

Title of report: Herefordshire Capital Investment Strategy 2021-2030 For Specialist Settings Educating Children and Young People with Special Educational Needs and Disabilities SEND

Meeting: Cabinet Briefing (Cabinet Feeder)

Meeting date: Thursday 8 April 2021

Report by: Cabinet member children and families;

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

To approve the approach and recommendations within the attached (Appendix 1) 'Herefordshire Capital Investment Strategy 2021-2030 for specialist settings educating children and young people with special educational needs and disabilities (SEND)' and for Herefordshire Council to support implementation of the proposed capital improvements to specialist SEND education accommodation therein.

Recommendation(s)

That:

- a) **Cabinet adopts the approach and recommendations within the 'Herefordshire Capital Investment Strategy 2021-2030 for specialist settings educating children and young people with special educational needs and disabilities (SEND)' (hereafter referred to as 'the strategy')**

Alternative options

1. There are no alternative options to the above recommendations that avoid unnecessary reactive spending on accommodation maintenance, and mitigate the risk of a reduction in the quality of education and a lack of pupil places for SEND children and young people with education health and care plans. However Cabinet could decide not to agree the approach and investment proposed in the strategy. The advantage to this would be that there would be no immediate requirement for prudential borrowing for investment. It is proposed that this is not the chosen option, as the disadvantages of a lack of planned improvement to these settings would be to: increase commissioning of specialist places out of county for SEND pupils, incurring higher cost and greater travel implications for children; increase reactive maintenance spending which would not propose good value use of funds, and; increase risks to good health and safety of pupils within deteriorating school buildings.

Key considerations

2. In 2016, Herefordshire Schools Capital Strategy was adopted by the executive; this strategy describes an approach to and principles for bringing forward proposals for capital improvements to Herefordshire maintained schools, in a rational and evidence based way. It encompasses the likely need for improvements in capacity (numbers of pupil places available), suitability of accommodation, and/or the condition/safety of the accommodation provided by the county maintained schools
3. Herefordshire council has a statutory responsibility to provide sufficient high quality accommodation for pupils with an Education Health Care plan (EHCP) for their Special Educational Needs and Disabilities (SEND). In order to ensure that sufficient places are available in safe and suitable accommodation to cater for the full range of needs

identified within EHCPs, the 'Herefordshire Capital Investment Strategy 2021-2030 for specialist settings educating children and young people with special educational needs and disabilities (SEND)' (Appendix 1, hereafter referred to as 'the strategy') is proposed to complement the overarching Herefordshire Schools Capital Strategy, by specifically addressing the range of specialist settings necessary to accommodate the education needs of Herefordshire children and young people with an EHCP for SEND

4. The strategy seeks to ensure that there is high quality sustainable specialist educational accommodation for children and young people (CYP) with an education, health and care plan (EHCP) for SEND in Herefordshire.
5. By adopting the strategic approach and investment proposals over the lifecycle of the strategy Herefordshire Council will undertake a planned and prioritised sequence of improvement works that continue to ensure that the statutory responsibility to provide sufficient high quality education places for children and young people with SEND in particular those with an EHCP relating to their SEN or Disability is met.
6. The SEND specific strategy states the intention to ensure that: all Herefordshire children and young people with education, health and care plans for SEND are educated in high quality, fit for purpose learning environments; that sufficient capacity is available to commission such places in settings that meet need within Herefordshire where possible; and that a strategic approach to capital improvement projects in SEND specialist settings is established to ensure clear prioritisation and best value investment.
7. The strategy includes information about Herefordshire specialist SEND settings and the provision that they offer for our SEND pupil population (for detail see the full strategy, appendix 1). It describes the information gathered about the SEND pupil population, for example the forecasting of future pupil numbers for the short and mid-term, and the trends in the SEND special school population both in Herefordshire, and nationally, (including our statistically neighbouring local authorities). With regard to the SEND specialist setting accommodation, a range of information is routinely collected, added to, revised and analysed, that supports the forecasting of basic need for places (sufficiency considerations), and also the condition and suitability needs of current accommodation. This information is used to enable the prioritisation of potential investment needs, and also supports the subsequent formulation of detailed and considered business cases to enable recommendations to be brought to governance.
8. The quality of education accommodation is important for all children and young people, but vitally so for CYP with SEND, so that equality of opportunity for those pupils may be guaranteed, their personal potential realised, and their achievement and development across all areas maximised. It is of paramount importance that the facilities used by some of our most vulnerable children and young people supports their successful transition into adulthood, and offers them the broad and balanced curriculum that should be available to all pupils. Investment in high quality buildings for this purpose is essential, and will support school leaders and staff to continue and add to the excellent work that they already do, in bringing about inspirational education for their SEND school communities.
9. The measurement of success will be evidenced by Herefordshire Council investment in providing buildings that comply with the nationally recognised DfE guidance, setting out the accommodation that our SEND pupils should expect, and deserve. (DfE Building

