

Decision maker:	Cabinet member young people and children's wellbeing
Decision date:	Wednesday, 21 March 2018
Title of report:	Special provision capital fund for children and young people with special educational needs and disabilities
Report by:	Interim Education and Capital Manager, Schools capital investment advisor

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 10 (General Exception) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) Regulations 2012.

Wards affected

All wards

Purpose and summary

To determine the council's three year plan for allocation of the special provision capital fund.

In March 2017 the Government announced the allocation of a special provision fund for councils to support capital investment in provision for pupils with special educational needs and

disabilities. The funding will be allocated on an annual basis over a three year period 2018-2021.

The fund will be allocated to projects to meet the council's duty to ensure that disabled children and those with special educational needs (SEND) can access high quality provision that meets their needs, and ensure arrangements are in place for alternative provision for children outside mainstream education or missing education (e.g. excluded or ill) to receive full time education. Projects will be determined by consideration of suitability, condition and sufficiency of current provision, and prioritised based upon these criteria in accordance with the council's Schools Capital Investment Strategy (SCIS).

Recommendation(s)

That:

- a. consultation be undertaken on the following priorities aligned to the schools capital investment strategy in order to determine the spending of the £500k special provision capital grant funding to improve the quality and range of provision available to SEND children and young people with education health care plans (EHCPs):**
 - 1. Improvements to the provision for children and young people in the current 'hospital school';**
 - 2. Improvements to provision for pupils with social emotional mental health needs;**
 - 3. Improved provision at settings for 11-16 year olds with learning difficulties and disabilities; and**
 - 4. Improvements to resourced provision for pupils with autism.**
- b. it be recommended to Council that the £500k special provision capital grant be added to the capital programme; and**
- c. the director for children's wellbeing be authorised to take all operational decisions regarding the allocation of the grant fund to an appropriate project following consultation with the cabinet members for contracts and assets and young people and children's wellbeing and having regard to the outcome of the consultation and in accordance with the schools capital investment strategy and grant scheme criteria.**

Alternative options

1. An alternative option could be to reject the available funding. This would reduce the amount of capital improvement possible for provision for children and young people with Special Educational Needs and Disabilities (SEND) in the immediate future.

Key considerations

2. The government capital fund available may only be used to improve or extend provision for SEND children and young people with EHCP's, and will support a need already identified in the broader school capital investment strategy (SCIS) consultation conducted by the council.
3. Information already collected in the SCIS has been used to define priorities for investment. Consultation with a range of stakeholders was completed in the development

of the SCIS. From the priorities already defined in the SCIS for SEND investment, further consultation with the SEND community will be engaged in to define the most appropriate use for this fund.

4. This funding can be invested in mainstream schools and academies, special units, special schools and academies, early years settings, further education colleges or to make other provision for children and young people aged from 0 to 25. Additional places may be created at settings which are identified by Ofsted as good or outstanding and where sufficient places may not be available for the future, or where provision is in need of improvement including maintained schools and academies. Place planning needs will be determined by using information available regarding national trends and trends within our council statistical neighbours group.
5. The information gathered within the SCIS shows that some current provision for SEND is in buildings that are not fully compliant. There are some condition issues to rectify, and also in some provision capacity for providing extra places is limited. If the fund is not drawn down, any funding of priority capital works to the SEND estate would fall entirely to the council to resolve. The benefit of drawing down the modest fund available would be that some issues may be alleviated sooner than would otherwise have been expected. Investment needs already identified in the SCIS are;
 - Improved provision for 16-19 students with EHCP's for learning disability and autism (now being resolved by the new free special school and therefore not a priority for this funding)
 - improvements to the provision for children and young people placed at the current 'hospital school';
 - improvements to provision for pupils with social, emotional mental health needs;
 - improved provision at the settings for 11-16 year old pupils with EHCP's for learning disability and or autism;
 - extension of resourced provision for 11-16 pupils with autism;
 - improved provision for children and young people placed in alternative provision.
6. Consultation is now to be conducted as a result of the available special provision grant funding that will further define appropriate project(s) for its use.
7. It is recommended that the director for children's wellbeing be authorised to determine prioritisation of the projects to be funded by the available grant.
8. Because the grant funding is capital monies it should be added to the council's approved capital programme and amendments to the capital programme are reserved to Council.

Community impact

9. The special provision capital fund seeks to affirm the government's vision for children and young people with SEND to achieve well and lead happy and fulfilled lives. In addition the Children and Families Act places important statutory responsibilities on councils for supporting children and young people with SEND. Councils' have been given discretion to use the fund as they see fit, to improve special provision for children and young people with education health care plans through initiatives like expansions, reconfigured provision, re-purposing areas, or other capital transactions that result in new (additional) places or facilities' improvements.

