

Report subject	Convert Bournemouth Learning Centre building into a school
Meeting date	24 June 2020
Status	Public Report (Appendix A is exempt)
Executive summary	<p>The number of children and young people assessed as requiring a place at a specialist education provision in the BCP area has increased in recent years. Local provision to meet these needs is of high quality, but capacity has not been expanded sufficiently to meet this additional demand. As a result, increased use has had to be made of local Independent and Non-Maintained special schools which are comparatively expensive and often located outside of the BCP area. The result of this has been significant pressure on the school Transport budget.</p> <p>In partnership with the BCP community of schools, a range of proposals have been developed to increase capacity and create new provision to meet the needs of these pupils. These will both deliver savings and ensure appropriate provision is available to meet needs closer to where children and young people live. Proposed projects were considered and agreed by Cabinet on the 22/4/20. The Children's Capital Strategy was agreed by Cabinet 27/5/20, it identified additional projects / pressures not included in the draft Strategy but which may also require funding in the future; this included converting the Bournemouth Learning Centre (BLC) building into a school [and engaging an external provider to operate the school]. This paper requests that funds are released to meet the cost of converting the BLC into a school. Resources are available to support this investment from existing DfE ring-fenced grant allocations for this purpose.</p>
Recommendations	<p>It is RECOMMENDED that Cabinet:</p> <p>(a) Approves the proposal to convert the Bournemouth Learning Centre building into a school in order to create additional capacity to</p>

	<p>meet the assessed educational needs of children and young people in BCP</p> <p>(b) Approves the allocation of £0.5m Basic Need Grant funding to support the delivery of this proposal</p> <p>(c) Delegates authority to the Corporate Property Officer (in consultation with the Corporate Director, Chief Finance Officer and Monitoring Officer), to take the necessary steps to recover possession of the BLC from third parties currently occupying part of the Bournemouth Learning Centre</p> <p>(d) Recommend to Full Council the disposal of the Bournemouth Learning Centre [through a lease to an external provider] at an undervalue of up to £700k, subject to the education provider's significant change process and site acquisition being agreed, and delegate authority to the Corporate Property Officer to agree the terms and enter into the lease, subject to education provider's significant change process being agreed</p>
Reason for recommendations	To enable the creation of additional capacity to meet the assessed educational needs of children and young people and reduce pressure on the High Needs Budget.
Portfolio Holder(s):	Councillor Sandra Moore, Portfolio Holder for Children and Families
Corporate Director	Judith Ramsden; Corporate Director Children's Services
Report Author	Neil Goddard; Service Director, Quality and Commissioning.
Wards	All
Classification	For Decision and Recommendation

Background

1. The Council receives revenue funding through the Dedicated Schools Grant (DSG) to meet the costs of delivering education to all pupils within the BCP area. The DSG is made up of four blocks, the Schools Block (SB), Early Years Block (EYB), High

Needs Block (HNB) and Central Service Block (CSB). The HNB is used to fund provision for children and young people who are assessed as having additional needs or requiring a specialist school placement. In recent years the HNB has faced significant budget pressures leading to an accrued and increasing overspend.

2. This is a national issue, with many Councils around the country struggling to contain spend on the HNB within available resources. There are many reasons for this, including demographic changes, the increasing costs of meeting higher level needs and statutory changes which included an increase to age at which HNB funding can be accessed.
3. For the 2020/21 financial year, the Department for Education (DfE) have increased the funding that is allocated through the HNB. However, this has not been sufficient to meet the additional costs and so further action is required to rebalance the budget and address the accrued overspend.
4. In partnership with the community of Council schools and other stakeholders a HNB Recovery Plan has been developed with the aim of increasing inclusion and reducing the costs of meeting needs. A key feature of this are proposals to increase capacity and create new provision that can meet needs locally.
5. Detailed sufficiency analysis of specialist school places for children and young people with an Education, Health and Care Plan (EHCP) maintained by the Council, including a review of the Local Offer, shows that the need for places continues to increase. Local special schools are already at capacity, and as a result more children and young people are being placed in Independent and Non-Maintained Special Schools (INMSS) placements. The need to make greater use of INMSS has increased the cost of meeting needs and so contributed to the pressure on the High Needs Budget (HNB).
6. This analysis has shown that the most prevalent primary needs across Primary and Secondary age pupils are in the areas of Autistic Spectrum Condition (ASC), Learning Disabilities (LD), Social, Emotional and Mental Health (SEMH) and Speech, Language and Communication Needs. Forecasts suggest that these will continue to increase and will remain the most prevalent needs for some time. Of those currently placed in INMSS at Primary, Secondary and Post 16 the highest number have needs related to ASC.
7. The analysis included a review of the views of children and young people with SEND and their families. We know from regular consultation, engagement and feedback that education provision (quality and sufficiency) is very important to children and young people with SEND and their families. For example, through a Parents and Carers survey undertaken by the Council in Summer 2019 the feedback received said there was a need for more local specialist provision.
8. Based on this analysis, and following detailed work with local schools, a set of proposals were developed to increase capacity in the local system. This will be achieved by creating new 'satellite' provision that is located in mainstream schools but operated by a local external provider (with experience of special school provision), expanding existing specialist provision and creating resource bases in mainstream schools to provide for pupils with additional needs. Conversion of the

