

Decision maker:	Leader of the Council
Meeting date:	Tuesday 28 April 2020
Title of report:	Brookfield Special School Capital Improvement Programme
Report by:	Cabinet member commissioning, procurement and assets

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

(All Wards)

Purpose and summary

To approve expenditure on Brookfield Special School (Brookfield) to ensure that there is high quality sustainable special educational accommodation for children and young people with social emotional and mental health (SEMH) special needs in Herefordshire.

The Brookfield improvement project seeks to achieve; better school buildings compliance with DfE building bulletin 104 for special educational needs settings, more robust fire evacuation

buildings compliance, the release of a council owned split site facility at Symonds Street, the capacity to deliver the full statutory curriculum at Brookfield, and improved accommodation for girls with SEMH needs. This will ensure that there is high quality sustainable educational accommodation for children and young people with SEMH special needs in Herefordshire. This report seeks cabinet agreement to draw down the funding allocated in the capital programme to progress the project to completion, in line with the business plan at Appendix 1.

Recommendation(s)

That:

- (a) The Council undertakes the programme of capital improvements to the Brookfield Special School as described in the business plan (Appendix 1) be completed within a budget of £3.939m**
- (b) Delegated responsibility for award of procurement contracts for the lifecycle of the project, informed by methodology advised by the council procurement team is given to the Director for Children and Families, to be recorded as officer decisions accordingly.**
- (c) The Assistant Director Education Development and Skills be authorised to take all operational decisions necessary to implement the above**
- (d) Authority be delegated to the Director of Economy and Place for finalising and completing all necessary deeds of surrender, agreements, new lease terms and regrant of the leases to both the Brookfield School and the Greyhound Rugby Football Club**

Alternative options

1. The cabinet could decide not to agree the use of the funds listed in the capital programme. The advantage to this would be that there would be no requirement for prudential borrowing in order to provide the bulk of the total funding required. This amount totals £3,090,000. The disadvantage of this decision would be that the very modest amount of government grant left available and allocated to the project at Brookfield i.e. £849,000, would only be able to realise a small percentage of the priority improvements proposed; the provision of female toilets for pupils, the upgrade of the internal stairwells to full fire compliance, and an external fire escape to the first floor of the secondary block. It would not be possible to move the Arrow cohort from the very poor accommodation in Symonds Street into a purpose built vocational block on the Brookfield site, nor provide a sports hall, or any compliant sized classrooms for the secondary setting. It is proposed that this is not the chosen decision, as not to proceed with the full programme would impede significant improvement to the education of the SEND pupils offered a place at the school. A likely consequence of the lack of capital investment in Brookfield would be an increase in the commissioning of places for Herefordshire children out of county, which would be costly (putting the high needs funding block at risk of entering deficit), and incur greater travel time to and from school for some Herefordshire pupils.
2. The cabinet could choose not to give delegated authority to the award of procurement contracts to the Director for Children and Families following the advice of the procurement team. There is no obvious advantage to this decision, and the disadvantage would be that

procurement may not be completed in the most cost efficient or best value way. It is proposed that this is not the chosen decision, in order to enable consistency of procurement approaches, and the meeting of project deadlines.

3. The cabinet may decide not to grant delegated powers for operational decisions within the lifecycle of the project to the Assistant Director of Education Development and Skills as project sponsor, with associated records of officer decision as governance thereafter. The advantage to this would be to impose higher levels of governance to the project gateways. The disadvantage would be to lengthen the project timeline, potentially imposing inflationary cost increases. In addition, this would negate the described role of the sponsor and project board in the corporate project management approach. It is proposed that this is not the chosen decision, in order to take the project forward to time, and within budget.
4. The cabinet may decide not to award delegated responsibility to the Director for Economy and Place for the finalising of new leases for the Greyhound Rugby Club and the Brookfield School. There is no obvious advantage to this decision, and the disadvantage would be a delay to the lease agreements that will allow the project to proceed to the benefit of both parties, and a timeline lag that would potentially lead to cost increases.

