

CABINET

DATE	19 th July 2023
REPORT OF	Councillor Margaret Cracknell Portfolio Holder for Children and Education
RESPONSIBLE OFFICER	Janice Spencer, Director of Children's Services
SUBJECT	Special Educational Needs and Disability School Places Sufficiency and Funding of Resource Specialist Provision Places
STATUS	Open
FORWARD PLAN REF NO.	CB 07/23/05

CONTRIBUTION TO OUR AIMS

The Council has a statutory duty under the Education Act 1996 to ensure the provision of sufficient and suitable pupil places for its children.

Analysis of current and future educational need for children with Special Educational Need and Disabilities (SEND) who have an Education, Health and Care Plan (EHCP) has identified future shortfalls of sufficient numbers and suitable local education Resource Specialist Provision pupil places to meet current and future predicted needs. There is a need to create and fund local places to prevent children and young people going out of area and remain educated in their local community.

The identified rolling programmes of Schools' High Need provision of new Resource Specialist Provision of pupil places will contribute directly towards the Council's strategic priority of supporting the development of 'Stronger Communities' by providing a fit for purpose service model aligned to the use of physical property, reducing the need to send our children out of area which continues to support communities across the Borough.

EXECUTIVE SUMMARY

The current NELC SEND Sufficiency Strategy 2020-2025 is being refreshed following detailed analysis undertaken through the Developing Better Value in Send Programme. This report seeks authority to implement the recommendations of approving the rolling programme of funding of local Resource Specialist Provision education places, entering into Service Level Agreements (SLA) with local school Trusts to commission places. Following a successful pilot of provision for secondary children with Social Emotional and Mental Health (SEMH) needs, approval is also required to enter into a further 4 year Service Agreement with the Trust for place provision to meet demand, whilst the new Specialist Free School is being developed.

RECOMMENDATIONS

It's recommended that Cabinet:

1. Approves and delegates to the Director of Children's Services in consultation with the Portfolio Holder for Children and Education authority to:
 - a. enter into agreements with Trusts to commission Resource Specialist Provision places for children and young people with SEND who have an EHCP as per a continuing rolling programme of NEL place creation.
 - b. carry out all ancillary activity reasonably arising from the above
2. Authorises the Assistant Director Law and Governance (Monitoring Officer) to execute any documentation arising from the above recommendations.

REASONS FOR DECISION

North East Lincolnshire Council has a statutory duty under The Education Act 1996 Section 14(1) to ensure that it provides sufficient school places for all pupils who are resident within the authority. It has specific duties to ensure that there is sufficient provision for pupils with SEND where an Education Health and Care plan (EHCP) has determined that the provision should be met in designated specialist provision.

The national increase in the birth rate has resulted in a significant increase in pupil numbers. There is identified predicted demand for an increase in mainstream school places and there will also be a corresponding increase in demand for specialist placements. The recent Delivering Better Value diagnostic analysis identified a deficit of places over the next 5 years with a potential significant financial cost to NELC.

The current SEND Sufficiency Strategy is being refreshed. In March 2022 Cabinet approved the programme of capital high needs provision development to fund some of the physical place creation over the next 3 years. The Council have also been successful in securing the delivery of a new 150 place Specialist Free School (opening 2027) and two new primary builds which will include Resource Specialist provision places (opening 2024). As new Resource Provisions come on line, and to meet shortfall whilst the new build provisions are being developed, the Council need to commission the places and enter into Service Level Agreements with the Trust providers, funded from the Dedicated Schools Grant High Needs Block funding. There has also been a successful three year pilot with an Academy Trust to provide Resource Specialist places for children and young people with SEMH. NELC would like to re-commission the 16 places with the Trust for a further four years until the new Specialist Free School opens.

There are financial emerging pressures due to the lack of current and predicted places required, with NELC having to fund expensive educational places out of borough to meet shortfall of places and increasing demand. By funding local

provision and entering into Service Level Agreements with local school Trusts, this will reduce the potential financial costs predicted over the next five years. It will also ensure children and young people are educated in NEL in their community full time in suitable education settings as opposed to being in external or inappropriate provision, improving the safeguarding of a vulnerable cohort of children. Education transport costs will also be reduced as a result.

Without this decision, the Council would not be able to commission the required places following the physical development of Resource Specialist Provision through the capital programme, or commission the SEMH places required following the successful pilot with Wellsprings Academy Trust whilst the new specialist free school is being developed, resulting in externally funded places having to be sought at a higher cost and out of borough.

