

Meeting:	Cabinet
Meeting date:	Thursday 18 January 2018
Title of report:	16-19 Local Authority Commissioned SEN School: agreement to lease former Broadlands Primary School site
Report by:	Cabinet member young people and children's wellbeing

Classification

Open

Decision type

Key

This is a key decision because it is likely to result in the council incurring expenditure which is, or the making of savings which are, significant having regard to the council's budget for the service or function concerned. A threshold of £500,000 is regarded as significant.

This is a key decision because it is likely to be significant having regard to: the strategic nature of the decision; and / or whether the outcome will have an impact, for better or worse, on the amenity of the community or quality of service provided by the authority to a significant number of people living or working in the locality (two or more wards) affected.

Notice has been served in accordance with Part 3, Section 9 (Publicity in Connection with Key Decisions) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

Wards affected

Aylestone Hill; All wards (service)

Purpose and summary

The council was successful in applying for a new government funded special free school to be established in Herefordshire. A competitive process is being undertaken to select the provider for the new school, managed by the council in partnership with the Department for Education (DfE).

Cabinet has previously agreed in principle to provide part of the former site of Broadlands

Primary School to enable the creation of a new post 16 special school, to be created and funded through the government's free school programme. This report confirms that the council will provide the site to enable the new school building to be constructed.

It is recommended that the management of the construction project be undertaken by the Education and Skills Funding Agency (ESFA), rather than Herefordshire Council in order to minimise any financial risk to the council.

It is further recommended that Cabinet approves the retention of the part of the former Broadlands Primary School site not required for the new school for other education purposes or development, subject to future decisions being taken including ensuring that full access is available to the retained area(s).

Recommendation(s)

That:

- (a) the director for children's wellbeing be authorised to agree heads of terms between the council and the Education and Skills Agency (ESFA) (on behalf of the Secretary of State) for the construction of a building to accommodate the new 16-19 Local Authority Commissioned SEN School**
- (b) subject to the approval of the Secretary of State for Education to the appointment of a provider to:**
 - a. agree that part of the land identified at appendix 1 be approved for use by the appointed provider for a period of up to 125 years,**
 - b. the director for children's wellbeing, following consultation with the solicitor to the council and chief finance officer, be authorised to take all operational decisions necessary to make the site available, including the agreement of a lease of up to 125 years for part of the former Broadlands site (as shown on the plan at appendix 1) of an area sufficient for a special school of 50 pupils to the successful promoter, the area being no less than 1 hectare as recommended in DfE Building Bulletin 104 – "Area Guidelines for SEND and Alternative Provision", the remaining land to remain in the ownership of the council**
- (c) the ESFA be requested to deliver the building project at its own risk with funding provided by the Secretary of State.**

Alternative options

1. The council could withdraw from the programme of new special free schools. This would mean that children and families in Herefordshire would not benefit from the proposed 16+ special free school, and would have no realistic alternative means of providing the same benefits from council resources. The council would be able to benefit from the site of the former Broadlands Primary School by selling it for development purposes. This option is not recommended as the value of the government investment in a new school would be significantly greater than the lost receipt.
2. An alternative site could be considered. This option is rejected as the council does not own or control an alternative site of sufficient area (one hectare) centrally located in

Hereford, with ready accessibility to mainstream post 16 provision. The process to select a provider has been conducted on the basis that the old Broadlands Primary School site would be made available; after Cabinet previously agreed to this “in principle”. Identifying another site at this stage would be extremely disruptive and might lead to the Secretary of State excluding Herefordshire from the current programme.

3. An alternative approach would be for the council to deliver the construction of the new school building. Although the funding would still be provided by the ESFA, the risks associated with the project would rest with the council. These would include cost risks and risks associated with late delivery. This has been rejected in order to reduce risks to the council.
4. A report setting out the appraisal of alternative sites is set out at Appendix 2, and these are discussed in the following section.

Key considerations

5. The Department for Education announced on 27 July 2017 that 19 councils, including Herefordshire Council, had been successful in applying for the opportunity of having new special free schools in their areas. Free schools are academies (state-funded independent schools) which can be run by a range of different organisations.
6. In accordance with free school legislation, the provider of a new free school is determined through a competition process. Herefordshire Council has been running that process in partnership with the DfE and it is expected that the Secretary of State will announce all 19 successful providers in early spring 2018.
7. Whilst the cost of providing a new building is met by the DfE, the council is expected to provide a suitable site. Herefordshire Council identified the site of the former Broadlands Primary School in Hereford and Cabinet agreed to its use in principle by its decision of 22 June 2017. Site details have been provided to DfE, ESFA and competing providers.
8. Broadlands Primary School relocated to alternative buildings on the adjacent Aylestone School site in 2015. Since then the old site and buildings have not been used for education purposes, although the Bright Sparks nursery has continued to operate from the old Broadlands building as a tenant. The decision to relocate Broadlands assumed a capital receipt would be obtained by the sale of the old site. If the site is used for the free school then that receipt would be lost or reduced.
9. Officers are working with the management of Bright Sparks to identify an alternative location as they are currently operating from the site. Continued efforts will be made to identify a suitable site in north Hereford.
10. The new free school would require approximately half the old Broadlands site to meet the minimum area for a 50 place special school (one hectare). This would leave half the site available for other purposes, which could include a reduced capital receipt from selling the site or the development of further educational facilities in due course. This report does not address future use of the remaining site, other than recommending that the boundaries of the site be leased to the free school are drawn in such a way as to not restrict the usage of the remaining part of the site.
11. The proposed free school would provide 50 places for young people aged 16 to 19 with special educational needs (SEN); principally, severe learning difficulties, profound and multiple learning difficulties and autistic spectrum disorders. This would replace and add