Key considerations

5. The proposed investment by the council, into the improvement of Brookfield which is an academy school is because this is the only Herefordshire school that can provide the required places for children and young people with social emotional and mental health needs that the council has a statutory obligation to commission. Brookfield currently serves the needs of approximately 80 pupils. These pupils all have an education health care plan (EHCP) describing their needs, and how these needs should be met. If this school does not meet these requirements, significantly higher costs for the education of these children and young people will be incurred, by the commissioning of places in independent schools or settings outside Herefordshire (typically an out of county day placement for SEND of this designation would be between £60-£80k, with added transport costs dependent on location). In addition children would be subject to longer travel times to and from school, and have no choice but to be educated outside their community. Officers in the Children and Families Directorate are in direct communication with the DfE education and skills funding agency to make a case for some central government funding that would, if available, support the costs of some of the health and safety elements of the proposed improvement project.
6. The above dialogue with the DfE is in order to assist the Brookfield Academy Trust in seeking emergency condition funding to contribute to the costs of the project, in particular with regard to those elements relating to health and safety and equalities legislation. Should such government funding become available, council governance will be sought in order to amend funding records for the project once the grant is secured.
7. Brookfield became an academy school in October 2014, but remains a key setting for all of Herefordshire's SEMH placement requirements. Some funding was allocated into the capital programme for improvements to the school in 2015, and again in 2016. Increasing pressure on places over the ensuing years, and forecasting for the future need, has led to the development of a proposed improvement programme (see business case Appendix 1) to future-proof the school and improve compliance and health and safety. The governance decisions taken to date have been as follows;

- Allocation of funding to improve Brookfield School accommodation into the 16/17 capital programme December 2015 <http://hc-modgov:9070/ieListDocuments.aspx?CId=291&MId=5385&Ver=4> .
 - Allocation of further funding for the same purpose to the capital programme 17/18 December 2016 <http://hc-modgov:9070/documents/s50043273/Appendix%20%20-%20approved%20capital%20programme.pdf> .
 - Cabinet member agreement to accept the government special provision fund, capital grant to be spent on settings providing for children and young people with EHCPs for SEND 21.03.18 <http://hc-modgov:9070/ieDecisionDetails.aspx?ID=5039> .
 - ROOD to allocate the special provision fund (SPF) to a Brookfield capital improvement project and subject to a feasibility study, present a business case to cabinet seeking the decision to use in addition the funds already allocated to Brookfield in the forward plan. <http://hc-modgov:9070/ieDecisionDetails.aspx?ID=5292> .
 - ROOD to spend the SPF on a Brookfield improvement project 06.12.18 <http://hc-modgov:9070/ieDecisionDetails.aspx?ID=5544> .
 - Granting of extra funds to meet the funds needed to complete the project described in the business case approved at full council meeting 14th Feb 2020. <http://councillors.herefordshire.gov.uk/mgAi.aspx?ID=54242>
8. Brookfield has been prioritised for improvement because unlike the majority of counties in England, as Herefordshire is so sparsely populated, Brookfield is the only school providing SEMH education places in Herefordshire. Alternative settings for commissioning of places will result in the council incurring a cost that is in excess of the funding allocated to the council for the purpose of providing SEMH education and be geographically distant. When compared with the government building bulletin (BB104) schedule of accommodation for SEMH special schools for the required 80 places the current site is only 51% compliant, and the buildings 44% compliant. A small group of the most vulnerable and challenging pupils are currently accommodated offsite in a temporary demountable of poor quality and unsuitable layout on Symonds Street. There are no female pupil toilets in the secondary building and as there is now demand for female places at the school (although this has not been the case previously), this poses an equality issue. All current classrooms are small and there are only 9 as opposed to the 10 described as necessary in BB104. There are no indoor sports facilities despite physical education being a statutory requirement of the national curriculum. The school has recently received a judgment of inadequate from Ofsted (Jan 2020).
9. For all of the above reasons, change is needed to the school accommodation in order to resolve the issues described as soon as possible and improve the educational experiences of those pupils with special educational needs that Hereford is required to provide specialised places for. The changes will not only benefit those children and young people currently accommodated at the school, but also ensure high quality accommodation for pupils into the future, described as a key principle in the Herefordshire Schools Capital Investment Strategy. The capital improvements will strongly support the work of the new head teacher, and new board of trustees, in effecting rapid improvement to the quality of education, and the educational effectiveness of the school now and into the future. By taking the decision to allow the funds available to be drawn down to implement the project, the cabinet will be improving life chances for those highly vulnerable Herefordshire children and young people that need the unique

services and education afforded by a special school setting of the appropriate designation.

