
31. In parallel with the work to progress the development of the new SEND provisions the Director of Children and Family Services has conducted a formal consultation process in order 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.

Results of the Consultation

32. Consultation on the proposals for new SEND provision took place over 12 weeks, commencing on 7 January 2019 and closing on 31 March.
33. The consultation has involved writing to a wide group of individuals having an interest in the development of new SEND provision, including every Leicestershire school, parents/carers of pupils having an EHCP, and associated parties e.g health, to seek their views. A bespoke document setting out the proposals and a questionnaire to enable consultees to provide feedback was made available to each consultee, with a hard copy or easy read version made available on request. This information was also made available on the County Council's website for anyone else to submit comments.
34. To support the consultation exercise, five open meetings have been held at various special school locations, which also provided an opportunity for parents to talk on a one-to-one basis with officers. The meetings were also open to members of the public, school staff and other professionals and were attended by approximately 143 people overall. In addition, there have been discussions with the Parent Carer Forum, the staff professional associations and pupils.
35. The responses to the consultation have included 345 responses to the consultation questionnaire, the majority of which were provided online. Details are given at the Appendix and a summary is provided below.
36. Respondents to the consultation survey included 198 people who identified as a parent/carer of a child with an EHCP, 68 members of school staff, and 79 others, largely members of the general public.

37. Analysis of the 345 responses to the questionnaire shows that there are very high levels of support, with the majority of respondents (88%) indicating strong agreement (54%) or tending to agree (34%) with the overall proposals.
38. In particular, those in favour of the proposals welcome;
- The potential for shorter travel times to school.
 - The opportunity to be educated in a mainstream school setting.
 - The development of more local specialist places
 - That there is recognition of the need to give priority to the development of more SEND provision, and
 - The opportunities for SEND pupils for improved engagement with their local communities, and longer-term benefits for their transition to adulthood.
39. There have been relatively few adverse comments made. These predominantly relate to the need to ensure that staff have sufficient training skills and expertise, concerns related to transport policy changes, and school organisation matters, for example concern that larger class sizes should be avoided.
40. The Children and Families Overview and Scrutiny Committee will consider the consultation outcome and progress with the HNB Development Plan as part of a SEND update report at its next meeting on 4 June. It has considered a report on the proposals previously, in January 2019, and welcomed plans to increase local provision.

Issue of the Statutory Notice

41. The publication of the Statutory Notice to change maintained schools is in keeping with Council's legal obligations as set out in the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013.
42. The Cabinet agreed in March 2019 that the necessary Statutory Notice could be issued in parallel with the consultation, in order to enable the prescribed process to start and proposed changes to come into effect at the start of the 2019/20 school year in September 2019.

Local authority maintained schools and existing special schools

43. 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.
44. 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 having an EHCP.
 - 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.
45. The Statutory Notice detailing the planned changes to each maintained school and maintained special school was published on 4 April 2019. Following publication there followed a 28-day representation period during which comments or objections could be raised; this closed on 2 May 2019.
46. There have been no objections received to the Statutory Notice during the representation period so, as agreed by the Cabinet in March, the Director of Children and Families Services will determine the Notice to allow the various SEND developments to proceed, particularly those planned to open in September 2019.
47. It should be noted that whilst there have been no objections, a group of parents of pupils attending the Ibstock St Deny's Church of England Infant School SEND Unit, subsequently sent an email (after the end of the representation period) seeking assurance and further information regarding the expansion of this particular unit. This matter has since been followed up and resolved through a meeting between the school and the relevant parents.

Academies

48. Discussions are progressing with each academy seeking to develop new SEND provision to ensure, where certain criteria are triggered, the early submission of a 'significant change' application for the consent of the DfE (via the Regional Schools Commissioner) to proceed. It is expected that the various consents will be given later during the summer term 2019 to allow any development works for

the new SEND provisions to progress during the summer holidays for September or early autumn opening.

