



**Cabinet**  
7 March 2022

**Report from the Strategic Director,  
Children and Young People**

**Approval to Establish a New Special School at Secondary Level**

<b>Wards Affected:</b>	All
<b>Key or Non-Key Decision:</b>	Key
<b>Open or Part/Fully Exempt:</b> (If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)	Open
<b>No. of Appendices:</b>	N/A
<b>Background Papers:</b>	Cabinet Report School Place Planning Strategy 2019-23 (November 2021 Refresh) Cabinet Report: Investment Programme for School Place Sufficiency for Children and Young People with SEND (January 2022)
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**1.0 Purpose of the Report**

1.1 The 2019-23 School Place Planning Strategy (November 2021 refresh), approved by Cabinet in November 2021, and the Capital Investment Programme for School Place Sufficiency for Children and Young People with SEND approved by Cabinet on 17 January 2022 identified the need for an additional Special School in the borough at secondary level that would offer a curriculum for pupils whose special educational needs cannot be met within mainstream schools. Subject to the Department for Education (DfE)

presumption process, the intention is that the new Special School would open in September 2024. This paper details that process and requests approval from Cabinet to proceed.

## **2.0 Recommendation(s)**

That Cabinet:

- 2.1 Approves the establishment of a Special School at secondary level on the site known as London Road.
- 2.2 Approves use of the DfE (Free School) Presumption process to establish the school, as set out in paragraph 3.7, noting that the final decision on the selected provider will be taken by the Secretary of State for Education.
- 2.3 Delegates authority to the Strategic Director for Children and Young People, in consultation with the Statutory Lead Member for Children's Safeguarding, Early Help and Social Care and the Cabinet Member for Schools, Employment and Skills to ratify the full business case and to identify and thereafter recommend to the Secretary of State for Education the Local Authority's preferred provider.

## **3.0 Detail**

- 3.1 Local Authorities have a responsibility under section 507b of the Education Act 1996 (as amended by Education and Inspections Act 2006) to secure, so far as reasonably practicable, sufficient educational and recreational activities which are for the improvement of young people's well-being, personal and social development, and sufficient facilities for such activities for young people aged 13 – 19, (or up to 25 for young people with additional needs).
- 3.2 The School Place Planning Strategy Refresh, approved by Cabinet in November 2021, evidences the growing demand for places that meet the needs of children and young people with SEND. In order to meet this growing need and to tackle increasing pressures on the High Needs Block of the DSG, creating additional local school places for children with SEND is identified as a key part of the School Place Planning Strategy November 2021 refresh and the new SEND Strategy (2021-25). A range of options regarding school places were approved by Cabinet on 17 January 2022, including the potential to build a new SEND school in the borough.
- 3.3 The proposed new school will be a 150 place specialist school for children with Autism Spectrum Disorder. The school will be a new build school on the site known as London Road with the intention of opening in September 2024.
- 3.4 It is not possible for the Council to open new community schools (Education Act 2011). There are two routes to establishing new schools once the council has identified need:
  - a) The (Free School) presumption route whereby the council would advertise a proposal to establish a new school and invite DfE approved academy

sponsors to apply to run the school. The council is responsible for providing a site and buildings.

b) The (Free School) application process run by DfE, which would provide capital investment for approved projects.

3.5 As there is not currently an (Free School) application window open for Special School Provision proposals and given that the Council already has a site identified, it is proposed that the Local Authority triggers the (Free School) Presumption process for a Special School at secondary level.

3.6 This involves notifying the DfE of the intention to invite proposals for the development of a Special Free School and working with the DfE via the presumption process to identify a suitable provider. Through the presumption process, the Local Authority evaluates proposals and identifies a preferred provider that is notified to the Secretary of State for approval. The Regional Schools Commissioner acts on behalf of the Secretary of State in this regard.

3.7 In accordance with the Department for Education's guidance for Local Authorities regarding new school proposals, as updated in May 2018, an indicative timeline for the presumption process is outlined below:

Action	Date
Report to Cabinet triggering the presumption process	7 March 2022
Publish the specification for the school on the local authority's website, and provide a copy to the DfE for publication	Week beginning 21 March 2022
Competition period (minimum of 6 weeks)	March to June 2022
Assessment of proposals, including due diligence (DfE requirement: at least 4 weeks) and preferred provider identified by the local authority	By August 2022
Regional Schools Commissioner approval (decision on behalf of Secretary of State)	By September 2022

3.8 The Local Authority is required to develop a specification and criteria for applicants to follow in making a bid to run the provision. The specification includes detail on the School, Vision, Education Plan, Capacity and Capability, Funding and Costs and Equalities Assessments.

#### 4.0 Financial implications

- 4.1 A budget of £20 million has been identified to support the development of the Special Free School as detailed in the Capital Investment Programme for School Place Sufficiency for Children and Young People with SEND that was agreed by Cabinet in January 2022. A full business case will be provided with a detailed financial breakdown as the project progresses.
- 4.2 The LA will be responsible for all pre-opening and post-opening revenue costs associated with establishing the new school. The capital budget allocation has factored in costings for fixtures and fittings, but there will be additional revenue pre and post-opening set up costs that prospective providers will be expected to outline as part of the procurement process. Once open, places will be funded through the High Needs Block of the Dedicated Schools Grant. The procurement process should consider the SEND banding expectation of the provider in order to support the deficit management plan of the High Needs Block.

