

CABINET MEMBER DECISION

Date of decision – 5 JUNE 2018

DECISION TO PUBLISH STATUTORY PROPOSALS FOR PRESCRIBED ALTERATIONS TO SPECIAL SCHOOLS 2018 & 2019

Relevant Cabinet Member

Marcus Hart – Cabinet Member for Education and Skills

Relevant Officer

Director of Children, Families and Communities

Local Member(s)

Mr K Taylor – Bromsgrove (Rigby Hall Special School)

Mrs T Onslow – Kidderminster (Wyre Forest Special School)

Recommendation

1. The Director of Children, Families and Communities recommends that the Cabinet Member with Responsibility for Education and Skills:

(a) notes the guidance on prescribed alterations to maintained schools, the recommendation formed from the High Needs Commissioning Review, the consultation feedback received from Worcestershire Special Schools and the planned consultation with other stakeholders including parents and carers, schools, colleges and providers that offer special education provision;

(b) notes the proposal for The Kingfisher school to increase pupils numbers for September 2018 subject to a full business case and decision by the Regional Schools Commissioner;

(c) approves the publication of the statutory full proposals and public notices to:

- i. increase the number of pupils above 10% for September 2018 at Rigby Hall Special School;**
- ii. increase the number of pupils above 10% for September 2018 at Wyre Forest Special School; and**
- iii. enlarge the premises and increase the number of pupils above 10% for September 2019 at Rigby Hall Special School; and**

(d) notes the final decision will be made by:

(i) the Director of Children, Families and Communities in relation to proposals in respect of which no objection is received; and; or

(ii) the Cabinet Member with Responsibility for Education and Skills in relation to proposals in respect of which objection to the Public Notice is received.

Background

2. The 2017 High Needs Commissioning Review (HNCR) and SEND Sufficiency report detailed a need for more special school places in Worcestershire. The SEND Team currently have a list of 125 pupils waiting for a special school place, most of whom are currently in Worcestershire mainstream schools or Alternative Provision. The Provision Planning team have also forecast an increased need for special school places based purely on demographic growth of 39 places (Reception – Year 14) for September 2018 and 54 places for September 2019. This does not take into account housing growth, any surplus needed or the pupils within other provision waiting for a special school places.

3. As part of the HNCR all Worcestershire special schools were asked to consider whether they could accommodate an increase in places for September 2018 with minimal or no accommodation changes. In the commissioning review meetings with Special Schools in January 2018, increased places were proposed at The Kingfisher School, Rigby Hall School and Wyre Forest School for September 2018 (Appendix 1 details changes). These proposed changes will increase commissioned places by a total of 50 places for September 2018.

4. In March 2017 the Council was notified by the Department for Education (DfE) of additional funding available, the Special Provision Capital funding, provided to support Worcestershire Council create new places for children and young people with Education Health and Care Plans (EHCPs) between 2018-21. Worcestershire Council has been allocated a total of £1,085,665 over the period of the three years (£361,888 each year) subject to certain conditions being met by the Council. To identify potential capital projects, the Council completed a bidding process open to all Special Schools to submit project concept briefs to increase special school places. The High Needs Implementation Group assessed all of the bids received against an agreed set of criteria including quality of provision, value for money, age range and timescales for delivery. The proposal from Rigby Hall School to enlarge the premises of the school and increase the number of pupils at the school scored the highest, this will increase places by an additional 25 FTE for September 2019.

Legal, Financial and HR Implications

5. The Council has a duty (under the Education Act 1996) to ensure there are sufficient school places to accommodate the children and young people who reside in the county and to ensure these places are of good quality with sufficient capacity to promote parental choice and diversity. Section 14 of the Education Act 1996 places a duty on Local Authorities to secure educational provision is made for pupils aged 16 – 18 and over 19 years, and those with special educational needs. Section 315 requires LAs to keep their arrangements for Special Educational Needs and Disabilities (SEND) provision under review.

6. All of the above prescribed alterations are subject to the statutory process detailed in the 'making changes to maintained schools' or 'making significant changes to an open academy' DfE guidance. Governing Bodies of all categories of special school and LAs for community special schools may seek to increase the number of places by following the statutory process if the increase is by 10% or 20 pupils (whichever is the lesser). The proposals at Rigby Hall and Wyre Forest require the LA (community special) to complete a statutory process. The Academy special school is required to complete a full business case including consultation with all those who could be affected by the proposed change to be submitted to the Regional Schools Commissioner for a decision.

7. The September 2018 proposals do not require any capital funding, the revenue funding will be found as part of the High Needs Dedicated Schools Grant, which is significantly overspent as reported to CFC Leadership Team as part of the monthly budget monitoring report. For Kingfisher as an Academy school, the place funding will be deducted from the Local Authority DSG from September 2018. Each FTE will be funded at £10k plus the top up for individual pupils based on their bandings. Some pupils may move from mainstream schools into these places, although this is unlikely to generate any savings.