10. The evidence base so far used to support planning for this investment is; consultation with special head teachers and their governors, use of information collected by SENDIAS, use of information provided by the National Autism Society, buildings condition information held by the CWB directorate, place planning information supported by data in the 2017 statistical first return, and buildings suitability (compliance) information held by children's wellbeing. The recommended activity in this report supports the SCIS principles; to provide high quality learning environments, and to use income from a variety of sources including specific grants and one off government schemes. It also supports priority 3 and 6 in the Children and Young People's Plan, to support the needs of children and young people with special educational needs including mental health and emotional needs and disabilities, some of whom are looked after children.

Equality duty

11. 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; The proposal would enhance equality of opportunity for children and young people with SEND by improving their access to high quality educational facilities and resources.
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
12. 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. Our providers will be made aware of their contractual requirements in regards to equality legislation. In addition, by making this decision to use the special provision capital grant fund to enhance and improve facilities for the education of children and young people with SEND commissioned by Herefordshire council, the council is demonstrating its commitment to the equality duty.

Resource implications

13. The funding described has been approved and published by government.
14. The funds as described in paragraph 15. (below) are to be used to improve and or extend provision for SEND children and young people, based on prioritisation information about current condition, suitability and sufficiency of provision, and further consultation with key stakeholders
15. The funding available to Herefordshire Council from the special provision capital fund is £500 000 capital income to be allocated to the council over three years, one third during each of the years 2018, 2019 and 2020, to be spent and accounted for by March 2021
16. Any works will be procured in accordance with the council's procurement regulations.

Legal implications

17. This is a key decision which can be taken by the Cabinet Member under the provisions set out in section 3.3.15 (i) of section 3 of the council's constitution.
18. Section 14 Education Act 1996 imposes a duty on the council to ensure the provision of "sufficient schools" for the provision of primary and secondary education in their area
19. Section 27 Children and Families Act 2014 imposes a duty to keep under review educational provision, training provision and social care provision made both in and outside of their area for children and young people with SEN or a disability for whom they are responsible.
20. Department of Education guidance specifies how the funding can be spent including that councils can use the funding as it sees fit to improve special provision for children and young people with EHC plans.
21. Councils are required to complete and publish a short plan setting out how they intend to invest their allocation to be made available to parents, carers and other local groups on their local offer page by 14th March 2018.
22. At this stage we are at the pre-proposal consultation stage stakeholders to ensure that any proposal put forward is viable.
23. Once this pre-proposal consultation is concluded then regard must be had to adhering to the SEND Code of Practice (2015) expectation to consult and engage with parent/carers on any development and change of practice and to ensure that any statutory requirements and DfE guidance regarding changes to maintained and academy schools are completed including general and statutory requirements as to consultation.
24. By meeting the criteria and following the recommended consultation process as set out by central government the council will significantly reduce any risk of not receiving the funding or having it reduced or removed at a later date.
25. To remove any risk of challenge over the distribution of the funding the process should be transparent and in accordance with the council's procurement rules.

Risk management

26. There is very limited risk associated with the acceptance of the funding. There is some reputational risk of not accurately prioritising the use of funds within the SEND sector, but this has been minimised by previous consultation and will be further mitigated by the aforementioned proposed stakeholder consultation. The risk of the alternative option, i.e. to not draw down the funding for use to improve SEND provision, is that any such improvements will take longer to implement.
- 27.

Risk / opportunity	Mitigation
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Opportunity

To complete some capital improvement works to some aspects of the SEND provision that have been identified as in need of improvement

Risk

The sum available is modest and careful thought as to a suitable project that may be completed within the budget will be needed

Close partnership working with internal property services and planning teams to identify and cost any potential projects, in addition ensuring that the procurement of a capital project complies with our CPR's. The risk will be managed at directorate level

Consultees

28. Consultation about investment in the SEND sector has been completed through several meetings with head teachers and governors to discuss issues, ask for suggested solutions, and discuss/agree broad areas in need of expenditure. There was broad consensus as to where investment was needed most urgently. Notes of meeting were taken and circulated after each meeting. Further consultation as aforementioned will be conducted regarding identification of the specific project to be taken forward with this fund, with parents and carers, and ward members relevant to the location for the improvements proposed. Such consultation will be undertaken through a further meeting with special school head teachers, through discussion with identified councillors, and through questionnaires circulated to a sample of the parents and carers of children and young people with a range of SEND primary needs.
29. Political groups have been consulted and no comments or objections received

Appendices

None

Background papers

None identified