

**CABINET**  
**30 JANUARY 2020****NEW PRIMARY SCHOOL ALTERNATIVE PROVISION FOR  
KIDDERMINSTER**

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**Relevant Cabinet Member**

Mr M J Hart

**Relevant Officer**

Director of Children's Services

**Local Member**

Mrs M Rayner

**Recommendation**

- 1. The Cabinet Member with Responsibility for Education and Skills recommends that Cabinet:**
  - a) endorses the work undertaken by Worcestershire Children First and the Department for Education in respect of the wave 2 process for establishing a Primary Alternative Provision free school in the Wyre Forest area of Worcestershire;**
  - b) notes that a final decision on the choice of proposer for the new school rests with the Secretary of State for Education and is due to be announced in Spring 2020;**
  - c) approves that the proposed location and site of the new school would be on part of the former and vacant Sladen Middle School site, agrees that the required land would be leased to the new free school on a 125-year lease, and authorises the Strategic Director of Commercial and Change to settle the details of such a lease;**
  - d) approves the revenue funding set out in the report for the primary places with the intention for the new free school to open from September 2021 subject to the signing of the funding agreement between the Secretary of State for Education and the trust; and**
  - e) notes that the statutory consultation under Section 10 of the Academies Act 2010 to enter into an agreement with the Secretary of State for Education to set up a free school rests with the chosen trust as part of the pre-opening phase.**

## **Background to Alternative Provision**

2. Alternative Provision is used by Local Authorities to fulfil their specific duty to make arrangements for children who by reason of permanent exclusion, illness or other circumstances would not receive a suitable education. Schools may also use Alternative Provision to make suitable arrangements for children who have received a fixed-term exclusion or to exercise their powers to direct to off-site provision for the purposes of improving behaviour.
3. All pupils must receive a suitable education regardless of their circumstances. The provisions set out in statute acknowledge that situations arise which require children to be educated by other means in order to ensure that they remain accessing education and that this provision should be suitable to meet their assessed needs.
4. Alternative Provision is fundamental to achieving this, so long as both schools and the Local Authority identify at the earliest opportunity children who are not accessing their optimum education and carry out an appropriate needs assessment to identify if there is or likely to be need for alternative provision.
5. Furthermore, schools and the Local Authority must ensure that the purpose for sending children to Alternative Provision is clearly defined, regularly reviewed and appropriate timeframes for reintegration clearly set out from the start.
6. The Council's vision, set out in the Education Strategy 2019-24, strives to minimise Permanent Exclusion to ensure schools are inclusive and implement effectively the Graduated Response to assessing and meeting the needs of their children.

## **Alternative Provision – Worcestershire Expression of Interest**

7. As part of the process for the Council's expression of interest in a new Alternative Provision free school, we needed to put together a bid form that clearly identified the rationale for the provision, the need for numbers, financial information and site location (Appendix 1 – Free School Bid Form).
8. Within section C1 (in Appendix 1) on current context, the Council identified it had six Alternative Provision schools, of which two catered for primary-aged children. This meant that whilst children in Worcester and Redditch have easy access to primary AP, those in the Wyre Forest area were served by an outreach of Beacon, with limited places.
9. The Wyre Forest area was identified as having a need for provision due to the lack of capacity in the existing system, the deprivation and the strong support for the provision from Headteachers in the area. This support was one of the criteria for the success of this bid.
10. The bid proposal identified that across Worcestershire in 2016/17 there were a total of 141 permanent exclusions of which 114 were secondary-aged children compared to 27 primary-aged children, which is an increase of 26% on the previous year; however, during the academic year only 20 children were reintegrated back into school. Furthermore, the number of days from the start date at the Alternative

Provision to the reintegrating school has increased from 190 in 2014/15 to 285 in 2016/17.

11. Specifically, in the Wyre Forest area in 2018-19 we had three permanent primary exclusions and 82 primary fixed-time exclusions. So far in 2019-20 we have had three permanent primary exclusions and 78 fixed-term exclusions.

12. One of the principal aims of the bid was to build on work undertaken in other parts of the County. This has seen that where the Council has been able to provide effective impartial support and monitoring to schools, parents and providers, it has been able to ensure that all parties are clear about the expectations and how schools can better work together to support children in school and reduce the need to exclude, or for parents feel the need to withdraw their children to either attend another school or home educate.