1. BACKGROUND AND ISSUES

- 1.1 In May 2019 a sufficiency exercise explored the scale of growth in demand for specialist provision and predicted shortfall in local specialist provision and identified the increased dependency on external independent non-maintained placements. There was evidence from IMPOWER of a significant increase in the number and cost of this type of placement. A sufficiency exercise was completed during January and February 2020. The process followed a number of stages which collated and examined key strategies, documents, data sets and opinions. NELC SEND Sufficiency Strategy 2020-2025 identified 6 recommendations to begin to address the sufficiency gap identified.
- 1.2 In March 2022 paper to Cabinet regarding Schools capital programme, the growing number of predicted places required was identified due to the national increase in the birth rate resulting in a significant increase in pupil numbers. There was identified predicted demand for an increase in mainstream school places and a corresponding increase in demand for specialist placements. Cabinet approved the capital programme which included development of two new primary schools (which included Resource Specialist provision places in each) and High Needs capital grant investment to support the creation of Resource Specialist Provision places on school sites .
- 1.3 In October 2022 the Department for Education DfE announced that NELC were successful in entering the Delivering Better Value in SEND programme(DBV). The DfE has acknowledged the pressure experienced by local systems in delivering services and the DBV programme aims to support Local Authorities in delivering services for children and young people whilst ensuring sustainability. Detailed analysis of NELC position was undertaken. The diagnostic further confirmed the predicted numbers and type of need, lack of number and types of suitable places in NEL, the financial cost implications unless significant action was taken to improve inclusion, the need to reduce requests for EHCP's and create and develop a local mix of suitable provision in NEL to educate our children with EHCP's. In March 2023 cabinet approved the accepting of the

£1,000,000 DBV grant to increase capacity to deliver an agreed programme of activities to facilitate improved inclusion and monitoring.

- 1.4 The DBV diagnostic analysis is also contributing to the refresh of the SEND Sufficiency and Joint Commissioning Strategies to identify a further 5 year plan to increase suitable appropriate provision in the borough. This is due for approval in November 2023 along with the SEND and Alternative provision strategy.
- 1.5 In March 2023 DfE announced that NELC were successful in its bid for a new 150 place specialist free school for children and young people with SEMH needs, which will open in September 2027.

Over the last financial year and this financial year, the Local Authority has taken receipt of the High Needs Capital Grant from the DFE. A programme of identified Resource Specialist provision educational places creation for children with EHCP's has been developed to repurpose existing buildings that are part of mainstream schools. The pilot scheme successfully opened in April 2023 at a primary Academy providing 12 primary school commissioned Resource Specialist pupil places. A Service Level Agreement (SLA) has been developed with the Trust. NELC are exploring opportunities with Trusts to deliver the programme of 60 plus additional places being created across the borough and will need to enter into SLA's to commission and fund the places with each Trust via the High Needs block revenue funding, once the physical spaces have been created.

- 1.6 Alongside the physical development of places funded via the capital programme, a successful pilot project was undertaken with an Academy Trust to provide places for children and young people of secondary school age with SEMH. This provision needs to continue to meet some of the identified deficit of places until the new free school is built and the Council wish to enter into a four year agreement with the Trust to commission this provision. NELC are also exploring other external investment place creation opportunities.
- 1.7 The current DBV diagnostic has identified the growing predicated demand, and need to try and reduce this. Demand however will increase due to identified needs of children due to increased birth rates, known health issues and other factors such as new housing developments increasing community demand. Funding of external places is very expensive compared to the cost of local development with Trusts on school sites. Transport costs will also be reduced as a result of the reduction of children and young people not having to be educated out of area. Children and young people will also benefit from remaining educated in in their own communities in appropriate suitable educational placements, improving the outcomes and reducing safeguarding concerns for NEL children with EHCP's .
- 1.8 As the Resource Specialist Provision is based in mainstream school settings, inclusion, outcomes for children and young people, and data visibility required for service improvement cycles will improve. This will also contribute to an improved position for NELC and its partners for future SEND inspection.

2. RISKS AND OPPORTUNITIES

- 2.1 By proactively creating Resource Specialist Provision and entering into Service Level Agreements with local school Trusts the Local Authority is ensuring that it is creating sufficient and suitable educational places for children and young people with SEND who have EHCP's. This will result in significant cost avoidance due to having to commission externally provided places and associated transport costs. The Local Authority's Education Transport Policy sets out its duty to support parents with transport to schools. Free transport must be provided if the school is for primary pupils up to the age of 7 more than 2 miles away and 8 years and over more than 3 miles away. This requirement is not means tested and requires significant funding to transport children and young people on EHCP's. Reduced transport travel to out of area will also positively impact on the environment and contribute to the Councils carbon reduction target. Children and young people will remain educated and supported in their community in appropriate places which will also reduce safeguarding concerns and improve outcomes.
- 2.2 By not proactively creating Resource Specialist Provision and entering into Service Level Agreements with local school Trusts the Local Authority is not ensuring that it is creating sufficient and suitable educational places for children and young people with SEND who have EHCP's. Due to the increased number of children with EHCPs and demand for the provision diagnostic evidence shows that the Local Authority will continue having insufficient and unsuitable places, thus not meeting its statutory duty in accordance with the Education Act and specific duties to ensure that there is sufficient provision for pupils with SEND where an Education Health and Care (EHC) plan has determined that the provision should be met in designated specialist provision..
- 2.3 This will result in places having to be sought externally at a significant increased cost and incurring transport costs. Transport travel to out of area will also negatively impact on the environment and contribution to the Councils carbon reduction target. Children and young people will not remain educated and supported in their community in appropriate places which will increase safeguarding concerns and negatively impact on outcomes.

