

ESTABLISHMENT OF NEW SCHOOLS - NEW LEGISLATION, POLICY AND STRATEGIC IMPLICATIONS

To: **Cabinet**

Date: **17 April 2012**

From: **Executive Director: Children and Young People's Services (CYPS)**

Electoral division(s): **All
Soham and Fordham Villages, Bar Hill, Castle (for section 3 of the report)**

Forward Plan ref: **2012/018** *Key Decision:* **Yes**

Purpose: **To advise Cabinet on the new legislative framework governing the establishment of new schools and seek agreement to:**

- the adoption of a revised process for establishing a new school and a generic template specification for new primary schools as set out in appendix 2;
- the Cabinet Members for Learning and Children and Young People's Services being granted delegated authority to approve all future new primary school specifications in consultation with the Executive Director: Children and Young People's Services;
- a joint officer and cross-party panel being convened for the purpose of evaluating the proposals received from potential sponsors of new schools; and
- proceed immediately with these new arrangements for securing sponsors to establish and run the new primary schools required to serve Soham and the NIAB (National Institute of Agricultural Botany) and the University development in North West Cambridge. This process will also be used to secure sponsors for all subsequent new schools.

Recommendations:

That Cabinet approve:

a) the new approach and timelines for the establishment of new schools for immediate implementation;

b) the template specification for new primary schools as set out in Appendix 2, and that the Cabinet Members for Learning and Children and Young People's Services be given delegated authority to approve all future new primary school specifications in consultation with the Executive Director: Children and Young People's Services;

c) the continued use of a joint officer and cross-party member Panel to evaluate the proposals received from potential sponsors of new schools, with reports from that panel being presented to Cabinet for consideration and a decision on whether or not the Authority should state a preference for one of the proposals where more than one is received;

d) the proposal to proceed with these new arrangements to secure a promoter to establish and run the new primary schools required to serve Soham, NIAB and the University developments in Cambridge either as Academies or Free Schools with immediate effect;

e) that in accordance with current Cambridgeshire practice, that the new primary school in Soham should open in its first year (2013) for Reception-age children only;

f) the commissioning of a further report to be presented at its meeting on 22 May 2012 on the approach to the procurement of new schools including how to determine the policy approach and response to the developers of major housing sites who wish to take on responsibility for the design and building of the new schools to be established to serve their developments.

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1.0 Background

- 1.1 The Education Act 2005 placed a requirement on Local Authorities to invite other potential promoters to enter into a competition to provide any new secondary schools they planned to establish, or where they planned to provide replacements for existing secondary schools.
- 1.2 The Education and Inspections Act 2006 extended the competition requirement to primary and special schools, including new primary schools to be established as a result of reorganisations such as infant and junior school amalgamations.
- 1.3 In September 2007, Cabinet considered and gave approval to a new decision-making process to be used by the Authority whenever a need for a new school and, therefore, a competition process, was identified. The approved process is set out in **Appendix 1**.
- 1.4 At the same meeting, Cabinet approved the adoption, with immediate effect, of a number of policies and policy preferences, to be used in the Authority's specifications for any new schools it would need to establish.
- 1.6 In November 2011, the Government published the Education Act 2011. As anticipated, following the Academies Act 2010 and the Education Bill 2010/11, the new Act requires Local Authorities to seek proposals for the establishment of an Academy or Free School whenever they identify the need for a new school. This part of the Act became law on 1st February 2012.
- 1.7 In order to ensure compliance with the Education Act 2011, new policies and procedures for the establishment of new schools must be agreed and adopted.

2.0 The Education Act 2011

- 2.1 The 2011 Act sets out the following new requirements for Local Authorities with regard to the establishment of new schools:
 - 1. The Authority has to seek proposals for the establishment of an Academy or Free School, and specify the date by which proposals must be received.
 - 2. Following the published closing date by which proposals should have been submitted, the Authority must contact the Secretary of State for Education, to outline the steps it has taken to secure applications for the establishment of an Academy or Free School, together with details of any which have been received.
 - 3. Only if no Academy or Free School proposals are received, can the Authority seek the Secretary of State's permission to begin a competition process to establish a maintained school.