8. The Rigby Hall September 2019 enlargement does require capital funding from the LA. Following the bidding evaluations, the CMR for Education and Skills was consulted on evaluation results and supported the recommendation to include the Rigby Hall project as a proposal for the 2018/19 SPCF allocation (£361,888) as part of the Education Capital programme to be reviewed by Cabinet in June 2018 (Resources report). Early indicative costs for this project estimate a cost of £367,895.95 + VAT for the additional Complex Needs Centre expansion. The CFC Accommodation officers are currently working with the school and consultants to develop detailed feasibility and costings. Additional Basic Need capital will be allocated to support this project if necessary as detailed in the Cabinet report.

Pre-Consultation

9. Since 2016, the statutory guidance no longer has a requirement for a pre-consultation period but there is a strong expectation that schools and LAs will consult interested parties, in developing their proposal(s) prior to publication, as part of their duty under public law to act rationally and take into account all relevant considerations. Schools also need to ensure that they have the consent of the site trustees and other relevant religious authorities (where necessary).

10. The Director of Children, Families and Communities considers (having taken advice from Directorate officers and Head of Legal and Democratic Services) that we do not include a pre-consultation stage for the above school proposals for the following reasons:

- I. There is not a statutory requirement to do so; and the statutory process does include the representation stage, a period of 4 weeks where any person or organisation can submit comments on the proposals to the LA to be taken into account by the decision maker; and
- II. The proposals have already had the benefit of being worked up with stakeholders though the recent Review

III. The timeline including the pre-consultation stage would likely complete in October / November 2018, too late for the September 2018 start date of the additional pupils. It would also delay the start of the works on site to enlarge the premises at Rigby Hall, therefore this proposal would unlikely be ready for September 2019.

11. As part of the High Needs Commissioning Review, officers consulted with Worcestershire Specialist education providers on a set of recommendations. 81 providers responded and 67 (83%) agreed with the recommendation to increase generic special school places within existing Worcestershire Special Schools.

12. The High Needs Commissioning review was a lengthy process and recommendations need to be actioned as quickly as possible to support children and young people access the most appropriate education provision to stand the best chance of positive outcomes. The LA needs to evidence the outcomes and outputs of the HNCR and a significant part of this includes taking action to address the increased demand for special school places. Any further delay could have a detrimental impact upon children and young people's progress and the LA's relationship with our special schools and alternative providers.

13. One of the requirements placed on LA's to receive the SPCF is a need to consult with parents and carers, schools, colleges and providers that offer special education provision. Officers plan to incorporate this process into the Representation stage of the statutory process and include information about the strategic planning process for the SPCF.

Statutory process

14. The statutory process for making prescribed alterations to schools has four stages:

Stage	Description	Timescale
Stage 1	Publication of Statutory proposal and public notice	At start of representation stage
Stage 2	Representation (Formal Consultation)	Must be at least 4 weeks
Stage 3	Decision	LA should decide a proposal within 2 months
Stage 4	Implementation	No prescribed timescale

15. The indicative timeline for these proposals statutory process is planned as follows:

- 5th June 2018 - CMR decision report – to publish full statutory proposals and public notices
- 5 day call in period on CMR decision

- 13th June – 11th July 2018 - Publish Full proposals & Public Notices – Representation Stage (must be 4 weeks)
- End of July - Final decision (if objections, will need a further CMR report).

16. Details of the published full proposals will be sent out to a range of stakeholders including parents and carers of pupils at all Worcestershire Schools, other education providers, parent groups, local residents, trade unions, and local members. Public notices will be published in all local papers and at each proposed school. All stakeholders will have an opportunity as part of the representation stage to comment on the proposals. Officers will take any comments and objections into account when forming the recommendations for the final decision maker who will be able to see the comments and responses as part of the final decision report.

17. The final decision must be made within a period of two months of the end of the representation period or it must be referred to the Schools Adjudicator.

18. The above timeline would allow schools to confirm places allocated to pupils for September 2018 and work to begin on the enlargement project at Rigby Hall ready for at least September 2019. The High Needs Commissioning review was a lengthy process and recommendations need to be actioned as quickly as possible to support children and young people access the most appropriate education provision to stand the best chance of positive outcomes. The LA needs to evidence the outcomes and outputs of the HNCR and a significant part of this includes taking action to address the increased demand for special school places.

Privacy and Public Health Impact Assessments

19. A Privacy and Public Health impact screening has been completed in respect of these recommendations. The screening did not identify any potential considerations requiring further consideration during implementation.

Equality and Diversity Implications

A full Equality Impact Assessment has been carried out in respect of the recommendations. This did not identify any potential negative impact for the Protected Groups affected. The full EIA is attached at Appendix 2.

Supporting Information

- Appendix 1 – Details of proposed prescribed alterations at Worcestershire Special Schools September 2018 and September 2019.
- Appendix 2 – Equality Impact Assessment

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 this report:

- [High Needs Commissioning Review Plan](#)
- [SEND Strategy](#)