New Barwell Communication and Interaction Free School

49. Work is in progress to establish the new 80-place Communication and Interaction School to be located in Barwell, and which is expected to open in September 2020. This school, which will provide predominantly for pupils with an Autism Spectrum Condition and having an EHCP, will be funded from the County Council's 2019/20 and 2020/21 capital programme within the agreed MTFS.
50. In accordance with guidance issued by the DfE, where a local authority considers there is a need for a new school in its area it must seek proposals to establish an academy (free school) via a process known as the Free School Presumption.
51. The Council invited Expressions of Interest to operate the new Communication and Interaction School, from Monday 11 March to Monday 29 April 2019. To ensure wide coverage, information was published on the DfE national list of local authorities seeking academy/free school proposers, and on the County Council's school organisation webpage. To encourage interest from local academy proposers, information was directly sent to those established Multi Academy Trusts (MATs) successfully operating in Leicestershire schools.
52. Each organisation expressing an interest was provided with access to an information booklet, 'Information for Academy Proposers', and a detailed application form. The information booklet, which covered the background, specification for the new school, the application process, timeline, assessment criteria and the Council's expectations of the selected sponsor, can be accessed via the following link –

<http://bit.ly/2Lyq90G>
53. By the closing date four Expressions of Interest had been received from Academy Trusts, or those organisations progressing Trust status. This included two Trusts currently operating in Leicestershire and two in neighbouring counties.
54. In keeping with DfE guidance for the free school presumption, the Council is required to assess all proposals received and forward to the Secretary of State via the Regional Schools Commissioner for a decision. The fundamental purpose of the assessments undertaken has been to satisfy the Council in relation to each Academy Trust of:
 - The capacity to establish the new school on the basis of high expectations and high performance to continue to drive up standards and excellence within the primary school system, in particular for the most vulnerable children.
 - A strong desire and vision to work closely with other education providers in the locality to promote partnership working and community cohesion.

- Evidence of a proven track record of school improvement or sustained high standards and how the proposed governance model will drive and support high standards.
55. The DfE further requires that all organisations recommended to the Secretary of State for consideration are already 'approved' sponsors on the DfE register or are in the process of progressing sponsor approval.
 56. A detailed evaluation of each expression of interest is now underway in accordance with the assessment criteria provided within the Information for Academy Proposers document.
 57. The assessments will follow a three-stage process, comprising the initial written application, a presentation by the applicants and an interview by the Council and finally a visit by the Council to an existing similar academy currently operated by the applicant. Each stage of the application process will be allocated a weighted score, and the total scores for each stage will be aggregated to determine an overall evaluation mark for each applicant.
 58. The detailed assessment work will lead to a preferred shortlist of applicants deemed suitable to establish and operate the new school. In order to keep to required timescales to enable the appointed academy trust to be in place by the start of the autumn term, a decision on the shortlist would be required to be taken in early July; this would allow referral to the Regional Schools Commissioner before the end of term.
 59. As there is no Cabinet meeting scheduled for early July, and mindful that the Regional Schools Commissioner will take the final decision on appointment, then members are asked to agree that the Director of Children and Family Services in consultation with the Lead Cabinet Member for Children, Families and Safer Communities agree the shortlist of preferred academy trusts.

Conclusions

60. There has been an excellent response received from parents/carers, schools and the public regarding the establishment of new units/resource bases and to expand existing special schools. This is extremely encouraging and demonstrates a real commitment to make the new provisions a success.
61. The successful outcome to the Statutory Notice and other actions taken to develop the new provisions alongside other improvements planned within the HNB Development Plan will enable early their early establishment and a sustainable growth model to be adopted to help meet the demand for SEND places.
62. The expressions of interest received to operate the new Communication and Interaction school, based on the assessments so far, demonstrate a high quality of expertise, knowledge and capacity relative to provision for SEND pupils, this will clearly be of assistance to enable a successful start for the new school and delivery of actions set out in the HNB development Plan.

Equality and Human Rights Implications

63. 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.
64. 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 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.
65. The EHRIA screening document has been completed and showed that a full EHRIA was not required. This will be kept under review as the proposals for the new provision move through the planning and development stages and adjustments made accordingly.

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 2018 – 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 Cabinet on 29 March 2019 - Special Educational Needs and Disability – Progress with the delivery of the HNB Development Plan

<http://politics.leics.gov.uk/ieListDocuments.aspx?CId=135&MId=5601&Ver=4>

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

<http://politics.leics.gov.uk/ieListDocuments.aspx?CId=1018&MId=5493&Ver=4>

Appendix

Appendix - Summary of Consultation responses

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