- 2.2 The existing competition process appears to be little changed from that currently in place. However, a new clause allows for an Authority to withdraw a competition notice once it has been published, subject to permission being granted by the Secretary of State, or following a direction by the Secretary of State. In addition, Local Authorities are no longer able to enter into the competition.
- 2.2 Although this part of the Act passed into law on 1 February 2012, it was not accompanied by any detailed regulations or guidance on how the provisions should be implemented. Officers have been in discussion with Department for Education (DfE) officials who have offered the following advice on the process for seeking proposals for new Academies/Free Schools:
1. The relevant Authority would undertake marketing/awareness-raising activity to look for potential promoters for the new Academy or Free School. The Authority would provide an outline specification to include information such as the school location, size, age range and catchment areas.
 2. The Authority would be expected to email a summary of the requirements for the new school to the DfE, together with contact details and a link to its website where further information could be found. The DfE would then make this information accessible to the New Schools Network and other interested parties registered with them as being interested in establishing new schools.
 3. Following receipt of proposals, the Authority would have the opportunity to assess these against its specification and identify its preferred promoter.
 4. The Authority would then submit all the proposals it had received, together with its assessment of them, to the Secretary of State for Education for his consideration and decision.
 5. If the Secretary of State for Education's decision is to appoint one of the applicants as the sponsor of the new school either as an Academy or Free School he would then enter into a funding agreement with that sponsor.
 6. Should none of the proposals be deemed suitable by the Secretary of State for Education, then the relevant Authority would be given consent to embark on a competition process.
 7. Should an Academy or Free School proposal be received at any point during the competition process, the Secretary of State for Education would need to be informed and the competition process suspended. If the Secretary of State were then to decide that the proposal was unsuitable, the competition process would resume.
 8. Should the competition process conclude without a suitable promoter having been identified, it would then become the relevant Authority's responsibility to set up the school as a maintained school.

- 2.3 There are no DfE prescribed timescales for any aspect of this process.

3.0 New Primary Schools

- 3.1 The Authority has identified the need to open a new primary school to serve Soham in September 2013, a new primary school to serve the NIAB development in North West Cambridge during 2013/14 and a new primary school to serve the University development in North West Cambridge in September 2014.
- 3.2 In order to be in a position to open the Soham primary school by September 2013 and the NIAB primary school during 2013/14, the Authority needs to have an approved promoter in place no later than the end of December 2012. Therefore, the search for an Academy or Free School promoter needs to begin immediately following Cabinet's consideration of this report.
- 3.3 In recognition of the fact that the Authority is commissioning this new provision, a specification has been developed setting out both the Authority's standard requirements for a new primary school and its expectations of potential promoters. This is attached as **Appendix 2**. Once approved by Cabinet this template will be used as the basis for the individual specifications required for the Soham, NIAB and University primary school promotions.
- 3.4 A separate specification for secondary schools will be developed in due course.
- 3.5 Current County Council practice for new schools in new developments is to open the school for all age groups from the opening date. This is because there is often no other nearby alternative and would result in children having to travel long distances to access their education. New schools in the new developments also often serve as a key anchor point for the community. The new school helps to provide a cohesive feel to a new community and provide a focal point where the new residents can access information. It can provide a range of services and links to health services (such as health visiting, midwifery, speech and language) and adult services (such as Job Centre Plus, Citizens' Advice Bureau, Adult and family learning).
- 3.6 In contrast, new schools in existing communities have historically opened for Reception-age children only, for example the Lantern in Ely and Jeavons Wood in Cambourne. The school then grows year-on-year as the children age through the school, until they complete their Year 6 education and transfer to secondary school. This approach makes it easier for the leadership team of the new school to manage, organise and fund the successful development of the new school as it avoids the problem of providing for the education of a small number of older children spread across the other year groups (other than Reception). The school will be able to focus on the needs of its youngest children and their families and provide them with a secure start to their education which will feed through into future levels of attainment.
- 3.7 Should a new school in an existing community open to all age groups, this could also have a potentially destabilising effect on existing schools as some parents may choose to send their children to the 'new' school rather than remain in their

current school. This could result in a reduction in revenue funding for these schools and the need to re-organise their class structures and possibly lose staff through redundancy.

- 3.8 The two existing primary schools, Weatheralls Primary School and St Andrew's Primary School, have expressed similar concerns and support the opening of the third primary school for Reception age children only in its first year.
- 3.9 At a recent public consultation held on the proposed new primary school serving the existing community in the north of Soham, a number of comments were received from parents expressing the view that the new school should open for all age groups. The reasons given were:
- That several families had children at both of the existing primary schools in Soham (The Weatheralls and St Andrew's)
 - The long journey times to the existing schools from the housing estates in the North of the Town
 - The potential for parents to have a child in the new school and another child in an existing Soham primary school creating the potential for multiple journeys taking different children to different schools.

