

THE ESTABLISHMENT OF DENOMINATIONAL SCHOOLS

To: Children and Young People Committee

Meeting Date: 9 February 2016

From: Adrian Loades, Executive Director: Children, Families and Adults Services

Electoral division(s): All

Forward Plan ref: **Key decision:** No

Purpose: To consider proposals which would inform the Council's approach to the establishment of new denominational schools in Cambridgeshire

Recommendation: To agree to adopt, with immediate effect, the proposed approach (set out in section 2.6.2 and 2.6.3) namely:

- (a) When seeking a new school sponsor, to explicitly welcome proposals from all potential sponsors including for voluntary aided schools and academies with a faith designation
- (b) When proposals are received for the establishment of a new voluntary aided school or academy with faith designation, the Council will take into account whether there is:
 - unmet local demand for additional relevant faith provision;
 - an established trend where parental preference exceeds the number of places available and this is forecast for the foreseeable future;
 - the potential for new denominational provision to alleviate demand on places in other schools in areas of high basic need.

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1.0 BACKGROUND

- 1.1 Cambridgeshire County Council (The Council), as the local Children's Services Authority, has a statutory duty to provide a school place for every child living in its area of responsibility who is of school age and whose parents want their child educated in the state funded sector. To achieve this, the Council has to keep the number of school places under review and to take the appropriate steps to manage the position where necessary. The Education and Inspections Act 2006 also requires local authorities to adopt a strategic role, with a duty to promote choice, diversity and fair access to school provision.
- 1.2 At its meeting on 30 June 2015 the Children & Young People (CYP) Committee were asked to consider and reach a decision on a proposal that the Council should adopt a formal policy with regard to the establishment of denominational schools in Cambridgeshire. The Committee concluded that officers should enter into further discussions with the relevant Diocesan authorities, prior to bringing back a report to the Committee in January 2016. Two meetings were held, one jointly with representatives from the Church of England Diocese of Ely and the Methodist Family of Schools and another with the Roman Catholic (RC) Diocese of East Anglia.
- 1.3 A number of common threads emerged from these meetings with the Diocesan Authorities, as follows:
- their schools bring diversity and excellence to the education landscape in Cambridgeshire
 - the fewer the number of denominational schools there are in a local authority's area, the greater the proportion of children of that faith in those schools; and that
 - routinely considering the establishment of denominational schools as a part of the overall approach to addressing basic need, would address this imbalance.
- 1.4 The second bullet point above is borne out in Cambridgeshire where the vast majority of pupils in the two RC primary schools are Catholic. This contrasts with Norfolk (4 primary and 1 secondary RC schools) and Suffolk (9 primary, 1 secondary RC schools) where, with the exception of Newmarket (St Louis Primary School), the make-up of pupils on school rolls is more diverse.
- 1.5 The RC Diocese was able to cite examples in Norfolk and Suffolk whereby the establishment of a new Catholic primary school has alleviated demand for places in areas where pressures upon places are high, freeing up places in local non-faith schools but not denuding them of pupils attracted by a brand new local school. These comments have been substantiated by officer colleagues in these two neighbouring authorities.

2. KEY LEGISLATION AND STATUTORY GUIDANCE

The Council must take account of the following legislation:

- 2.1 School Admissions Code December 2014
The admissions authorities for schools designated by the Secretary of State as having a religious character may adopt admissions criteria which give priority to children of their faith. The Admissions Code, December 2014

(section 1.36) states the following:

As with other maintained schools, these schools are required to offer every child who applies, whether of the faith, another faith or no faith, a place at the school if there are places available. Schools designated by the Secretary of State as having a religious character (commonly known as faith schools) may use faith-based oversubscription criteria and allocate places by reference to faith where the school is oversubscribed.

2.2 Admissions criteria versus oversubscription criteria

- 2.2.1 The paragraph above confirms that no school may operate discriminatory admissions criteria. A denominational school cannot, therefore, have admissions criteria which allow only for admission of children of its own, or another faith. For example, if an RC primary school with a Published Admission Number (PAN) of 60 were to have 60 or fewer applications for places in Reception, all of these places would have to be offered regardless of the faith of the applicants. Similarly, if places were available in other year groups, these would also have to be offered irrespective of faith.
- 2.2.2 The two RC primary schools in Cambridgeshire are voluntary aided schools. Specific exemptions from Section 85 of the Equality Act 2010 enable voluntary aided faith schools to use faith criteria in prioritising pupils for admission to those schools in cases where there are more applications than places available. Where faith ranks within the oversubscription criteria, if the school is oversubscribed it may, therefore, prioritise the allocation of its places by reference to faith.
- 2.2.3 In the context of a local authority with very few denominational schools, such as Cambridgeshire, where demand for faith places outstrips capacity, and it becomes necessary to apply the over-subscription criteria this is likely to result in the majority, or even all the children admitted, being of the particular faith or faiths given priority within those criteria.
- 2.2.4 Arrangements are different for new academies and free schools that have a faith designation. When such schools are oversubscribed, a minimum of 50% of places must be allocated to children without reference to faith.

2.3 Public Sector Equality Duty (s149 Equality Act 2010)

- 2.3.1 S149 (1) (b) and (3) (b) are particularly significant. They require a public authority to have 'due regard' to the need to advance equality of opportunity and to take steps to meet the needs of persons who, for example, are from different faith backgrounds as well as those from no faith. The Council's legal advice is that the starting point for this must be an inclusive approach with guidance on how all proposals will be considered.
- 2.3.2 The Council needs to demonstrate 'due regard' to the need for faith-based places to be created.