Bulletin 104) An additional measure of success will be the creation of new or improved educational facilities that allow and encourage the delivery of an appropriate and innovative curriculum offer for all SEND pupils.

10. The proposals within the strategy include a range of recommended projects that would benefit children across the full range of SEND requiring specialist educational settings, equating to improvements for approximately 1.4% of the total number of school age children in Herefordshire. Children for whom learning is difficult, and barriers to learning significant. The numbers of children and young people for whom specialist educational settings is needed is increasing year on year, in Herefordshire, in similar local authorities to Herefordshire, and nationally.
11. The strategy has already been communicated in draft form for consultation to all appropriate stakeholders. This includes school leaders (of all schools, not just specialist settings), parents and carers of children and young people with an education, health and care plan for the scrutiny of themselves and their child, members of the SEND strategy group (representative of professionals supporting the full range of SEND), and, through schools, disseminated to any other stakeholders thought appropriate by school leaders for their response. If the strategy is agreed, the same groups would be informed through corporate communications mechanisms, and the strategy placed on the website for full public access. Progress against the strategy intentions and recommendations would be regularly reported through the normal school channels, for example the regular 'Schools Spotlight' publication.
12. In order to formulate capital proposals, the capital team collects a range of information. A schools capacity return for the government (SCAP) is produced for Herefordshire school age children each year. This SCAP report also provides a forecast of likely numbers of children attending schools for future years. Using this it is possible to forecast numbers we may need to accommodate in SEND specialist schools in the future. This information is also compared with numbers nationally, and numbers within local authorities similar to Herefordshire. The capital team also tracks and records information about each Herefordshire maintained school's accommodation. This information includes suitability (for SEND settings this is measured against the recommendations of government building bulletin 104), condition (most recently surveyed in 2020) and safety (also examined during the condition surveys of 2020, and supplemented by fire safety checks commissioned by individual schools).
13. The information above enables a mechanism for prioritising investment need. Each SEND specialist setting educates CYP with a range of needs. This is explained in the attached strategy – appendix 1. There is an annual review of the education health and care plan (EHCP) for each child to ensure that need is still being met. When children and young people are nearing the time for an education phase transfer (for example from primary to secondary education) parents, carers and pupils are supported to consider where their next placement might be. In order to ensure that high quality places are available the local authority has a responsibility to work towards this by supporting not just educational quality, but also education accommodation in its maintained school settings.
14. As well as significant investment by the council in schools capital improvement over the past five years (for example the work underway to remodel and add to provision at Brookfield Special School, using a council contribution of over £2m) occasionally

opportunities arise to apply for government grant funding for school capital improvements. For example, the recent special provision grant, supporting the Brookfield School capital project, and the successful bid by Herefordshire Council to receive a new SEND post-16 College. The bid for a 16-19 phase special school in 2017 was discussed with head teachers from all Herefordshire special schools at the time and agreed as appropriate. The bid requested a new school that would give improved accommodation for the current number of post-16 students, also add 20 new places, to increase capacity for the future. The college opens in September 2021 and will accommodate 60+ 16-19 age students with learning disabilities from Herefordshire. We have also received expressions of interest in placements there from neighbouring local authorities.

