



<u>Committee and Date</u>	<u>Item</u>
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## **NEW SCHOOL PROVISION IN WEST SHREWSBURY**

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### **1. Summary**

- 1.1. A report to Cabinet on 28 November 2018 on School Place Planning secured agreement to launch the first (informal consultation) phase for a new mainstream school in the west of Shrewsbury - under the Government's 'free school presumption process' - on land secured from developers at Bowbrook for this purpose via a Section 106 (S106) agreement.
- 1.2 In March 2019, the local authority received notification from the Department for Education that a bid to establish a special school in the local authority – via the Wave 2 Special and Alternative Provision Free Schools process - was proceeding to the next stage of the process. This is effectively a similar, but separate presumption/competition process to that set out in paragraph 1.1 above, to secure a provider to operate the special school.
- 1.3 The special school is planned to be co-located on the same 7 hectare site in Bowbrook as the mainstream school. In order to progress the development of both of the schools there is a need to activate the appropriate clause in the S106 agreement, in particular the 'Land Trigger Event', which requires the passing by Council of a resolution to construct a school(s) on the community land in Bowbrook.
- 1.4 This paper provides Cabinet with an overview of the new school provision planned for west Shrewsbury and seeks their agreement for a resolution to go to Council on 19 September 2019 to secure the release of the community land to construct the schools.

### **2. Recommendation**

Cabinet agree to a resolution going to Council on 19 September 2019 to activate clause 7 of the Third Schedule in the S106 agreement by the serving of a notice on the landowner of the Council's intention to construct 2 new schools on part of the community land at Bowbrook, and

to initiate discussions with the landowner on the transfer of the land via a 999-year lease.

## REPORT

### 3. Risk Assessment and Opportunities Appraisal

- 3.1 Local authorities have a statutory duty under section 14 of the Education Act 1996 to ensure sufficient schools are available in their area to provide primary and secondary education, whether in maintained schools or academies. This requires the provision of a school place for every child living in its area of responsibility who is of school age and whose parents choose for their child to be educated in the state funded sector.
- 3.2 Where this statutory duty for additional school places extends to establishing a new school, local authorities are required to follow the Government's presumption process. The latest Department for Education (DfE) advice, '*The free school presumption*', was published in May 2018 and is available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/706171/Academy\\_and\\_free\\_school\\_presumption\\_departmental\\_advice.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/706171/Academy_and_free_school_presumption_departmental_advice.pdf).
- 3.3 Local authorities are responsible for determining the specification for any new mainstream school and to lead and implement the project to establish the school, and to fund the build. All new schools established through this process are classified as 'free schools', which is the DfE's term for any new academy provision, which means they are independent of local authority control and receive their funding directly from the Government.
- 3.4 The proposal for a new special school, through the Wave 2 Special and Alternative Provision Free Schools process, will also be a free school, though the construction will be funded by the DfE. While the bid to establish a special school has progressed to the competition stage, the final decision to open and fund the free school rests with the Secretary of State for Education formally entering into a funding agreement with the academy trust which will operate the school. The provision of a suitable site upon which the school can be constructed will be a critical factor in this decision making – in Shropshire's case, the availability of land at Bowbrook is significant in reducing the risk of the funding agreement not being signed.
- 3.5 Initial discussions with DfE representatives indicate that there are 3 routes through which the construction of the special school can be delivered:
  - the DfE leads and delivers the project
  - the DfE secures the provider to run the school and this academy trust leads and delivers the project