13. One of the key premises of the bid was that despite increasing the number of places in Alternative Provision, based upon the pupil numbers projected in each cohort/group and the reduction in Section 19 placements, then in 2022 the Council would achieve in-year savings of just under £250k (compared to pupil costings if the school bid were unsuccessful). Using the projected pupil numbers, in 2026 the Council could achieve in-year savings of just under £400k, against a time of forecasted increased demand.

14. In section C2 the bid aligned the work closely with the High Needs Strategy. It identified the pressure on places in Alternative Provision and the need to strengthen our mainstream provision. The specification for the proposed new school addresses this need, helping to support more children to stay in, or be reintegrated into, mainstream provision.

15. Good quality Alternative Provision has a significant role in ensuring that children are educated in the right place at the right time with the right level of support, and can form part of an effective system of early intervention and inclusion central to achieving good outcomes for vulnerable children in Worcestershire.

16. The expected outcomes from the new school are outlined in section C4. The prime foci will be to:

- a) address early identified non-school readiness post reception both in terms of pupils and parent/carer contribution to learning and school life;
- b) deliver evidence-based intervention programmes geared to improving the foundations for future learning and progress;
- c) target and rectify the key drivers behind pupil behaviour that adversely affects their own and peer learning opportunities;
- d) deliver sustained reintegration of pupils back into mainstream and onto secondary;
- e) impact on the growth of Mental Health issues and pupils with behavioural challenges; and
- f) establish a sustainable outreach and training hub to build capacity within mainstream schools around behaviour for learning.

17. These expected outcomes will be measurable via:

- a) improved attendance rates of referred pupils both within the AP school and post reintegration;

- b) improved KS2 outcomes of referred pupils;
- c) improved engagement of parent/carers in school life (e.g. parents' evenings, clubs etc);
- d) improved emotional wellbeing survey (SDQ) outcomes both of pupils and parents/carers as co-educators; and
- e) a longer term closing of the attainment gap in Wyre Forest Schools through all phases.

18. More specifically, a key feature of the school will be the creative and flexible approach to delivering different behavioural, social and emotional needs of all children. The holistic development of each child is paramount and through a coherent, coordinated curriculum plan, which emphasises social and emotional aspects of learning, all children will accelerate their progress in literacy and numeracy. The curriculum will be built around the development of personal, social and emotional skills and understanding alongside using a range of programmes to support the development of literacy and numeracy and intervention programmes for those who are below age-related expectations.

19. The specification for the new school required proposers to show how they will use a variety of approaches to develop confidence in pupils' own learning which will enable them to learn faster and better by improving concentration and instilling a love of learning. The aim is empowering children to become more resourceful, resilient, reflective independent, self-disciplined and collaborative. With the clear measurable outcomes that they spend less time in the AP provision and re integrated in to mainstream schools quicker and more successfully. Parenting programmes will be tailored to supporting pupils in and out of school alongside access to other adults who can inspire and raise aspirations from a range of sectors.

20. As part of the assessment process, providers will need to explain how they will meet the specification as laid out by the Council and how these will be funded from within their budget.

## **Wave 2 Free School Process November 2018**

21. In November 2018 the Council expressed interest to the Department for Education (DfE) in opening a new free special school and a new free AP primary school under the wave 2 process for special provision. In 2019 the DfE announced that the Council was successful with its expression of interest to enter into the process to open a new primary Alternative Provision free school in Kidderminster. New free special or AP schools can only be centrally funded via this wave 2 route with the Council expressing an interest. The Council still retains its statutory duty to secure sufficient education for children and young people, and where it identifies a need for additional places, this would follow the free school presumption route.

22. The wave 2 process for special provision is part of the DfE's central free school programme and will be delivered and funded as such.

23. The DfE in its non-statutory guidance, 'Guidance and Criteria – For proposer groups interested in applying to set up a special free school or alternative provision free school – March 2019' identifies that free special schools or Alternative Provision

operate most successfully when in partnership with Local Authorities. Any new free special school or Alternative Provision should fit within the Local Authorities' priorities.

