

	Officer Key Decision
	Report to the Strategic Director of Regeneration and Environment
London Road SEND School – Project Business Case	

Wards Affected:	All
Key or Non-Key Decision:	Key
Open or Part/Fully Exempt: <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Open
No. of Appendices:	None
Background Papers:	None
Contact Officer(s): <small>(Name, Title, Contact Details)</small>	Name: Neil Martin Job Title: Head of Capital Programmes (Schools) Email: neil.martin@brent.gov.uk

1.0 Purpose of the Report

- 1.1 This report concerns the proposal to develop a new Secondary Special Education Needs and Disabilities (SEND) School at London Road that forms part of the SEND Capital Programme approved by Cabinet in January 2022. This report details the project business case, including information on budget, objectives and milestones and requests approval of the project business case.

2.0 Recommendation(s)

That the Strategic Director, Regeneration and Environment in consultation with the Strategic Director, Children and Young People and the Lead Member for Children, Young People & Schools:

- 2.1 Approves the London Road SEND School project business case as described in this report
- 2.2 Approves the project budget of £20m of capital funding to deliver the project.
- 2.3 Notes that the final decision on the provider of the new school, following the DfE Free School Presumption Route process will be made by the Regional Schools Commissioner on behalf of the Secretary of State for Education

3.0 Background

- 3.1 In November 2021, Cabinet approved the School Place Planning Strategy Refresh. This report evidenced 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 and is also contained within the new SEND Strategy (2021-24).
- 3.2 In January 2022, Cabinet approved the SEND Capital Programme Business Case which detailed how the Council intends on increasing SEND provision within the borough to meet the growing need as well as reducing the pressure on the High Needs Block of the DSG. The programme aims to deliver 427 places over the next 2-3 years along with capital improvement projects to enhance accessibility at mainstream schools. The cost of the approved programme is £44.19m and this will be funded by Basic Need, High Needs Capital Grant and the Special Provision Fund.
- 3.3 One of the identified work streams within the SEND Capital Programme is a new 150 place Secondary SEND School for pupils diagnosed with Autism Spectrum Disorder (ASD). In March 2022, Cabinet approved the use of the Free School Presumption Route to establish the school at London Road. The indicative budget set aside for this project within the programme was £20m.
- 3.4 The Regional Schools Commissioner (RSC), on behalf of the Secretary of State for Education, will approve the new Free School and its provider following the completion of the Free School Presumption Route. The Operational Director, Safeguarding, Partnerships and Strategy informed the RSC's office in February 2022 of the LA's intention to commence the process to establish a new Special School through the Free School presumption route. The January Cabinet report regarding SEND capital proposals were also shared with the RSC's office. The Operational Director, Safeguarding, Partnerships and Strategy will continue to keep the RSC informed as the project progresses.

4.0 Project Proposal

- 4.1 In 2021, feasibility work identified a number of potential capital project work-streams in order to meet the SEND demand. One of these was the 150 SEND school. The feasibility study for the school was commissioned and is now complete.
- 4.2 In order to make more economic use of the available capital funding for this project, it was determined that the DfE Modern Methods of Construction (MMC) Framework would be the best route to procure a contractor to deliver the scheme.
- 4.3 As part of this contractor procurement route, the client is required to complete a detailed feasibility study at RIBA Stage 1 so that this information can be

provided to the contractor to work through the design phases and deliver the required expansion. The feasibility study consisted of:

1. Identified required accommodation for an expanded school and analysed existing accommodation to determine what accommodation is required for the new build/extension.
2. Produce a School Specific Brief to ascertain the school's requirements, in consultation with the Council, for the expansion.
3. Produce a detailed schedule of accommodation based on points 1 and 2.
4. Arrange and commission a suite of surveys to identify risks relating to ground conditions, transport assessments, unexploded ordnance, etc.
5. Production of a DfE project programme.
6. Production of a cost estimate. This will be used by the contractors to review whether the project can be delivered for this cost envelope before contracts are awarded.