- Shropshire Council leads and manages the project through what is termed 'self-delivery'.
- 3.6 While the DfE is able to lead on the delivery of the special school, the Council would not be commissioning them to lead on the construction of the mainstream school which will be co-located on the Bowbrook site, as the provisioning of statutory school places rests with the local authority. Given the potential economies of scale, efficiencies and value for money through using a single contractor to build both schools, the Council is looking to self-deliver the construction of the 2 schools.
- 3.7 In order to go down this route the Council, as what is termed the Responsible Body, has to secure DfE approval to self-deliver the special school. This process, which is prescribed in the DfE's *External Guidance on Self-Delivery for Responsible Bodies*, requires the completion of a self-delivery business case. Part 1 of this business case was submitted to the DfE in early August. A final decision from the DfE around self-delivery for the special school will be made following the submission of part 2 of the business case in the autumn.
- 3.8 There are additional risks in going down the self-delivery route, in particular an overrun on cost, which the DfE would require the Council to meet. However, as the Council has to 'self-deliver' the mainstream school regardless of which route the special school is delivered through, these risks are likely to be reduced through having oversight and control of both projects on a single site and to realise financial efficiencies. The DfE will also be closely involved and engaged throughout the project, which will ensure that they monitor the progress of the project, from procurement and design, through to construction and opening.
- 3.9 In the case of the mainstream school, as highlighted in the 28 November report, a key risk is not securing the appropriate funding to meet the costs of the additional school places resulting in the Council not meeting its statutory duties under section 14 of the Education Act 1996.
- 3.10 It is not anticipated that there are any significant risk factors preventing Council passing a resolution to secure the release of the land, other than to note that there is a reservation period of 10 years from the commencement of development at Bowbrook in which to activate the release clauses. As the S106 agreement was signed on 1 August 2014 and the commencement of development was on 5 January 2015, this does not present a current risk.

#### **4. Financial Implications**

- 4.1 Where additional school places are required, whether on an existing school site or through a new school, there are a range of funding streams to meet the costs of any necessary capital works. These include: Government allocated basic need capital grant, contributions from housing developments through Community Infrastructure Levy

(CIL) and S106, and any potential receipts from the sale of surplus school sites within Council ownership (dependent on Cabinet approval to allocate such receipts for education provision).

- 4.2 In respect of the mainstream school in Bowbrook, the expectation is that the construction will be funded by a combination of basic need capital grant and developer contributions, in particular CIL. Cabinet approval will be sought at the earliest possible time for the release of the required CIL funds to commission this statutory school provision.
- 4.3 As indicated above, funding for the special school will be provided by the DfE following approval of the self-delivery business case – the Council will be advised of the initial capital budget including delivery fees at this point. Economies of scale and greater value for money are potentially available through securing a single contractor to build both schools. Discussions with the DfE contacts indicate that they would be in favour of this approach. Opportunities for shared facilities for the 2 schools will also be explored which could realise further efficiencies in overall project costs.
- 4.4 The DfE has indicated that they will be expecting Modern Methods of Construction (MMC) to be used in the construction of the special school. MMC differs from traditional construction and commonly includes off-site construction, factory-built, industrialised or system building and pre-fabrication. This same approach will be used for the construction of the mainstream school, which is likely to deliver greater value for money for the Council.

## **5. New Special School**

- 5.1 The DfE launched the Wave 2 Special and Alternative Provision Free Schools process in July 2018, inviting applications from local authorities to secure funding for new special schools or alternative provision in their areas. The School Place Planning report to Cabinet on 28 November 2018 advised that the authority was submitting an application. The Shropshire Council application dated October 2018 is attached at Appendix 1.
- 5.2 The application is for a 120 place cross-phase special school for children and young people with social, emotional and mental health issues including Autistic Spectrum Disorder. The rationale and requirement for the provision is detailed in the application. The application was required to detail the proposed location of the school, with a clear expectation that this was essential in order for the bid to progress. The land at Squinter Pip Way in Bowbrook was specified in the application as the proposed location for the school.
- 5.3 In March 2019, the Council was informed that the application to establish a special school had been approved to move to the next stage of the process, the trust competition or 'free school presumption' stage (letter

attached at Appendix 2). The approval required the authority to advertise the opportunity for potential academy trusts to apply to operate the new school and to publish a specification on the Council's website, which was done on 22 March – details available on the website at <https://shropshire.gov.uk/the-send-local-offer/news/seeking-proposals-to-establish-a-special-free-school/> . Applications have to be submitted by the end of September 2019, with a decision on the successful provider expected in early 2020.