10. The improvement of the site and buildings at the Brookfield Special School will include; internal modifications to the secondary block to provide two extra compliant classrooms and girls toilets, the provision of an external fire escape to the secondary block, a small new build sports hall, and a new vocational block comprising two classrooms and a showering and changing area.
11. In order to progress the project, possession needs to be gained of a car park that is currently under lease to the adjacent tenant, the Greyhound Rugby Club. There is currently an unexpired six year term of the existing lease and the lease terms are unfavourable to both the council and the tenant. The proposal is to surrender the current lease and grant the Greyhound Rugby Club a new full repairing and insuring lease of up to 35 years. This will give the club long term security and enable it to apply for grants and take advantage of other commercial or funding opportunities. The council will regain possession of the car park, this will be added to the lease at Brookfield School, also enabling the rugby club to use it as an overflow car park out of school hours. Brookfield School is an academy, granted by a lease.
12. The improvements to service delivery made possible by the changes would be; an improved curriculum offer by the school, better educational outcomes for children and young people at the school over time, compliant accommodation for the placement of girls at Brookfield, improved and compliant fire evacuation provision, removal of a split site situation and restoration of a demountable and site to council for disposal, revenue efficiencies for Brookfield by removal of the split site situation enabling increased staffing efficiencies, and better quality vocational accommodation for KS4 pupils.
13. Subject to cabinet agreement to move to project implementation, the project will be procured and a contract awarded using the mechanism recommended by the procurement team and in line with the requirements of the council's Contract Procedure Rules.
14. The project will continue to be managed according to corporate policy.
15. The expected outcome will be that project procurement will commence on approval of the recommendations in this report, in mid-May. It is anticipated that procurement will be through the traditional route, starting with the procurement of a contractor to produce a developed design for planning approval. Procurement will be in line with the council's Contract Procedure Rules. The project at each stage will be procured as a whole, different phases may be available for handover to Brookfield at different stages, and project completion is currently anticipated to be end of August 2022, in readiness for the new school year. The project will be measured by; the successful provision of the elements proposed in the project business case, achievement of higher compliance with the government building bulletin (BB104), completion within the project timeline proposed and reviewed at each RIBA gateway stage, and implementation within the budget described

Community impact

16. The County Plan outline's the council's priorities. The improvement to Brookfield supports three of these: Ensure all children are healthy, safe and inspired to achieve, Protect and improve the lives of vulnerable people, and Invest in education and the skills

needed by employers. The children and young people's directorate schools capital investment strategy itemises 10 principles. The Brookfield improvement project would align with principles 1, 2, 7, 8, 10 and 11.

17. As with all school provision, improvements to the quality of education is vitally important in improving the life chances of children and young people in the care system. The improvements to Brookfield will improve the quality of education, and the educational experiences for all of the pupils on roll, including those who are in care and therefore the responsibility of the corporate parenting board.

Equality duty

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.
18. The decision to invest in capital improvements to Brookfield advances equality of opportunity by; giving the school the ability to offer placements for girls with social emotional mental health needs, and, by improving the quality of accommodation supporting the fostering of good relations between children and young people who have a designated special need of SEMH at the school, and those in mainstream settings.
 19. The education of children and young people at Brookfield is a commissioned service, as this is the case, 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, the Brookfield Academy Trust will be reminded of their contractual requirements in regards to equality legislation.