Whilst understanding and being sympathetic to these points, officers' recommendation is that, on balance, the new primary school for Soham should open in its first year for Reception-age children only in line with established practice.

4.0 Issues and Implications

(a) Seeking Proposals for New Schools

- 4.1 The 2011 Act represents a significant change from the role performed by the Authority under the 2005 and 2006 Education Act new school competition arrangements.
- 4.2 Prior to 31 March 2010, the Government employed the consultants, Deloitte, to work with Local Authorities to promote new school competitions and with potential bidders on the development and submission of their proposals. Part of Deloitte's role was to stimulate interest and broker collaborative agreements between potential promoters.
- 4.3 Deloitte's involvement meant that officers and members were able to maintain a purely neutral stance when a competition generated interest from more than one potential promoter. Officers were always willing to attend meetings and discuss the competition specification in such cases, but on the clear understanding that they were not offering advice, and that any information provided would be shared with all parties. The separation between the Authority's role and that of Deloitte's was essential, given that Cabinet was the decision-making body in most of the competitions run by the Authority.
- 4.4 The Secretary of State for Education has taken on the role of decision-maker.

Even so, the Authority has an influential role in encouraging and seeking to secure proposals from potential sponsors and for assessing those received. Therefore, the Authority needs to consider how it exercises its role in the decision-making process while treating all potential promoters equally.

- 4.5 To achieve this balance, it is proposed that there should be a clear division of responsibilities within Children's and Young People's Services. The Strategy and Commissioning Directorate should undertake the planning of new school provision and all organisational aspects of the process while the Learning Directorate should take responsibility for identifying potential Academy/Free School sponsors and assessing the proposals received on the grounds of capacity and leadership to raise standards, prior to their presentation to Members. This would give recognition to the Learning Directorate's key role in raising attainment by proactively targeting potential promoters in whom there is confidence in their ability to establish, lead and manage a new school and deliver high quality learning outcomes for all pupils.

(b) Timescales for New Academy/Free School Proposals

- 4.6 Under the Education Act 2006, promoters were given four months to prepare and submit their proposals. This was followed by a six week consultation period and a further two months for assessment and decision. There are no detailed regulations or guidance covering timescales for seeking and assessing applications from Academy/Free School sponsors accompanying the 2011 Act. The Authority has the choice, therefore, of whether to retain its existing process and timeline or to adopt a new one.
- 4.7 As the current process and timeline add significantly to the lead-in time necessary to establish a new school, officers' recommendation would be to reduce the time made available to potential sponsors to prepare and submit their applications and to reduce that made available for the assessment of those received.
- 4.8 It is proposed that on publication of a local and national press announcement of the need for a new school, potential promoters are invited to submit their Academy or Free School proposals within a maximum of 10 weeks of the date of that notice. The Authority would then have 10 weeks in which to assess the applications received. A decision on whether to express a preference for any of the proposals to the Secretary of State for Education would be taken at the next available Cabinet meeting.
- 4.9 Should it subsequently prove necessary to run a competition, this would add around another eight months to the lead-in time to establish a new school. If this situation arose with any school needing to be open by September 2013, it may be necessary to look to an existing school to manage the Reception intake in that year as a new promoter is unlikely to be confirmed in sufficient time to establish a new school.

(c) Democratic Process – Member involvement

- 4.10 Established practice has been for a panel comprising both members and officers

to assess applications from potential promoters to establish new schools, with the recommendations from this panel being presented to Cabinet for consideration and endorsement. The members have included the Cabinet Members for Learning and for Children and Young People's Services, the local member(s) and opposition Spokespersons.

- 4.11 It is proposed that the practice of convening a joint member and officer panel should continue, with future panels being chaired by the Cabinet Member for Learning, supported by the Service Director: Strategy and Commissioning.
- 4.12 Although the Secretary of State, and not Cabinet, is now the decision-maker on new schools, the provision of new schools is an important issue for local communities. It will generate significant interest from parents, other stakeholders and potential promoters. It is, therefore, recommended that Cabinet should receive a report on the outcome of the member Panel's assessment of the proposals received and decide whether or not to express a preference in favour of one of these to accompany their submission to the Secretary of State for Education.