- 5.4 The letter also initiated discussions between DfE officials and Council officers on the securing of the land and the required legal documentation relating to this, including an agreed Heads of Terms and the provision of a 125-year peppercorn lease along similar lines as the 125-year leases the Council is required to provide for maintained schools converting to academy status.
- 5.5 The DfE contact has indicated that technical advisers from their team will be commissioned to undertake feasibility studies of the site, which will be at their cost. The Council will be responsible for any ground abnormal costs required on the site that the surveys flag up, over and above a minimum threshold. The costs of services to the site will also have to be met by the Council, though there are S106 developer funds available to meet these – see below.

## **6. New Mainstream School**

- 6.1 The report on School Place Planning considered by Cabinet on 28 November 2018 secured approval to launch the first (informal consultation) phase for a new mainstream school in the west of Shrewsbury, under the Government's 'free school presumption process', on the land secured at Squinter Pip Way in Bowbrook.
- 6.2 The approval of the special free school application has delayed progress on this informal consultation phase, particularly as the presumption process for the provider to run the special school was launched almost immediately following receipt of the DfE's letter in March 2019. The informal consultation on the mainstream school will now take place in the autumn term.
- 6.3 As a consequence, a separate presumption process will be run for the provider to run the mainstream school. There is a likelihood that the academy trust that secures the approval to operate the special school will be different from the trust that secures the approval to run the mainstream school. This is likely to mean that the 2 schools will be operated by different academy trusts, given the differences in the education provision being provided in each school. It is worth noting that a number of Shropshire based multi-academy trusts have indicated a strong interest in applying to operate the mainstream school, which is positive.

## 7. S106 Agreement for Land at Bowbrook

- 7.1 The S106 agreement for the land at Bowbrook was signed on 1 August 2014. It includes provision for the transfer of 7 hectares of community land 'for future recreation, community and/or education purposes'. There is a reservation period of 10 years for the transfer of the land from the commencement of development on the site. A plan of the 7 hectare site is attached at Appendix 3.
- 7.2 The acquisition of the land by the Council is to be governed by a 999-year lease. The S106 agreement requires a 'Land Trigger Event' to be activated, which is through one of the following:
- the passing by the Council of a resolution to construct a school on part of the community land
  - the passing by the Council or the Town Council of a resolution to create an indoor or outdoor community facility on the community land
  - the passing by the Council or the Town Council of a resolution to create public recreation facilities on the community land.
- 7.2 The footprint for the 2 schools – including playing fields and car parking - will require a significant part of the land available, particularly as they will potentially operate as separate schools and be run by different academy trusts. It is estimated that the two schools will require at least 4 hectares, with the mainstream school potentially requiring further land to expand in the future to accommodate pupils from further housing development on preferred sites, highlighted in the Local Plan review, to the south of the current site.
- 7.3 The new schools could provide for the shared use of playing fields for the wider community and recreation use, while ensuring the necessary safeguarding of pupils.
- 7.4 The S106 agreement includes other developer contributions, over and above the land transfer. A phased education contribution totalling £829,317 is written into the agreement. An element of this will be used to address any abnormal land costs emerging from the DfE feasibility studies, as well as ensuring that the site is provided 'clean' and serviced prior to the school construction works commencing.
- 7.5 It is recommended that Cabinet agree to a resolution going to Council on 19 September 2019 to construct 2 schools on the community land off Squinter Pip Way in Bowbrook. This will enable the serving of notice to the landowner as required in the S106 agreement and to commence discussions on the acquisition of a 999-year lease, which is required to be agreed between the developer and the Council within 3 months of the date of service of the notice. Once the lease is agreed and the transfer of the land has taken place, the Council has 5 years within which to let a contract for the construction of the school(s). With a current planned

delivery date of September 2022 for the schools, this will not be an issue.

**List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)**

Cabinet report on School Place Planning – 28 November 2018

**Cabinet Member (Portfolio Holder)**

Edward Potter

**Local Member**

All Council members for Shrewsbury town wards and those wards bordering the town

**Appendices**

Appendix 1 - Shropshire Council Special Free School application – October 2018

Appendix 2 - Shropshire SEN free school outcome letter – 11 March 2019

Appendix 3 – Land at Bowbrook, Shrewsbury