to provision for these types of SEN in existing special schools in the county in modern buildings constructed to current recommended standards and meet forecast demand for the future.

12. The new free school will not be able to proceed unless the council can give a very strong assurance to the DfE and ESFA that the site is available. This report therefore recommends making the site available for a period of up to 125 years. If the council was not to give such assurance, the Secretary of State would be unable to confirm that the free school project could go ahead.
13. The recommendations stipulate that the Secretary of State's approval of a free school and the agreement of heads of terms between the council and ESFA, for the contract to deliver the new school, are obtained before a lease is concluded, to protect the council's interest and ensure the project is deliverable before entering into such a commitment.
14. Officers in the council's property services have conducted a review of potential alternative sites in the council's ownership to enable Cabinet to be assured that offering part of the former Broadlands Primary Schools site is the best option. Such a site would need to meet the following criteria:
 - a. it would need to have an area of no less than one hectare to meet the minimum total site area set out in the DfE's building bulletin 104 – Area Guidelines for SEND and Alternative Provisions.)
 - b. it would need to be located in Hereford to enable ready access for pupils from all parts of the county
 - c. it would be advantageous for it to be located close to existing mainstream post 16 providers to enable joint working and support for a broad curriculum offer
15. None of the alternative sites owned or controlled in Hereford reach the minimum site area required by the DfE, so on those grounds alone no other site could reasonably be offered as an alternative. In addition, none are located as close to Hereford Sixth Form College, Hereford College of Arts and Herefordshire and Ludlow College as the old Broadlands site.
16. There are no reasonable grounds to substitute another site for the current identified site, and to do so would be likely to jeopardise the approval of any free school for Herefordshire. The investigation of alternative sites is intended to assure Cabinet that the selection of the former Broadlands site is the best option and that this should be confirmed to DfE and ESFA.
17. The cost of the construction of the new free school building will fall to the ESFA on behalf of the Department for Education. Councils are given the choice of allowing the ESFA to manage the construction project or alternatively self-deliver it themselves, whereby the council is granted a fixed sum to deliver the project.
18. The advantages of self-delivery is that the council has greater control of the construction process, including the design of the building. This however comes at the risk of the council bearing the project costs, including timely delivery, quality and any overspend.
19. The advantage of using the ESFA to deliver the project is that all risks are transferred to them. The disadvantage, as stated, is reduced control over the design of the building, other than as planning authority and a key stakeholder and consultee.

20. On balance, it is recommended that the ESFA delivery option is chosen in order to minimise risk to the council.

Community impact

21. The proposed free school will benefit the whole community of Herefordshire. It will directly serve young people aged 16 to 19 with a range of special educational needs, including severe learning difficulties, profound and multiple learning difficulties and autistic spectrum disorders. By locating the new school on a site adjacent to Aylestone School and in close proximity to Hereford Sixth Form College, Hereford College of Arts and Herefordshire and Ludlow College, there will be opportunities for collaboration with mainstream education providers. The site is also within reasonable walking distance of the transport hubs for pupils who are able to travel independently, thus making it accessible from other parts of the county.

Equality duty

22. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to -

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
23. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. As this is a decision on back office functions, we do not believe that it will have an impact on our equality duty.
24. A new post 16 special free school will provide improved educational and vocational opportunities to young people with a range of needs, including disability, which is a protected characteristic under the Act. As such, this is designed to enhance the equality of opportunity in terms of employment and other outcomes for adult life. It will provide modern, high quality accommodation to Department for Education specified standards. The building will conform to all applicable standards for accessibility under the Act. The school will provide services to young people with all protected characteristics defined in the Act, including gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation.

Resource implications

25. The Department for Education is planning 19 new special free schools across England. Herefordshire Council was successful in its bid for one of these to be in the county. The new free schools will be built at the expense of the Department for Education through the Education and Skills Funding Agency (ESFA). The cost of the construction will be met by the ESFA and the council's contribution will take the form of the provision of the site.