15. The proposals within the strategy include a proposal to significantly invest in improvements to a special school in Leominster, providing an increase in places for SEND pupils from 2-16. We recommend that consultation on closure of the current sixth form at the school is undertaken during 2021. The school presently offers education from age 2 to 19. Numbers within the sixth form have fluctuated over the years since opening, but have never risen above 12 students. When the new SEND sixth form college opens in Hereford City this year, it is likely that the numbers of students attending the sixth form in Leominster will decrease. The new college will have sufficient spaces for all Herefordshire 16-19 pupils anticipated to need a place. In any one school year post-16 we may accommodate 1-3 students from neighbouring local authorities (LAs), these numbers have also been considered, and discussion with our neighbouring LAs is underway. The special school in Leominster provides a good standard of education for its pupils, however the school accommodation capacity, condition and suitability are all substandard. In addition, a recent fire risk assessment has recorded that all three of the buildings on site have outlived their suitability and that they are unfit for the purpose for which they are being used.
16. The Children and Families Directorate capital team has considered the impact of possible closure of the sixth form facility and concluded that although the school has provided good education for this age group, the numbers of children attending in the future may make the viability of the sixth form increasingly difficult, thus putting mounting pressure on the whole school budget. In addition, children and young people at and over the age of 16 with SEND are more likely to be able to travel to school in Hereford City than younger pupils, as they benefit from effective travel training at their school to help prepare for increasing independence in adulthood. The proposal does not seek to underestimate the difficulties and barriers experienced by pupils with SEND who have to travel for lengthy periods to attend school, but in a transport modelling exercise it was found that if transport routes are revised and improved, travel from north of the county to the new college in Hereford may not mean significantly increased travel times, as its location benefits from being central within the county, with a network of roads leading in from peripheral areas. Children and young people aged 16+ already travel to the SEND sixth form provision at the Barrs Court Hub in Hereford city from the eastern, western and southern perimeters of the county. The proposed travel time for students travelling from the northern perimeter in the future would be equitable with, and little different from the travel for their post-16 peers who live elsewhere in the county.
17. Sixth form students currently educated at the Leominster school benefit from a rich range of off-site learning opportunities within their own neighbourhood. The leadership

of the new college has pledged that these opportunities will continue to exist, and be built upon within the personalised curriculum for all students at the new college. In addition, for those students who are able, and wish to, there will be opportunities for joint learning experiences at the other post 16 settings in Hereford City.

18. Quite understandably, school leaders, staff and some parents, carers and pupils would be saddened by a proposal to consult on closure of their school's sixth form phase. For this reason, the strategy proposal is that full consultation on this recommendation should take place, following the DfE government guidance on how to consult on a significant change to a maintained school, so that all relevant information can be considered and an appropriate council decision on this matter be taken.

Community impact

19. The projects recommended within the strategy will help Herefordshire Council to achieve some of their stated intentions in the County Plan 2020-24. In particular that it will: invest in low carbon projects to work towards carbon neutrality by 2030; it will ensure that all children are healthy, safe and inspired to achieve; it will protect the lives of vulnerable people; and invest in education and skills.
20. In addition to considering the impact on children and young people with SEND of proposed projects it will be important to bear in mind when considering a capital project scope, scale and budget, the needs of the Herefordshire community as a whole, best use of any financial investment, and how many pupils that investment will benefit.
21. Further investigation into any positive or negative implications of the proposal in the strategy relating to the special school in Leominster will be conducted through the proposed consultation on closure of the sixth form described in paragraph 13 above.