## **5.0 Legal implications**

- 5.1 Section 6A of the Education and Inspections Act 2006 (the ‘free school presumption’) requires that, where a local authority identifies the need for a new school in its area, it must seek proposals to establish a free school.
- 5.2 The DfE has issued guidance regarding the free school presumption stating that under the presumption route the local authority is responsible for providing the site for the new school, with the DfE’s expectation that the site be made available free or on a peppercorn basis by the local authority to the trust. The local authority is also responsible for meeting the associated capital and pre/post-opening revenue costs. The legal basis for the provision of the school site is highlighted in section 6.4 of the *Capital Investment Programme for School Place Sufficiency for Children and Young People with SEND January 2022 and the Department of Education Free School Presumption advice*.
- 5.3 The decision on all new (free school) proposals lies with the Secretary of State. His approval is required as it is the Secretary of State who will enter into a funding agreement with the sponsor chosen to run the new school. The Secretary of State will consider any recommendation on the choice of a proposer made by the local authority.

## **6.0 Equality implications**

- 6.1 The Council must, in the exercise of its functions, have due regard to the need to:
- a. eliminate discrimination, harassment and victimisation
  - b. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
  - c. foster good relations between persons who share a relevant protected characteristic and persons who do not share it,

pursuant to s149 Equality Act 2010. This is known as the Public Sector Equality Duty.

- 6.2 Under the Public Sector Equality Duty, having due regard involves the need to enquire into whether and how a proposed decision disproportionately affects people with a protected characteristic and the need to consider taking steps to meet the needs of persons who share a protected characteristic that are different from the needs of persons who do not share it. This includes removing or minimising disadvantages suffered by persons who share a protected characteristic that are connected to that characteristic.
- 6.3 The Public Sector Equality Duty covers the following nine protected characteristics: age, disability, marriage and civil partnership, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 6.4 There is no prescribed manner in which the Council must exercise its public sector equality duty but having an adequate evidence base for its decision is necessary. The proposals set out in this report aim to ensure that there are sufficient and suitable school places for all Brent children and that their diverse and special educational needs are met.
- 6.5 The equality implications associated with the School Place Planning Strategy 2019-23 were set out in the report to Cabinet to approve the same (November 2018). This report considers more specifically the demographics around the demand for SEND school places and the options for meeting that demand.

## **7.0 Consultation with Ward Members and Stakeholders**

- 7.1 The Lead Member for Children's Safeguarding, Early Help and Social Care, the Cabinet Member for Education, Employment and Skills, the Cabinet Member for Environment and the Cabinet Member for Regeneration, Property and Planning have been consulted in relation to the School Place Planning Strategy 2019-23 and Capital Investment Programme for School Place Sufficiency for Children and Young People with SEND January 2022. They will be briefed on the overall programme and proposed location of the proposed school. Individual ward members will be provided with information about projects within ward areas once approval has been given to proceed with project activity.
- 7.2 In accordance with the Department for Education, the chosen provider will also conduct a statutory 6-week consultation period in the pre-opening phase.
- 7.3 Schools have been consulted on proposed expansions and new SEND provision as part of the development of the Capital Investment Programme for School Place Sufficiency for Children and Young People with SEND January 2022.

## **8.0 Property Implications**

- 8.1 These have been detailed in the Capital Investment Programme for School Place Sufficiency for Children and Young People with SEND approved by Cabinet in January 2022. A budget of £20 million has been identified for the capital development.
- 8.2 In 2020 as part of ongoing discussions with the DfE regarding section 77 land release for the Wembley Housing Zone at Cecil Avenue, the Council was asked by the DfE to look at the viability of providing a SEND school on either London Road or Cecil Avenue. The outcome of the viability studies showed that the London Road site was a better suited site for a proposed SEND school due to the size and topography of the plot. Subsequently, in March 2021 Capital Programme Board approved a concept paper for officers to complete a RIBA 1 Feasibility Study. Further, in the summer of 2021, the Secretary of State for Education approved the release of education land at Cecil Avenue under section 77 subject to the provision of a new SEND school at London Road. This then formed part of the approved Cabinet report on the Wembley Housing Zone in August 2021. This was further referred to in the January 2022 Cabinet report regarding Capital Investment Programme for School Sufficiency for Children and Young People with SEND. The intention would be to grant a 125 year lease of the London Road Site to the selected provider on a peppercorn rent.
- 8.3 As part of the planning and development of the London Road site, consultation will be undertaken with a voluntary sector provider currently utilising a property on that site, in order to secure an appropriate alternative location, either on a permanent or temporary basis.
- 8.4 A full business case will be put forward for approval under the delegated authority for Strategic Director for Children and Young People, in consultation with the Statutory Lead Member for Children's Safeguarding, Early Help and Social Care and the Cabinet Member for Schools, Employment and Skills to ratify the full business case and to nominate the Local Authority's preferred provider to the Secretary of State for approval.

## **9.0 HR implications**

- 9.1 No implications

Related Documents:

Cabinet Report School Place Planning Strategy 2019-23 (November 2021 Refresh)

Cabinet Report: Investment Programme for School Place Sufficiency for Children and Young People with SEND (January 2022)

**Report sign off:**

**Gail Tolley**

Strategic Director, Children and Young People