Project Objectives

- 4.4 The project is estimated to cost £20m and will deliver a new SEND School for 150 pupils with ASD.
- 4.5 By undertaking this programme the Council will meet its statutory duty to ensure that more pupils with SEND are offered a suitable local school place. Table 1 sets out the benefits to delivering this new SEND school.

Table 1: Project Benefits

Description of Benefit	Financial/non-financial benefit?	Estimated benefit amount?	When will the benefit be realised?	One-off or recurring?
High Needs Block Savings	Financial	£2.1m	September 2024	Recurring
New local Special school places available for Brent children and young people	Non-financial	150 places	September 2024	Recurring
Increased Employment Opportunities in Teaching	Non-financial	60	September 2024	One-off

- 4.6 The school operator will be chosen via the Free School Presumption route in the autumn 2022 and they will have input into the design and layout from this time. The project will provide the following accommodation:
- A new build, two-storey SEND Secondary School for ASD pupils, based on the current building guidelines BB104 and DfE SEND School specification for the following types of areas:

- General and specialist teaching classrooms
- Sports hall
- WCs
- Dining hall
- Gymnasium
- Break out areas and sensory rooms
- Storage
- Staff accommodation (office and welfare)
- Supply and connection to utilities for the school site to enable the new build
- Fixed and loose furniture, equipment and ICT for the school
- Roof top play areas as well as biodiversity areas

4.7 In managing the project, the Council will provide the following services either internally or procured externally:

- Project management including:
 - Budget and cost management
 - Programme management
 - Stakeholder engagement including with Members
 - Public consultation for all statutory processes (including where the Academy must lead)
 - Risk and issue management
 - Procurement activities
 - Contract administration
- Governance over the project to enable oversight and direction
- Legal advice
- Procurement advice
- Technical expertise from a full design team

4.8 The Council will be responsible for obtaining all necessary approvals to undertake the capital projects including planning approval, from the DfE and building control approval.

Options Appraisal

1. *Do Nothing / continue to rely on children going to out of borough schools*

4.9 Based on the current numbers of Brent based pupils already attending out of borough schools, there is already a significant financial impact to the Council. As the number of pupils with an EHCP increases, this will have an increased impact on the High Needs Block of the DSG.

2. *Provide additional places in temporary bulge classes rather than through permanent new build*

4.10 There is little difference in the capital cost of developing temporary accommodation compared to permanent accommodation. Temporary bulge classes are logistically difficult to achieve for SEND schools where a range of specialist accommodation is required to meet pupils' needs. Further, if SEND pupil numbers continue to remain high, the temporary provision will need to be

converted to permanent and so the Council would have to complete another programme of expansions and new builds in a few years' time.

3. Provide SEND places in mainstream schools where there is spare capacity

- 4.11 Although there is spare capacity at some schools in the mainstream primary and secondary sector, it is not advised to accommodate SEND pupils requiring a SEND school provision in mainstream schools due to the requirement for additional accommodation for their education. Although at some of the schools in the ARP work stream, renovating spare buildings has been considered as part of the feasibility studies, due to the constraints of these buildings, they cannot provide an appropriate environment for pupils requiring a SEND school setting and so a new SEND school is proposed to meet the need.

4. Provide permanent additional school places in a new SEND School – This is the recommended option.

- 4.12 In order to assist in meeting the SEND place need and reduce the burden on the High Needs Block, a permanent, new 150 place SEND school is required.

- 4.13 The recommended option is to create a new 150 place SEND School at London Road. The proposal meets:

- The urgency of the need to act to create capacity to alleviate the pressure on the High Needs Block in the short term;
- The targeting of increased provision in key areas where the pressures exist, taking into consideration the age profile and special needs of children and young people.

Alignment with Strategic Objectives

- 4.14 The project aligns with the School Place Planning Strategy 2019-23. The Council has statutory responsibilities in relation to children and young people with SEND, where the Council has to ensure there is suitable provision to meet their needs. Furthermore, the strategy outlines a set of operating principles to be followed with regard to school place planning.