Bournemouth Learning Centre building into a school was identified as an option in the Children's Capital Strategy (agreed by Cabinet 27/5/20) as an additional project which may also require funding in the future. Further work has now been undertaken to evaluate the business case for the project, the result of which is a recommendation that the building be converted into a school to be run as satellite provision by a local external provider and capital be allocated to support the delivery of this proposal.

9. Feasibility for the SEND Capital Programme was agreed though consideration of the 22 April 2020 Cabinet report, this will be used to support the detailed development of this scheme. This expenditure will be incurred at risk pending the external provider undertaking further public consultation and Secretary of State approvals for the satellite provision in order for the project to proceed. This risk is assessed to be low given the business case already developed to inform this Cabinet report and the Council's experience of successfully producing cases for the opening of such provision (if the external provider is an academy the Council can support them in making a case to the Secretary of State (DfE) / Regional Schools Commissioner (RSC) (as the case may be)), and the Council has been working with the RSC and DfE on the Council's SEND sufficiency. The Council is permitted to use the SEND grant for feasibility; the monies will not need to be repaid if this project does not proceed.
10. The Council's Financial Regulations require all capital projects in excess of £500k (but less than £1m) to be approved by Cabinet. As this project is estimated to cost £500k the decision is being recommended to Cabinet.
11. There is a need to invest capital resource to creating appropriate facilities to allow pupils' needs to be met effectively. The Council receives Basic Needs capital allocations which are used to ensure there are sufficient places locally for all children, including those in specialist settings. These resources are limited, and the proposal has been assessed on a Value for Money basis to ensure any investment delivers the maximum return in reducing costs.
12. The scale of the pressure on the HNB means that the delivery of the additional capacity must be expedited to ensure places are available from September 2020 wherever possible. It is proposed that the new provision at the BLC site will open from early 2021 onwards, although this remains contingent on other aspects of the project progressing, including recovery of vacant possession of the Bournemouth Learning Centre in line with the current project timetable.

Converting the BLC building into a school

13. The BLC was originally built as a school before being used as an adult training facility with ancillary office space. It is also located next to other education provision and a local park. It therefore lends itself well to being converted back to a school. The building is in good condition having been extended in 2005. The site is already classed as D1 and there will not be any significant external works carried out as part of the project, therefore a change of use application is not required.
14. Ward Members of the ward in which BLC is located and the neighbouring ward (given the BLC's proximity to the ward boundary) are being consulted; this

consultation started on the 18 May 2020. Two meetings have now been held to consider the issues. The questions and issues identified are being brought forward into the development of the public consultation which will take place later in the year.