Environmental Impact

22. The SEND capital strategy contains a number of recommendations that would result in capital projects being prioritised and brought forward through the usual corporate project management and governance routes. As is expected by Herefordshire Council, projects would be conceived, specified and implemented to comply with all environmental expectations in council policy and principles, including Passivhaus excellent accreditation.
23. The environmental impact of any proposals within the strategy will be considered and expectations articulated to contractors and delivery partners that would minimise waste, reduce energy use and carbon emissions and consider opportunities to enhance biodiversity. This will be ensured through appropriate procurement mechanisms and managed and reported through the usual contract management routines.
24. The development of each project will therefore seek to minimise any adverse environmental impact and will actively seek opportunities to improve and enhance environmental performance.
25. The proposal to consult on closure of a sixth form facility at the Leominster special school, and commission places instead at the new college opening in September 2021 may slightly increase transport times for a small number of young people from the north

of Herefordshire, but not above times and distances already being travelled by post 16 students from the south, east and west of the county. In addition a very small number of students travel from out of county into Herefordshire to school, but these routes both to Leominster, and to Hereford City are already established. To improve this for all post 16 students travelling in to Hereford to attend the new college, it is proposed that the transport routes, which have developed over time and are not always efficient, be reviewed, in order to streamline travel, aiming to benefit students and minimise impact on the environment. Each project developed will also require the school leader and project contractor to consult with Herefordshire planning department on highways and transport implications of the proposed development, and produce a detailed travel plan showing how travel and transport will be successfully managed, encouraging sustainable travel choices for pupils and staff that have the least possible impact on learners and the environment.

Equality duty

26. 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.

27. 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 procured providers for each project proposed will be made aware of their contractual requirements in regards to equality legislation, and the requirement by Herefordshire Council, that all projects ensure council compliance with section 149 of the Equality Act 2010 as above.

28. The Equality Act 2010 established a positive obligation on local authorities to promote equality and to reduce discrimination in relation to the nine 'protected characteristics' (age; disability; gender reassignment; pregnancy and maternity; marriage and civil partnership; race; religion or belief; sex; and sexual orientation). In particular, the council must have 'due regard' to the public sector equality duty when taking any decisions on service changes. A proposal within the strategy that recommends a consultation on the closure of a small sixth form provision in Leominster does constitute a service change. However this does not discriminate against those young people in the Leominster area for whom traditionally this sixth form setting would have been available, as a new college opening in 2021 will offer equally good opportunities, in new modern and compliant school buildings, led and managed by an academy trust with a

proven track record of providing outstanding education. In addition, education placements at this setting will ensure equality of access to sixth form education for the Leominster community of young people with SEND with their peers from other parts of the county, who will also be travelling to the new college for post 16 education.

29. Consultation to seek the views of relevant stakeholders on the draft strategy has already taken place. See appendix 2 for a summary of responses. If the strategy as a whole is agreed, further and wider consultation would then be conducted with regard to the specific recommendation regarding the Leominster school sixth form proposed closure. This will enable a full and detailed examination of the proposal, its likely impact and the reasons for the recommendation, and will provide all of the detail needed for the council to deliberate on its final decision regarding this proposal.

Resource implications

30. The implications of the capital strategy for resources are varied. The strategy approach will require ongoing work by officers within the Children and Families Directorate in bringing improvement concepts in priority order to a feasibility proposal stage at appropriate times during the lifecycle of the strategy. As each concept is proposed and brought forward for investigation into its feasibility, funding for this activity will need to be secured from the Capital Development Fund. If suitable expertise and capacity is apparent within the council, some activities may be completed internally, where this is not possible, procurement of services will be embarked upon, following internal guidance and protocols. Following the feasibility exercise, if a business case is put forward for consideration, there is an implication for a capital funding request in each case.
31. The first priority identified within the strategy, is a project to significantly improve the accommodation for a special school in Leominster. Funding is already in place for the feasibility study that will identify the best solution and the high level costs that this would incur. Contractors will deliver this feasibility work over the next 2-3 months resulting in a report produced which will inform a project business case to be brought forward before the end of 2021, detailing the proposed scale, scope and cost of the project, and outlining a case for council capital funding to be granted to implement the project.
32. Each proposed project will then be tackled within a timescale that is staged through the strategy lifecycle. Projects recommended in the strategy range from minor remodelling/redevelopment works at some settings, through medium scale improvements at some, to the aforementioned full scale project proposal that would require significant funding at the Leominster special school.
33. In each case, investigation into alternative or contributory funding will be undertaken, including contribution from the school setting itself, benefactor funding, equity release, developer contributions and government grant opportunities. The existence of a coherent council capital improvement approach to SEND settings will be vital in order to strengthen the likelihood of an application for any available government funding being considered and accepted.
34. In addition, financial benefits to be gained through proposed projects will be examined, including through sustainable energy options to reduce impact on school revenue