(d) Design and Build

- 4.13 In view of the urgent need to establish a third primary school in Soham in response to demographic pressures in the town, it has been necessary to progress design work ahead of seeking a promoter to establish and run the school. Work has also begun on preliminary designs for the NIAB primary school.
- 4.14 With the Authority's role becoming increasingly focused on the commissioning of school places, questions are now being raised on a regular basis by housing developers, those promoters awarded competitions under the Education Act 2006, and potential Academy/Free School sponsors under the 2011 Act, over whether they should be able to take responsibility for the design and build of new schools rather than this being undertaken by the Authority.
- 4.15 The preparation of a legal agreement with the City of Cambridge Education Foundation, the trust which was awarded the competition to establish and run the new secondary school to serve the Southern Fringe of Cambridge, provides a model for dealing with similar requests where the promoter wishes to take on similar responsibility for the design and build.
- 4.16 The University of Cambridge in its role as a developer has recently stated a clear aspiration to design and build the new primary school to be established on their land and want to enter into discussions with the Authority on this matter. Urban and Civic, the developers for the former Alconbury airbase have also indicated their desire to design and build the new secondary school which is required to serve this development.
- 4.17 It is important, therefore, that the Authority has a consistent and transparent approach to such enquiries and aspirations from housing developers. In determining its policy, the Authority needs to consider in much greater detail:
- the implications of such an approach on its existing procurement

arrangements and compliance with European Union (EU) procurement regulations;

- the role of the promoter of a new school under this arrangement, particularly their ability to influence the developer's school building design and ensure that it is fit for purpose
- the management and transfer of the identified risks
- contract arrangements, management and specifications
- potential impact upon school maintenance budgets
- the potential for school building projects to accommodate co-located services
- the impact of the James review and the anticipated revisions to building bulletins relating to the areas of accommodation to be provided.
- Decision making arrangements

- 4.18 Advice is currently being sought from Local Government Shared Services legal colleagues which will inform a report to Cabinet on 22 May 2012 on the issue of compliance with EU procurement rules and the other policy questions set out above.

5.0 ALIGNMENT WITH PRIORITIES AND WAYS OF WORKING

5.1 Supporting and protecting vulnerable people when they need it most

There are no significant implications for this priority.

5.2 Helping people live healthy and independent lives in their communities

The following bullet point sets out the details of the implications for this priority:

- If pupils have access to local schools they are more likely to do so by either cycling or walking rather than by Local Authority-provided transport or car. They will also be able to access out of school activities such as sport and homework clubs more readily. This will contribute to the development of both healthier and more independent lifestyles.

5.3 Developing the local economy for the benefit of all

The following bullet point sets out details of the implications for this priority:

- Schools themselves are a provider of local employment.

5.4 Ways of Working

The following bullet point set out the details of the implications of this priority:

- The proposals very much reflect the Authority's strategic role as a commissioner of high-quality services rather than a direct provider of those services.

6.0 SIGNIFICANT IMPLICATIONS

6.1 Resources and Performance

- 6.1.1 The Secretary of State for Education would enter into a funding agreement with the successful promoter of a new Academy or Free School. This funding agreement would be effective from the date of opening of the new school and not before and would be administered by the Education Funding Agency (EFA).
- 6.1.2 Prior to the opening of a new school, a range of costs are incurred in its establishment. These can be considerable, based upon the experience gained from opening numerous schools over recent years. It is not, as yet, clear whether the Department for Education (DfE) and/or the EFA will meet some or all of these costs when the new school will be established as either an Academy or Free School, or whether the Authority will need to bear these costs. In recognition of this uncertainty, some provision has been made in the new five year Children and Young People Services (CYPS) capital programme for project management/start up costs. The demands on this funding will need to be kept under review, given the number of new schools that the Council will be opening in the next few years.

At this stage the impact of opening new schools on the revenue funding available for all schools is unknown. The Government and DfE are currently undertaking a review of all schools funding and have just published a further update with a consultation running until 21st May and are promising further detail later this year. These funding reforms will change the way in which maintained schools, Academies and Free Schools are funded. The changes will also impact on how central services are affected when schools convert to Academy status. Dependent on the outcome of the reforms the impact on revenue funding could vary significantly.

- 6.1.3 The new five year CYPS capital programme makes provision for a new primary school in Soham in response to demographic pressures and for new primary schools to serve NIAB and the University developments.
- 6.1.4 S106 agreements have yet to be finalised with the developers of the NIAB and University sites.
- 6.1.5 The selection and development of the proposed site for the new school at Soham may provide the Authority with significant development opportunities on adjacent land which is also within its ownership. Any future capital receipts from land sales could be used to support the capital programme.