- 4.15 The project also aligns with the Brent Borough Plan 2019-23 outcomes:

1. Every Opportunity to Succeed:

- Raise the attainment of pupils with special educational needs and disabilities
- Provide additional specialist places

2. Strong Foundations:

- Making every pound count
- Building services around our residents and their needs

- 4.16 Enabling more children and young people to stay in school in borough means they will also have greater opportunity to participate in and contribute to the Brent community.

Table 2: High Level Programme Milestones

Milestone	Start	Finish
Project Business Cases Approval	30 March 2022	30 June 2022
Technical Consultancy Procurement	18 April 2022	01 July 2022
Free School Presumption Route	6 May 2022	30 September 2022
Contractor Procurement	25 July 2022	14 October 2022
Design Work	07 November 2022	14 August 2023
Planning Application	30 January 2023	25 April 2023
Construction Works	04 September 2023	23 September 2024
Site handover and fit out	23 September 2024	08 October 2024

- 4.17 The programme as indicated in table 2 is based on following assumptions:
- A two stage Design and Build contract is used through the DfE MMC Framework
 - The Presumption Process to identify a provider will be successful and the RSC approves the new Special School
 - Construction industry is not further impacted by Covid-19, Brexit and the conflict in Ukraine
 - DfE MMC framework delivers the programme benefits as promised/advertised by the DfE.
- 4.18 It is recommended that once a Free School provider is identified, a memorandum of understanding (MoU) and development agreement is entered into with the school operator. This would set out the roles and responsibilities of each party and enable the Council to better manage the project especially in respect of the interpretation of the project brief and potential scope creep.

Procurement

- 4.19 Technical consultants were appointed to complete the Feasibility Study which is required as part of the DfE MMC Framework. This work is now complete and the outcome of the feasibility study feeds into this business case.
- 4.20 Due to the early appointment of the contractor (see below), there will be a need for the appointment of a Multidisciplinary Technical Advisory Organisation with experience of completing this role for the DfE. They will provide project management services, design advice services, cost consultancy and health and safety advice. This organisation will be procured using a compliant framework.
- 4.21 It is likely that further one-off appointments will be made throughout the project for specialist services such as transport consultants and planning consultants

to ensure travel plans and the planning application are completed sufficiently to obtain planning approval.

- 4.22 The Contractor is proposed to be appointed using the DfE MMC Framework. The contractor will be appointed using a two-stage Design & Build Contract and will begin designs from RIBA 2 onwards. This is a new framework to the Council and has specific tasks and documents, hence why the need to procure consultants with experience of using it whilst commissioned by the DfE.
- 4.23 Before invitations to tenders are sought from the contractors on the framework, an initial period of time is provided to the contractors to confirm their interest and whether the project can be delivered in the proposed timeline and budget. This gives both parties the opportunity to review in order to ensure expectations are measured before committing to tendering.
- 4.24 The framework is being promoted by the DfE to Local Authorities in order to manage expansions and new build schools costs down from previous levels.
- 4.25 The above will consist of very low value, low value, medium and high value contracts. Proposals for tender opportunities will be issued via separate reports requiring approval.

Risks

- 4.26 The main risks to this projects are:
1. No Free School provider identified following the Free School presumption route
 2. Free School Provider identified but not approved by the RSC
 3. Continued impact of Brexit and Covid-19 on the construction industry (resources, materials and deliveries)
 4. Increased demand within the construction industry meaning less interest in opportunities (consultants and contractors)
 5. Increased demand within the construction industry meaning price increases above inflation leading to unaffordable projects and calls on additional financial contributions
 6. Planning approval not being granted for the scheme

Assumptions

- 4.27 The following assumptions for this programme have been made:
- The school can and will recruit sufficient suitable teachers and support staff in time to open the additional places for pupils.
 - The Free School presumption route will identify a Multi-Academy Trust to run the new Special School and the RSC will approve
 - Planning approval can be achieved
 - DfE MMC framework delivers the benefits claimed for local authorities (e.g. costs, programme, and deliverables).