Resource implications

20. By taking the decision to proceed to implementation of the project, there will be a requirement for a senior council financial officer to sit on the project board to monitor and sign off financial decisions proposed by the sponsor. There will be no call on ICT and human resources within the council for this project. If council property services decides to tender for this element of the project, the cost will be met from the budget for fees and services. This service is accounted for in the budget plan.
21. Council approved the increased budget of £3.939m at Council on 14th February 2020, details of the funding are included in the table below. There are no future revenue implications to the council as any ongoing maintenance costs will be funded from the schools budget.

22. The capital costs of the decision are set out below. All project costs to be incurred, from the decision to proceed point, have been included. Funding sources have been itemised, and the year during which they will be required. It is anticipated that the completion of the project would support continuing prudent use of the schools high needs block budget by future proofing available places within Herefordshire for SEMH placements, thus reducing the need for expensive out of county placements.

Capital costs of the project	2019/20	2020/21	2021/22	Future Years	Total
	£000	£000	£000	£000	£000
<i>Design and build costs</i>		1,659	1,000		2,659
<i>Fees</i>		351	89		440
<i>Furniture and IT</i>		0	150		150
<i>Contingency</i>		450	240		690
TOTAL		2,460	1,479		3,939

Funding streams	2019/20	2020/21	2021/22	Future Years	Total
	£000	£000	£000	£000	£000
<i>Special Provision Capital Fund government grant</i>		849			849
<i>Corporate funded borrowing</i>		1,611	284		1,895
<i>Capital receipts reserve</i>			1,195		1,195
TOTAL		2,460	1,479		3,939

23. A business case is included as Appendix 1.

Legal implications

24 The council has power to act in its capacity as freehold owner of Brookfield, subject to the requirements of the Secretary of State arising from the academy status of the school. It is empowered to deal with the Brookfield lease and grant a fresh lease to

Brookfield, by a variety of statutes. Section 123 (1) Local Government Act 1972 provides that a principal council may dispose of land held by them in any manner they wish provided that it is not for a consideration less than the best that can reasonably be obtained, unless with Secretary of State's consent. The grant of a lease constitutes a disposal of land. Furthermore Section 1 of the Localism Act 2011 provides a general power of competence for local authorities. It gives local authorities the same power that an individual generally has, to act (subject to its fiduciary and statutory duties).

- 25 Local Authorities have a statutory duty under the Education Act 1996 s14 to secure sufficient primary and secondary schools for pupils of different ages, abilities and aptitudes having regard to the need for primary and secondary education to be provided in separate schools and securing provision for pupils with SEN. This must be exercised with a view to securing diversity in the provision of schools and increasing opportunities for parental choice (S14 (3A) Education Act 1996).
- 26 In addition, the Authority is under a duty to ensure that primary and secondary education facilities for the area include adequate provision for recreation and social and physical training for children (s507A and B Education Act 1996). Academies are required to follow a broad and balanced curriculum that promotes the physical development of pupils. While the Act does not state that facilities for PE have to be provided on site, the provision of indoor sports facilities would assist the school to meet the needs of its pupils in delivering the curriculum.
- 27 It is also a requirement that separate toilet facilities are provided in schools for boys and girls of 8 years and over (Reg 4 School Premises (England) Regulations 2012)(s542 Education Act 1996).
- 28 With regard to the proposed development works to the fabric of the building, the value of the proposed works is in excess of the EU procurement threshold for tendering. Accordingly, a procurement process compliant with the Public Contract Regulations 2015 will be undertaken to appoint a contractor.
- 29 The Council will first be tendering for design services and will then be tendering for the works.
- 30 Following planning approval for the proposed remodelling and building works set out in paragraph 9 the council will grant a new lease of the buildings and grounds at Brookfield to the relevant academy trust. (In tandem the council will deal with restructuring the lease of the neighbouring City Sports/Greyhound RFC site.)
- 31 The council's legal team will deal with the preparation and completion of the necessary legal documentation.