15. Overall there will be less traffic resulting from the change back to a school, given the large number of staff currently based at the BLC. However, there will be 'pinch points' related to the school day, this will be addressed through work with the provider, seeking to minimise any impact locally.
16. There are a limited number of suitable sites for creating additional special school places and these tend to be for smaller number of places, the BLC offers the opportunity to create a large number of places. It is estimated that the BLC could provide 40 – 50 special school places depending on the needs of the pupils. This would result in an annual cost avoidance to the HNB of £1.26 –£1.57m (this is based on the typical cost of a local special school places v the typical cost of an independent placement).
17. In addition to sufficiency needs, there are a number of factors which support ceasing to use the BLC as office space:
 - The creation of the Council and the agreement of the council wide transformation programme creates new opportunities for more efficient use of office space.
 - The reorganisation of the Inclusion and Family Service aims to have more staff in the in local community, and therefore not need to be based at the BLC.
18. Staff have their base of work at the BLC in the ancillary office space. Plans are in place to consult with staff whose base of work is the BLC, to enable flexible working for BCP staff in line with the transformation programme and plans to 'Recover and Reset to Our New Normal' as the lockdown restrictions slowly ease.
19. Four partners also currently use space at the BLC, resulting in £30k annual income. Discussions have started with partners and potential locations in other Council buildings will be identified with a view to maintain joined up working and a continued income stream. Steps to recover possession, if taken before a decision on the providers significant change process and site acquisition, are at the Council's risk ahead of such approvals being obtained. Further information regarding recovering possession is set out in Appendix A.
20. It is proposed that the works to the BLC are carried out by the external provider, with a successful track record of delivering such works. Grant funding will be allocated to the provider for this purpose.
21. The provision will be run by an external provider with a strong track record of delivery and Ofsted outstanding provision, and experience of successfully running large scale procurement and capital projects. The provision will be run as a satellite i.e. it will not require the establishment of a new school. A lease will need to be agreed between the Council and the provider, subject to the provider's significant change process being agreed (see para 24).
22. In developing the business case for converting the BLC into specialist education provision, it has been agreed internally that specialist education provision is the best

use for the property and that no other service unit within the Council has a use for the property. As prescribed by the DfE a peppercorn rent will be charged, forgoing the potential annual market rent. The hypothetical rental value for the property in the open market is in the order of £65,000pa. This would mean that the Council would be forgoing £1,625,000 of income over 25 years (if the lease was for 25 years). This rental income produces a capital value of £700,000 (the undervalue figure stated in the recommendation). The market value for the property is estimated at £1.25m. However, given the current circumstances of Covid and the degree of uncertainty, these figures are not assured.

23. Due to the legal duties placed on the Council, provision at the BLC could result in potential cost avoidance of £1.26 –£1.57m to the HNB; the estimated cost of building a new provision of this size could cost in the region of £2.5m (based on a square meter rate excluding the cost of acquiring a site) and could take many years before it is operational. This demonstrates that the Council is achieving best value for the site.
24. For a provider to create a satellite provision at the BLC a 'significant change process' must be undertaken. If the provider is a maintained school, it will be the responsibility of the Council to consult with the those specified by the DfE in line with the statutory guidance document 'Making significant changes ('prescribed alterations') to maintained schools' October 2018. However if the provider is an academy there is a requirement for the academy trust to go through the significant change process and consult with those specified by the DfE in line with guidance given in the document 'Making significant changes to an open academy and closure by mutual agreement' November 2019. This applies even where a local authority has instigated a proposed change. The Council would support an external provider if an academy, by providing information to be included in the application for change.

Summary of legal implications

25. Generally, the Council has a duty to ensure a sufficiency of places in its area under section 14 of the Education Act 1996. The Council must fulfil that duty with a view to securing diversity in the provision of schools and increasing opportunities for parental choice.
26. Pursuant to Part 3 of the Children and Families Act 2014, the Council also has a duty to identify children who have special educational needs and must (together with its partner commissioning bodies) make arrangements for the education, health and care provision for any children and young people in the Council's area who have special educational needs and/or who have a disability.
27. Any decision taken must be based on a proper and considered review of the consultation responses obtained.
28. In exercising any power or duty, the Council must act for proper purposes, in good faith and must exercise its powers properly. It must also act for proper motives, take

into account all relevant considerations, act rationally and balance any risk against the potential reward.