26. The site identified when the council bid to be part of the programme was that of the former Broadlands Primary School, which was relocated to refurbished buildings on the Aylestone School campus in September 2015. The decision to relocate Broadlands stated that some of the costs were to be met through a capital receipt from the sale of the school's former site. The estimated valuation of the land at that time (summer 2015) was £2million, subject to market conditions. The final cost of the Broadlands Primary School relocation was £1,276k. This was made up of £920k from the approved capital programme, 277k from the schools' capital maintenance budget and £79k s106 contributions.
27. The area required for the new free school is one hectare, approximately half of the total area of the old Broadlands site. This means that half the site would be available for other purposes. This could include a reduced capital receipt if the land was used for development, or it could allow for future development of other linked special educational facilities as part of a campus. This report does not recommend any particular use for the land not required, and leaves that for future consideration and decision. It is nevertheless strongly recommended that the new free school boundary is carefully defined to ensure that future use of the retained part of the site is not restricted.
28. The ESFA offers councils two options for project delivery – direct delivery by the ESFA or self-delivery by the council. Whichever organisation delivers the project would bear the associated risks, including that of controlling project costs. It is recommended that the ESFA delivers the Herefordshire project to minimise risk to the council.
29. In addition to the cost of construction, there are considerable managerial overheads associated with any project, some of which are not possible to capitalise, and are hard to quantify in advance. Such overheads would not be incurred by the council through the ESFA direct delivery option.
30. The ESFA has its own procurement frameworks in place and will have the advantage of simultaneously procuring all 19 projects across England. Thus it should be able to obtain best value from contractors.
31. The full details of arrangements for the project will not be known until heads of terms are agreed between the council and ESFA. It is understood that the ESFA will bear all construction costs, including preliminary works and the demolition of the former primary school building, and environmental works on site.
32. Revenue funding for free schools is provided through the ESFA and via the usual funding streams for special schools, driven by the number of places commissioned. Revenue costs will fall to the trust or organisation responsible for running the school when open.

Legal implications

33. The council is not yet under a duty to secure the SEN provision the forecast being that this duty will arise in 2020. The power to lease a site to the selected provider of this new free school is provided for in Section 123 (1) Local Government Act 1972. The former Broadlands Primary School site is part of a larger site which registered under Land Registry title number HE29982. The Council is the freehold registered proprietor.
34. A small section of the site ('the Property'), is currently occupied by Brightsparks Nursery. Suitable alternative accommodation for Brightsparks is actively being sought and it is hoped that agreement between the parties can be negotiated and achieved resulting in vacant possession of the Property and hence the whole site.

35. Alongside negotiated arrangements, if alternative accommodation is located, the Council can serve a Notice on Brightsparks under Section 25 of the Landlord and Tenant Act 1954 giving between six and twelve months' notice to vacate the Property using ground S30(1)(d), provision of suitable alternative accommodation. Alternative accommodation must be suitable for the Tenant, having regard to the current circumstances and the Tenant's requirements including the provision of business goodwill and the situation, extent of a facilities afforded by the holding. The offer of alternative accommodation can be made in the covering letter serving the S25 Notice.
36. If it does not prove possible to locate suitable alternative accommodation, an alternative would be to serve Notice under Section 30(1) (f) LTA – Landlord's intention to redevelop. The Landlord must have a firm and settled intention and a reasonable prospect of achieving that intention. Minutes should be available to evidence this, along with amongst other things, plans for the development, financing, and a business plan for future use. Compensation would be payable to Brightsparks if the S30(1)(f) redevelopment ground was relied upon.

Risk management

37. This is a high profile project requiring close working with the Department for Education and the ESFA. There are reputational risks if the council was to be perceived as jeopardising a high profile national programme, which is likely to be the subject of close political scrutiny. It is therefore essential to maintain good channels of communication and excellent relationships with government, and (once appointed) the successful provider. This will be mitigated by nominating project link officers from the council's children's wellbeing directorate and property services.
38. There is a risk to the council in respect of the tenancy of Bright Sparks nursery. Property services are working with the nursery to identify alternative premises in the locality.
39. The council will not be managing the project if the ESFA delivery route is chosen, as recommended. This means that the ESFA will be responsible for risks associated with the cost, timely delivery and quality of the new building. The ESFA will provide project executive and project management services. This reduces the risk to the council considerably. Although, it should be recognised that any school related project could present some risks to the council, if only by public perception. This residual risk will be mitigated by ensuring council officers work closely with the ESFA until the successful completion of the project.

Consultees

40. The successful provider appointed to run the new school is obliged to conduct section 10 consultations with users and the community before the new school opens.
41. Consultations took place with special and mainstream schools and SENDIAS when the bid for Herefordshire to be included in the special free school programme was prepared. Governors and headteachers are supportive of the initiative.
42. Political group consultation has been undertaken and no objections or comments were received. The views of the ward member have been requested and will be reflected before this report proceeds to cabinet.

Appendices

Appendix 1: Map of proposed site

Appendix 2: Potential site appraisal

Background papers

None identified