24. The wave 2 process operates as a hybrid of the wave 14 process for mainstream schools and the free school presumption route. In wave 2, the Council is responsible for identifying the specification for the new school and appropriate revenue funding but the DfE is responsible for the majority of the capital costs of the new school.

25. As the Council is not the proposer of the new school, it is not required to carry out a non-statutory consultation on proposals to open a new school (as it would be if following the free school presumption route). The statutory consultation on opening the new school will follow the announcement of the preferred provider and will be their responsibility to carry out as part of the pre-opening phase of the new school. This will form part of the information the provider will supply to the Secretary of State for Education that will allow final approval for the new school by the signing of the legal agreement (see below).

26. In March 2019 the Council began work with the DfE free school team. In the first phase, the project had two overlapping strands, the engagement of a proposer and the development of the new school. This is followed by phase 2 – pre-opening phase.

### **Phase 1 - Proposer Engagement**

27. As part of the first strand of the project, the Council produced a specification for the new school, see Appendix 2, which identified the need for 45 primary school places. The school places will be available for local schools to commission for pupils and for Council commissioning.

28. The initial specification, which was based on the information contained in the November 2018 bid form, laid out to potential providers what the Council requires from the new school and is used as the basis for assessing any proposals. This was published on the Council's website in July 2019 and a sponsor engagement event held on 17 July 2019. The closing date for applications from proposers for the new school was 30 September 2019.

29. The Council received two applications from proposers for the new school. Following initial assessment of the proposals by both the Council and DfE, it was agreed to take both proposals forward to interview on 13 January 2020. The interview panel was made up of two officers from Worcestershire Children First and representatives of the DfE and their agents.

30. Following the interview process a recommendation on the preferred proposer was then forwarded by the DfE to the Secretary of State for Education. If the Secretary of State for Education approves one of the proposers, the project will enter the pre-opening phase. If not, the project will cease.

31. Cabinet is recommended to note that the decision on the proposer for the new school rests with the Secretary of State for Education and a formal announcement is anticipated in Spring 2020.

## **Phase 1 - New School Site and capital costs**

32. In the criteria for the expressions of interest, the DfE made it clear that proposals that identified a suitable site, and was made available by the Council, would be received favourably.

33. As part of our expression of interest in respect of the new alternative provision free school, the Council identified a potential site for the new school. The site proposed was the former Sladen Middle School site, Hurcott Road, Kidderminster, which was demolished in 2007. The total site area is 2.56ha, of which approximately 1.8ha has been identified for the new school by the DfE using the government school area building bulletin guidance. This site is shown in Appendix 3.

34. The site was identified following work undertaken for both the proposed special and free schools. It was the preferred option as we had identified it was not needed for the proposed special school, work on the proposal for the free AP school was strongly supported by schools in the Kidderminster area and the site was clear and provided ample space.

35. The area identified for the school is subject to an overage payment of 50% of the enhancement value if developed other than for education purposes which significantly reduces its value as a housing development site and one of the reasons why this site was put forward.

36. The whole site is currently allocated in the Wyre Forest District (WFD) Local Plan for housing, but the Council has made representations to the WFD 2019 local plan site allocation consultation process to amend the allocation to a school on the identified area and housing on the residual land which the Council intends to dispose of for a capital receipt. This does not prevent submission of a planning application for a school, but it will need to be justified against the existing policy if the policy is not amended in line with the submission.

37. The capital costs associated with the construction of the new school will be met in full by the DfE and they will be responsible for the design and procurement. However, the Council will be responsible for any abnormal development costs that are identified from the ground investigations. Although this is considered as being a low risk considering the former use of the land, it still needs to be recognised that there may be a requirement for a capital contribution from the Council assuming that any abnormalities don't make the feasibility unviable. The result of the ground investigations won't be known until the end of March 2020.

38. The land on which the new school will be constructed would be leased to the new school in line with the normal academy route for 125 years and zero cost. This report and appendices show the justification for the need for new alternative provision in the Kidderminster area to support the needs of primary-aged children and help support them to stay in mainstream education.