29. The external provider must also undertake the steps as set out in the DfE guidance entitled “Making significant changes to an open academy and closure by mutual agreement dated November 2019”. This will entail consultation, submission of a business case for approval and separate consent to acquire the additional satellite site.
30. The Council is empowered to provide the proposed grant funding pursuant to section 1 of the Localism Act 2011 and more specifically pursuant to s111 of the Local Government Act 1972 as ancillary to the exercise of its duties set out in the Education Act 1996 and the Children and Families Act 2014 (as outlined above).
31. The Council should ensure that any grant funding is subject to a grant funding agreement on which legal advice is provided before any monies are made available to the provider. Confirmation that the expenditure of the grant funding complies with the State aid rules should be requested prior to draw down of the funding; this confirmation can be included in the terms of the grant funding agreement. It is usually satisfied by the Academy ensuring that it undertakes a proper and transparent tender for the works and associated expenditure.
32. It is likely that, notwithstanding the obligations of a grant funding agreement, if the works are not progressed as expected by the contractor/(s), the risk of delay and overspend will fall to the Council since the duty to ensure sufficiency of places cannot be discharged by requesting the works be arranged and undertaken by the responsible Academy Trust. In that event, the Council’s legal remedy would be to claw back the grant funding and seek to use the money elsewhere to deliver the places. [Details of the de facto mitigation of the operational risk inherent in the proposed delivery model for the works are set out in the Background section of this report.]
33. There is also a risk that some of the monies will be spent prior to any approval and it is likely that the provider will require the Council to fund that expenditure at risk.
34. The nature of the legal documentation in relation to the property between the Council and the provider will depend on the timing of the works and who bears responsibility for delivery of the works. This may therefore require the grant of an Agreement for Lease and a lease on substantively model terms as prescribed by the DfE.
35. The Council’s Property Services and Legal Services teams will be needed to support the process of obtaining vacant possession and the relocation of the current occupiers.
36. The Council’s HR Service will need to support the consultation process and advice in respect of the proposals to relocate staff from the Bournemouth Learning Centre.

Summary of financial implications

37. It is estimated that the BLC could provide 40-50 special school places, resulting in an annual cost avoidance to the High Needs Block of the ringfenced Dedicated Schools Grant of £1.26m - £1.57m. This is based on the typical cost of local special school place versus the typical cost of an independent placement.
38. There will be general fund implications in the form of lost rental income at the BLC. Four partners currently use space at the BLC resulting in a total income of £30k. Potential locations in other council buildings will be identified with a view to maintain joined up working and a continued income stream from the rental agreements but there may be implications for this office rent.

Summary of environmental impact

4. Through ensuring additional appropriate provision is available to meet needs closer to where children and young people live there will be a reduction in the distances travelled to get to school and an increase in the numbers being educated within their own communities.

Summary of equality implications

5. An equality impact assessment screening has been undertaken. The proposed project will enable appropriate provision is available to meet the needs of children and young people with special educational needs and/or disabilities. Equality impacts will be assessed as the decision is implemented; this will include:
 - During the development of the business case to the decision maker for the school significant change process (this will either be carried out by the LA if the provider is a maintained school or by an Academy Trust if the provider is an academy). The business case will include public consultation on the change.
 - As proposals are developed for the relocation of staff who currently have their base of work at the BLC. This will include careful consideration to any employees with particular requirements under the Equality Act 2010 and the completion of an Equality Impact Needs Assessment.
 - As specifications for works to the BLC are developed.
 - The provider will have responsibilities to assess needs and consider reasonable adjustments when the provision is being planned/is running.

Summary of risk assessment

6. An assessment of risks and identification of mitigations has been carried out for the development of this proposal. The primary risks to the progression of the project are:
 - There is a risk that the decision maker for the significant change process does not agree the business case for a satellite at the BLC site, this is mitigated through the work done to assess the business case to bring forward this proposal to Cabinet.

The LA also has experience of successfully producing cases for the opening of such provision. If the external provider is an academy the LA can support them in making a case to the RSC, and the LA has been working with the RSC and DfE on BCP's SEND sufficiency.

- The impact of Covid is risk for any project and day to day delivery. For this project the risk will be mitigated through the LA will appointing an external education provider with a proven track record of successfully delivering large capital works projects. In addition, a 15% contingency has been included in the budget for the project.

Background papers

Cabinet report: Capital Investment to Increase Special Educational Needs Capacity
Cabinet report: Children's Services Capital Strategy

Appendices

Appendix A CONFIDENTIAL – Please note should Cabinet wish to discuss the contents of Appendix A the meeting will need to go into Confidential (Exempt) session.