3. OTHER OPTIONS CONSIDERED

- 3.1 Do nothing. This option has not been recommended as it would not improve commissioning of local Resource Specialist Provision places leading to higher financial pressures by having to fund external provision rather than commissioning local places on school sites . As the Resource Specialist Provision planned will be in mainstream school settings, inclusion and outcomes for children and young people, and data visibility required for service improvement cycles would not be improved by this option. It would leave NELC and its partners also at risk of a poor future SEND inspection.
- 3.2 Ensuring sufficient pupil places across all of its school estate is a statutory duty of Local Authorities, and Central Government provides all Local Authorities with an allocation based upon the annual School Capacity Return (SCAP)

specifically for the purpose of supporting this need.

- 3.3 High needs provision is a government identified emerging need and Local Authorities have received further Government allocation for the 22/23 and 23/24 financial years to fund the physical development and programme to increase places. By not entering into Service Level Agreements and funding the commissioning of the places this leads to uncertainty for the Trusts and does not meet our requirements to provide the places as per our statutory duty.
- 3.4 An option to do nothing would result in a lack of suitable and sufficient pupil places and an inability to fulfil the statutory duty.
- 3.5 Option 2 approval to enter into agreements and commission the places, delegating the authority to Director of Children's Services in consultation with the Portfolio Holder for Children and Education, to enter into agreements to ensure timely delivery. This is the recommended option.

4. REPUTATION AND COMMUNICATIONS CONSIDERATIONS

The positive benefit to the Council's reputation will be the continued availability of sufficient and suitable pupil places for the children and young people with SEND with EHCP's of the Borough within their own locality in fit for purpose educational places.

5. FINANCIAL CONSIDERATIONS

- 5.1 The Local Authority receives an annual Dedicated Schools Grant High Needs block allocation which provides top up funding to schools to support pupils with high needs. This is in addition to the per place funding received by the trusts directly from the ESFA, which is recouped from our High Needs Block baseline.
- 5.2 The Local Authority has a responsibility to commission sufficient high needs places and all per place and top up funding for Resource Specialist Provision is covered by the High Needs Block within the Dedicated Schools Grant.
- 5.3 The identified increase in local provision is required to avoid more costly out of area placements. The increase in provision will need to be funded from within DSG, however there may be a short to medium term pressure whilst the full impact of the proposed arrangements is realised.
- 5.4 Average costs for an independent day setting is approximately £58k per annum, however our local Resource Specialist Provision is approximately £21k per annum. Therefore the programme to develop resource specialist provision will provide a lower average spend per pupil and help to drive cost avoidance going forward. The increasing trend for additional support is expected to continue, further driving the need to manage costs. Careful monitoring and forecasting of the position is essential to ensure the DSG grant is not pushed further into deficit and to assess the success of the proposed programme.

5.5 The creation of additional new suitable Resource Specialist Provision pupil places will result in additional teaching and education related positions within the Borough.

5.6 There will be requirement for the capital financial ask for the New Pupil Places programme to be reassessed annually to take into account any future secured Basic Need allocations and any Secured S106 education sums which the Council is in receipt of, which may result in a reduction upon the financial call from Corporate Resources.

6. CHILDREN AND YOUNG PEOPLE IMPLICATION

6.1 There is a statutory call upon Local Authorities to ensure the provision of sufficient and suitable pupil places for its residents. By approving the capital spend and programme, pupils and staff benefit from school environments, which increases aspirations and curriculum opportunities for pupils and provides localised provision.

6.2 Children will benefit from accessing education provision which is closer to their locality and enhances their social opportunities and friendships, as well as enabling greater independence for some in their travel to school.

7. CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS

The Local Authority are committed to building wherever possible carbon neutral schools.

8. CONSULTATION WITH SCRUTINY

The School Organisation Plan was presented to Scrutiny January 2019 and captured within the plan is the need to grow education sites in line with demand for new pupil places because of the increase in the birth rate and to meet the demand for localised provision generated from new housing developments. The plan included High Needs provision was refreshed for 2022 and beyond.

9. FINANCIAL IMPLICATIONS

The proposal aims to achieve better value for money for the Council from the provision of educational support for children with disabilities and special educational needs. This is financed from the DSG High Needs Block funding.

10. LEGAL IMPLICATIONS

The legal implications are largely addressed in the above report so far as statutory obligations are concerned. Any conditionality around the Delivering Better Value in SEND programme in how the authority fulfils those obligations must be considered. Legal Services are available to support the completion of the anticipated service level agreements.

11. HUMAN RESOURCES IMPLICATIONS

There are no direct HR implications.

12. WARD IMPLICATIONS

All wards are potentially affected as the school estate serves the entire borough.

13. BACKGROUND PAPERS

None

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