2.4 The Education & Inspections Act 2006

- 2.4.1 The Education Act 2006 sets out the duties of local authorities (LAs) in relation to the provision of primary and secondary education. These include the duty to:
- secure diversity in the provision of schools;

- increase opportunities for parental choice;
- to promote high standards; and
- to ensure fair access to educational opportunity

2.4.2 The way in which the Council considers the provision of faith-based schools is clearly part of its duty to promote both diversity and choice. Therefore, it is essential that the Council should demonstrate through its actions that it is committed to fulfilling its duty to promote choice and diversity and that the provision of sufficient and suitable denominational school places is part of its broader approach to place planning for basic need, i.e. a strategic rather than a values-based approach, with each new development, or area of growth, being considered on its individual circumstances and needs.

2.4.3 Failing even to consider faith-based schools at the outset of a school sponsor search, would run the risk of legal challenge that the Council was not complying with this duty.

2.5 Education Act 2011

2.5.1 The 2011 Education Act sets out the requirements for local authorities with regard to the establishment of new schools. An amendment to the 2006 Education Act, approved under the 2011 Act (section 11 (1a)) makes provision, as a special case, for proposals to establish a new voluntary aided school in England.

2.5.2 Recent guidance from the Department for Education (DfE) confirmed that, with effect from May 2015, the presumption is that all new schools will be established as free schools. This reflects the fact that “free school” is the DfE’s term for a new provision academy. “Academy” is a legal term for state-funded schools that operate independently of local authorities and receive their funding directly from the Government. However, the option of a new voluntary aided school remains within the legislation.

2.6 Seeking school sponsors for new schools

2.6.1 Recent case law arising from judicial review (*British Humanist Association v London Borough of Richmond upon Thames 2012*) makes it clear that a Council has to ‘consider’ all proposals put forward for new schools. Therefore, whilst Council may decide as part of its appraisal of all the proposals received, not to recommend for approval by the Regional Schools Commissioner a sponsor whose proposal is to establish a denominational school as the first school in a new community/development, there is no basis in law to prevent that body from a proposal.

2.6.2 Therefore, when the Council publishes its intentions to seek a sponsor to open a new school it should, in future, state explicitly that it welcomes proposals from all potential sponsors including for voluntary aided schools and academies with a faith designation.

2.6.3 It is proposed that the following questions should form the basis on which the Council considers and responds whenever a denominational group/trust submits a proposal to sponsor or establish a new voluntary aided school or an Academy with a faith designation/religious character. Is there:

- unmet local demand for additional relevant faith provision?
- an established trend where parental preference for places in existing

denominational schools exceeds the number of places available and this is forecast to continue into the foreseeable future?

- the potential for new denominational provision to alleviate the demand on places in other schools in areas of high basic need?

2.6.4 Where there is evidence of the above, the following will be among a number of issues which the Council will also need to be consider:

- the availability of suitable sites
- the availability of capital funding, and
- the potential impact on other schools in the area

3 ALIGNMENT WITH CORPORATE PRIORITIES

3.1 Developing the local economy for the benefit of all

3.1.1 There are no significant implications for this priority.

3.2 Helping people live healthy and independent lives

3.2.1 There are no significant implications for this priority.

3.3 Supporting and protecting vulnerable people

3.3.1 There are no significant implications for this priority.

4.0 SIGNIFICANT IMPLICATIONS

4.1 Resource Implications

4.1.1 The Council is responsible for all pre-opening start up costs in respect of new basic need schools, including diseconomy of scale costs, funding for which may be needed over a number of years.

4.1.2 The establishment of new schools with a religious designation could relieve pressure on places in other schools in areas of high basic need.

4.2 Statutory, Risk and Legal Implications

4.2.1 There are specific statutory requirements to be followed in seeking a sponsor for a new school under the provisions of the Education Act 2011. The process adopted by the Authority is compliant with the requirements of the Act.

4.3 Equality and Diversity Implications

4.3.1 Local authorities have a number of statutory duties including securing diversity in the provision of schools, increasing opportunities for parental choice and ensuring fair access to educational opportunity.

4.3.2 The bodies making proposals for new schools with religious designation will need to evidence that there is local demand for the relevant faith places sufficient to justify the creation of a new school.

4.3.3 Public Sector Equality Duty (s149 Equality Act 2010) requires a public authority to have 'due regard' to the need to advance equality of opportunity

and to take steps to meet the needs of persons who, for example, are from different faith backgrounds as well as those from no faith.

4.4 Engagement and Consultation Implications

- 4.4.1 Officers would keep existing local schools informed of proposals to establish a faith school in their area and it would expect the school proposer to engage with the existing community as part of its proposals.

4.5 Localism and Local Member Involvement

- 4.5.1 As with all new school development, officers would ensure that the local member are aware of and involved in considering any proposals for a new faith school in their constituency.

4.6 Public Health Implications

- 4.6.1 There are no significant implications within this category.

Source Documents	Location
School Admissions Code (December 2014) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/389388/School_Admissions_Code_2014_-_19_Dec.pdf	Octagon 2 nd Floor/Department for Education website