- No further school expansion/build projects are forthcoming which require Basic Need

5.0 Financial Implications

5.1 Table 3 summarises the capital cost of the new SEND School Project.

Table 3: SEND Capital Programme Costs

Work-stream	Cost (£m)
Works	15.90
Fees	1.50
Surveys	0.08
Statutory	0.02
FF&E	1.00
<i>Sub-total</i>	<i>18.50</i>
Project Contingency	1.50
Total	20.00

- 5.2 The project forms part of the £44.19m SEND Capital Programme approved by Cabinet in January 2022. The SEND School budget was £20m and this has not changed since programme business case approval.
- 5.3 The project will be funded via Basic Need, Special Provision Funding and the High Needs Capital Grant funding.
- 5.4 Project contingency is set at £1.50m. This amount reflects the early stages of the projects as well as current cost uncertainty in the construction industry due to the current impact of resource and material availability.
- 5.5 The cost avoidance of placing a child in a Brent Special school is £14k compared to Out Of Borough charges. Therefore, pupil placements in the new SEND school in Brent (vs. out of borough charges) could realise a cost avoidance of approximately £2.1m from academic year.

6.0 Legal Implications

- 6.1 The legal implications associated with the Council's statutory duty to ensure that there are sufficient school places available to meet the needs of the local population are set out in the School Place Planning Strategy 2019-23.
- 6.2 In January 2022, Cabinet approved the SEND Programme Business Case and one of the recommendations within the programme business case was to delegate authority to approve the project business cases to the Strategic Director, Regeneration and Environment in consultation with the Strategic Director, Children and Young People and the Lead Member for Education, Employment and Skills. The Lead Member portfolio has changed following the Local Elections in May 2022 and so the Lead Member to be consulted with is the Lead Member for Children, Young People & Schools.

- 6.3 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.
- 6.4 Under section 37 of the Education Act 2011 if the Council considers a new school needs to be established in its area, the council must seek proposals for the establishment of an academy. Given there is a presumption that any new school site provided by a local authority would be for a sponsored academy, the Council would in general be expected to grant a 125-year lease at a peppercorn rent to the academy. This approach is intended to be consistent with the existing guidance on community schools converting to academies where a local authority grants to the new academy a 125 lease of the community school site at a peppercorn rent. If in the alternative the council were asked by the DfE to provide a new site for a free school, it would also be expected to grant a peppercorn lease to the free school in accordance with DfE Guidance updated January 2014.
- 6.5 This programme will require the procurement of very low, low, medium and high services and works contracts. All procurement will be conducted in accordance with Contract Standing Orders and Public Contract Regulations (PCR). As per the SEND Capital Programme business case approved by Cabinet in January 2022, the authorities to procure, approve pre-tender considerations and subsequently award services contracts valued in excess of £2m and works contracts valued in excess of £5m has been delegated to the Strategic Director of Regeneration and Environment in consultation with the Strategic Director, Children and Young People and the Cabinet Member for Schools, Employment and Skills. The Lead Member portfolio has changed following the Local Elections in May 2022 and so the Lead Member to be consulted with is the Lead Member for Children, Young People & Schools.

7.0 Equality Implications

- 7.1 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.
- 7.2 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.

- 7.3 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.
- 7.4 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.
- 7.5 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.

8.0 Consultation with Ward Members and Stakeholders

- 8.1 The Lead Member for Children, Young People and Schools has been consulted as part of the drafting of this report. They have also been kept up to date with progress on the project.
- 8.2 Ward Members have also been kept up to date on the project progress and will continue to be as the project progresses through the contract stages.

9.0 Human Resources/Property Implications (if appropriate)

- 9.1 The services in this report are proposed to be provided by external providers and there are no direct impacts on Council staff. The new SEND school will need to recruit additional staff in due course for when the school is expected to open.

Related documents

SEND Capital Programme Business Case, Cabinet January 2022

Report sign off:

Tanveer Ghani

Operational Director of Property & Assets (Acting).