Risk management

- 32 The risks presented by the project commencement are identified below, along with consequences of the risk factor occurring, and mitigations proposed to resolve the issues

Risk / opportunity	Mitigation
<p>Reputational- there is a reputational risk to the council should the project not progress, and vulnerable children and young people continue to be educated in a sub-standard setting</p>	<p>Ensure that all required documentation needed in order to progress the project is provided, and contains sufficient information for key decisions to be made. Corporate and directorate level.</p>
<p>Reputational – If the project progresses but does not meet the key gateways outlined in the project timeline, the council might be subject to reputational damage</p>	<p>Ensure that the project is kept to time by efficient project management, and that the corporate communications team provides key information to stakeholders at appropriate times within the project lifecycle. Corporate level.</p>
<p>Financial – there is a risk of investment into a developed design for the improvements being made, and the project becoming compromised by delay in the agreement of the new leases by either tenant</p>	<p>The council’s legal services have received positive indications from the Brookfield trustees, the Greyhound Rugby Club trustees, and the Education Skills Funding Agency, that the content of the new leases described in the head of terms circulated is agreeable in principle</p>
<p>Financial – there is a risk to the continuity of education for current pupils at the school, if the project timeline is compromised. In the current timeline projection, all works necessary may be accommodated around the normal daily operation of the school. If there are delays to the project, a small amount of decanting of pupils to an alternative site may be necessary. This could be at extra cost to the project.</p>	<p>Make appropriate plans to if necessary, provide temporary alternative accommodation at little or no extra cost, in liaison with the Brookfield Academy Trust. These eventualities have already been discussed and solutions proposed, using current other education settings, at minimal extra cost. Service level. In addition, ensure efficient implementation of project management methodology to keep the project to time. Corporate level.</p>
<p>Financial – there is a risk that if the project timeline is compromised, there would be inflation to cost, greater than that which was allowed in the feasibility study.</p>	<p>Ensure that the project has a further council contingency in place, in case of any unanticipated delays. Corporate level.</p>
<p>Legal – delivery of the project is dependant on the surrender and regrant not only of the lease to the school but also the surrender and regrant of a third party lease. Therefore there is a risk to the project completion, if one or both of the new leases, are not agreed and signed off.</p>	<p>Draft heads of terms have been drawn up, with agreement in principle gained from both tenants. Prior to project commencement, legal services will endeavour to secure confirmation from both parties in writing that they will at the appropriate time proceed to lease completion. Corporate level.</p>

33 Levels of risk mitigation stated in table above.

Consultees

- 34 Consultation regarding the acceptance and allocation of the special provision fund (SPF) government grant was undertaken at the appropriate time. Details and impact of this consultation are recorded in previous governance papers. Links to previous governance are listed in key considerations, paragraph 6 above. The consultation evidenced broad agreement with the decision, along with the view that work is also needed at other special education settings. This information has been factored into the development of a SEND capital strategy encompassing the full SEND estate.
- 35 Consultation regarding the improvements necessary at the school, and the prioritisation methodology, was sought by discussion individually and collectively, with Head teachers and governors of all of the Herefordshire Special Schools. In addition, the methodology for prioritising the works at the Brookfield has been published and shared with the Herefordshire Schools Capital Consultancy group. This group is set up as representative of schools within Herefordshire serving all ages, with the full range of school governance and all different educational designations. The resulting feedback from these discussions reflected agreement that the Brookfield School needed capital investment, and reinforced the view that in addition, other SEND settings were in need of investment. See above.
- 36 The proposal affects all wards. The proposal has been discussed with the cabinet member for education, the cabinet member for property and the cabinet member for finance.
- 37 Feedback after the consultations above was given for the SPF – on the Herefordshire WISH website and by a link from the website to the council website, and for the discussions with head teachers and governors, by circulation of notes of meetings, and by preparation of a briefing paper for the schools capital consultancy group.

Appendices

Appendix 1 Business case for the capital improvement project proposed at The Brookfield (Academy) School.

Background papers

None.

Please include a glossary of terms, abbreviations and acronyms used in this report.

SEND – special educational needs and disabilities

EHCP – education, health and care plan (for SEND)

SEMH – social emotional mental health (special needs)

SPF – special provision fund (government grant)

HT – head teacher

BB104 – (government) building bulletin 104

RIBA – Royal Institute of British Architects (project plan of work)