spending for example, and maintenance cost avoidance implications for both council and schools by the provision of new and effective accommodation, replacing old, poor and expensive accommodation.

35. Completed appropriate cost and funding tables will be included as required in each business case brought forward, on agreement of the strategy approach and proposals.

Legal implications

36. Section 13 of the Education Act 1996 places a general duty on the Council to secure that efficient primary and secondary education is available to meet the needs of the population in its area. In doing so, the Council is required to contribute to the spiritual, moral, mental and physical development of the community.
37. Section 14 of the Education Act 1996 places a duty on the Council to secure that sufficient schools for providing primary and secondary education are available in its area.
38. Part 3 of the Children and Families Act 2014 places a duty on the Local Authority to support children and young people in England with special educational needs or disabilities and to keep under review the educational provision in its area for those children and young people.
39. The best value duty is contained in s3 of the Local Government Act 1999 as a result of which the Council is under a duty to make arrangements to secure continuous improvement in the way in which functions are exercised, having regard to a combination of economy, efficiency and effectiveness. The relevant guidance states that Councils should consider overall value, including economic, environmental and social value when reviewing service provision.

Risk management

40. Adoption of the strategy will demonstrate a council commitment to a programme of capital investment works to settings educating children and young people with an EHCP for SEND. This brings forward a risk of currently unplanned for council expenditure. However, this financial risk is mitigated by the governance regulations that exist within capital project management procedures, meaning that each project would be brought forward for governance consideration at the appropriate stages, with decision making entirely within the control of council members, before any projects receive agreement or funding is granted.
41. If and when a project is agreed, and funding applied for and granted, budget control will be tightly managed through the corporate project management process, and appropriate sign off required for spending decisions within the project. Key risks are routinely highlighted in this process, and mitigation identified that reduces impact of pressures on the council overall position.
42. The legal risks that any project might encounter are equally, managed by stringent compliance with corporate policies and procedures. There is legal officer support on each project board, and legal scrutiny of all recommendations put forward for council deliberation.

43. By constructing a strategy outlining approaches to capital investment in SEND settings, including explanation as to how projects are prioritised and brought forward for implementation, the council is reducing reputational risk by offering transparent information regarding the reasons for proposed investment and the mechanisms for choosing when and why the investment should be made. In addition appropriate consultation processes used in advance of decisions on any significant changes ensure open, honest and informed debate prior to any final decision.

44. Perceived broad categories of risk, and opportunities apparent, see below.

Risk / opportunity of agreeing the strategy	Mitigation
<p>There is risk of a council financial investment requirement for each project recommended that will improve the lives and achievements of vulnerable children and young people with SEND, and also support the council commitment to sustainability and environmental improvement. Although there would be an initial financial outlay, there are significant future cost benefits apparent through the creation of modern low carbon emission buildings, reduced revenue costs and maintenance cost avoidance for the council and schools</p>	<p>Each project will be individually costed by feasibility work before council decision to progress. The feasibility report would include possible other contributions to the cost that may be available.</p> <p>Consideration would be given as to how many children and young people would benefit from the proposed improvement, so that best value use of public funding may be demonstrated</p>
<p>If a project is granted and a budget allocated, there is a risk of overspend.</p>	<p>This risk would be minimised by a high level cost estimate from the feasibility study, and then in project implementation, by stringent adherence to council project management procedures.</p>
<p>Within any proposed capital project there are legal risks.</p>	<p>Legal risks would be managed through constitution of the project board at an early stage, which requires a legal case officer, who advises on legal issues and required approaches at each stage</p>
<p>When a capital proposal is brought forward that involves council investment there is a risk of reputational damage</p>	<p>Reputational risk to the council will be mitigated by full compliance with all corporate procedures, appropriate consultation and provision of relevant information about how spending has been prioritised and the value that each investment brings.</p>