39. Therefore, providing the land for an Alternative Provision free school reflects good value against the opportunity cost of foregoing the capital receipt, and uses surplus land for which the development value is restricted and intended for educational

purposes. It is therefore considered that the disposal meets the community value criteria of the Secretary of State's General Disposal Consent for undervalue disposals under s123 Local Government Act (LGA) 1972, as it will help to secure the promotion or improvement of the economic, social or environmental well-being of its area by the provision of an AP school. The opportunity cost falls well within the maximum level of lost receipt permitted to support a demonstrated community need/value. The precise valuation remains commercially confidential and is attached as exempt Appendix 3 not for publication.

40. Given the above information, Cabinet is recommended to approve the lease of the required land to the new Alternative Provision free school.

## **Phase 2 – Pre-Opening Phase**

41. Following the announcement of the chosen trust/proposer by the Secretary of State for Education in Spring 2020, the project will move to the free school pre-opening phase, which will be managed by the DfE. This phase is anticipated to last one and a half years.

42. This phase allows for final confirmation of the site and affordability of capital costs and for the chosen provider to develop their admission arrangements, curriculum and governance.

43. During this stage the trust/proposer will carry out its statutory obligation to consult under section 10 of the academies act 2010 about their free school proposal.

44. Section 10 of the Act requires the proposer to consult with the people they think appropriate, on whether to enter into an agreement with the Secretary of State for Education to set up a free school.

45. The duty to consult rest solely with the Trust/proposer.

46. The thoroughness and transparency of the consultation forms a key part of the decision on whether to enter into a funding agreement with the trust/proposer.

47. The Secretary of State for Education is required under Section 9 of the Academies Act 2010 to undertake an assessment of the impact the opening of the new school has on other provision in the area. This responsibility sits with the Secretary of State via the DfE project lead, and forms part of the decision on whether to enter into a legal agreement with the Trust/proposer.

48. The funding agreement is the legally binding contract between the trust and the Secretary of State for Education, which contains the terms and conditions upon which the free school is funded. The Secretary of State for Education can cancel or defer a project at any point in the pre-opening phase, even after signing the funding agreement, if pupil numbers are not as identified or if they consider the school would provide an unacceptably low standard of education.

## **Revenue Funding**

49. As identified above, as part of the specification the Council committed to commission five places at the new school. The intention is for the school to open in September 2021, but this is subject to the signing of the legal funding agreement between the Secretary of State for Education and the trust.

50. Funding for the five Council-commissioned places will come from Dedicated Schools Grant High Needs Block and will potentially start in the financial year 2021-22.

51. Cabinet is recommended to approve the funding for the primary AP places.

## **Legal, Financial and HR Implications**

52. There are statutory processes for establishing new free schools under the Education and Inspections Act 2006, Academies Act 2010 and disposing of land at under market value under s123 of the local Government Act 1972, addressed above. The financial implications are discussed above.

53. Discussions on any potential HR implications are ongoing and will be resolved prior to transfer. The chosen proposer will also carry out appropriate HR checks as part of their due diligence. The Cabinet Member with Responsibility for Education and Skills will be kept informed.

## **Privacy and Public Health Impact Assessments**

54. There are no privacy or public health implications.

## **Risk Implications**

55. The school will be procured and constructed by the DfE using their framework agreement, therefore removing any capital risks to the Council subject to any abnormal site conditions.

## **Equality and Diversity Implications**

56. An Equality Relevance Screening has been completed in respect of these recommendations. The screening did not identify any potential Equality considerations requiring further consideration during implementation.

## **Supporting Information** (Available electronically)

- Appendix 1 – Free School Bid Form
- Appendix 2 - Local Authority Commissioned Primary Alternative Provision Free School – Specification.
- Appendix 3 – Site boundaries – former Sladen middle school site
- App 4 - exempt appendix – on the grounds that disclosure of information relates to the financial or business affairs of any particular person (including the local authority) and that the public interest in maintaining the exemption outweighs the public interest in disclosing it.

## **Contact Points**

### County Council Contact Points

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### Specific Contact Points for this report

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## **Background Papers**

In the opinion of the proper officer (in this case the Director of Children's Services) the following are the background papers relating to the subject matter of the report:

'Guidance and Criteria – For proposer groups interested in applying to set up a special free school or alternative provision free school – March 2019' -

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/835351/Special\\_and\\_AP\\_free\\_schools\\_guidance\\_and\\_criteria\\_for\\_proposers.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/835351/Special_and_AP_free_schools_guidance_and_criteria_for_proposers.pdf)