Risks/opportunities of not agreeing the strategy	Mitigation
<p>If the strategy is not agreed, in its current or any amended form, there is risk of unplanned and reactive spending being necessary to deal with substandard and or dangerous accommodation for SEND pupils. There is an additional risk of being unable to place children with an EHCP for SEND in a suitable Herefordshire school, thus incurring risk of significantly increased transport time and cost for placements in private settings, putting the budget for all SEND education at risk.</p>	<p>An alternative to the strategy approach would be needed, or a council decision to increase funding to the high needs block enabling increased spending on out of county placements for CYP with SEND</p>
<p>If a council strategy for planned improvement to SEND specialist settings is not in place, there is the risk of placing pupils in accommodation that is unsafe, and cannot meet need</p>	<p>In order to reduce the risk of injury or harm through unsafe buildings, if the strategy is not accepted, it would be necessary to set aside a significant capital fund that could be drawn on to respond to emergency accommodation safety concerns</p>
<p>If capital improvement to accommodation for SEND pupils is reactive not planned, there is the risk of reputational damage as investment methodology would not be evident and may be seen to result in unfair or poor value spending decisions.</p>	<p>In the absence of a published strategy for SEND specialist settings capital investment and improvement, the council would need to be prepared to justify each investment decision individually, when bringing forward previously unidentified proposals</p>

Consultees

45. During the development of the strategy there has been a range of consultation activity. Initially some strategy suggestions were put forward to head teachers of special schools, when it became evident to the SEND commissioning team that demand for places in specialist settings was increasing (2016/2017). This led to the application for a new government funded 16-19 college in 2017, which was successful. Following this, investigation into the trend of increased pressure on places across all age ranges in the county also prompted further examination of the national picture and the situation within our statistically neighbouring authorities, carried out by officers within the capital strategy team and Head of Additional Needs. Concerns as to this trend and the need to respond were raised at a Directorate level, and shared with the Director, Assistant Director and member for education. A draft strategy was formulated that included consideration of the current capacity deficiencies, and also suitability and condition of accommodation in current settings. This draft was shared with the council members for assets, education and finance.
46. A sequence of further consultation, leading to refining and shaping of the final strategy was conducted, leading to the recent stakeholder consultation which closed on 9th February 2021. For more information on consultation, please see appendix 2.

47. A review of the strategy (Appendix 1) and summary of consultation findings (Appendix 2) was undertaken by the Children and Families Scrutiny Committee on 23 March 2021, with the recommendation that the strategy should include clarification that the scope of any feasibility work carried out into improvements to Westfield School would be informed by the result of the consultation on a proposal to close the Westfield Special School Sixth Form phase which has been made in response to this recommendation.

48. Political group consultation is being carried out currently to inform this decision and will be added to the report once the consultation period ends on the 9 April 2021.

Appendices

Appendix 1 draft 'Herefordshire Capital Investment Strategy 2021-2030 for Specialist Settings Educating Children and Young People with Special Education Needs and Disabilities (SEND)'

Appendix 2 summary of consultation timeline and responses to the recent consultation on the draft 'Herefordshire Capital Investment Strategy 2021-2030 for Specialist Settings Educating Children and Young People with Special Education Needs and Disabilities (SEND)'

Background papers

None

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

Glossary of terms

SEND – special educational needs and disabilities

EHCP – education health and care plan

C and F – children and families directorate

CYP – children and young people

SCIS – Schools capital investment strategy (for all maintained schools)