6.2 Statutory Requirements and Partnership Working

- 6.2.1 There are statutory requirements which will be followed. As further guidance emerges from the DfE, it will be incorporated into the process set out in this report.

6.3 Climate Change

6.3.1 The Authority's ability to identify sponsors of new schools in sufficient time to ensure the schools are available to provide for the needs of the first families they are being established to serve will ensure that children will not need to be transported outside their local communities to access a primary school place.

6.3.2 Cabinet approved policy is for all newly-commissioned Council buildings to meet the BREEAM (Building Research Establishment Environmental Assessment Method) 'very good' standard, with an aspiration to achieve 'excellent'.

6.4 Access and Inclusion

6.4.1 The Authority is committed to ensuring that children with special educational needs and/or disabilities (SEND) are able to attend their local mainstream school where possible, with only those children with the most complex and challenging needs requiring places at specialist provision.

6.4.2 The template specification for new primary schools (Appendix 2) makes clear the expectation that they will serve those children with SEND in their catchment areas for whom mainstream education is considered appropriate. Potential Academy and Free School promoters will need to confirm and demonstrate that this requirement would be met, in addition to complying with the Government's code on admissions and the Authority's In Year Fair Access Protocol.

6.4.3 All new school accommodation will comply with the requirements of the Public Sector Equality Duty (PSED).

6.5 Engagement

6.5.1 The identified need for new primary schools to serve Soham, NIAB and the University development sites will be publicised both locally and nationally.

6.5.2 **Soham:** Meetings have already been held with the local schools and the local members have contributed to discussions over the need for a third primary school, the timing of this and its location. There is also close liaison with East Cambridgeshire District Council members and officers; the proposal for a third school in Soham is included in the District Council's masterplan for Soham. A pre-planning application consultation meeting was held on 23 February 2012 which explained the need for the school and the design proposals.

6.6 Consultation

6.6.1 A comprehensive consultation process is required as part of the new process for establishing a new Academy/Free School and will follow the statutory requirements.

Source Documents	Location
<ul style="list-style-type: none">Establishing a New Maintained Mainstream School – A Guide for Local Authorities (DCSF February 2010)Cabinet Report - New Schools Competition Arrangements Policy and Decision-Making Process (11 September 2007)	Alison Cook Assistant Education Officer

<ul style="list-style-type: none"> • Education and Inspections Act 2006 and associated regulations and guidance • Soham Masterplan Vision (February 2010) 	B202, Castle Court Cambridge
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Appendix 1

Cabinet-Approved (2007) Member Involvement in the Decision-making Process

Democratic Process	Member involvement
The initial identification of the need for a new school in response to planned growth or as a result of reorganisation, e.g. an infant and junior school amalgamation.	Service Infrastructure Policy Development Group (PDG)
The consultation on and development of the specification prior to launch of the competition.	Service Infrastructure PDG
Decision to seek any exemption from competition. OR Decision to launch competition following approval of the specification. Each report requesting Cabinet approval to start the competition process to include a standard recommendation that the Service Infrastructure Portfolio Holder and Office of Children and Young People's Services (OCYPS) Spokesmen be asked to review the position at the third month checkpoint and advise the Deputy Chief Executive OCYPS whether a County Council sponsored bid for school is submitted. NB If the exemption application is unsuccessful this would trigger the need to launch a competition.	Cabinet
Review of competition process during 4 month period which will involve the decision on whether or not to enter a Local Authority proposal if either no proposals have been submitted, or the Authority is not satisfied that the submitted proposals meet its specification.	Consultation with Cabinet Member for Service Infrastructure and CYPS Spokesmen. It is proposed that this should take place at the three month checkpoint
Assessment of proposals (in the absence of a Local Authority proposal) and advice on recommendation to Cabinet.	Cabinet Member for Service Infrastructure and CYPS Spokesmen. Informed by public consultation on proposals.
Decision on successful proposal	Cabinet

Template Specification New Primary School

Background

The Authority provides information on why a new school is required. Details to include: demographic data, housing development plans, capital and revenue funding.

Details of new school

Address:

Single site/split site: Default is single site.

Area/community to be served: The school will serve a defined catchment area.

It will be a designated partner primary school to [named secondary school]

Age Range: Lower age limit - 4+ (the Authority's policy is to admit children into Reception following their fourth birthday).
Upper age limit – 11.

Gender of pupils: The default is that the school will be mixed, not single sex.

Opening Arrangements: Default is a September opening date.

Admission arrangements on opening:

Default is that a school serving a new community would open with places available in all year groups.

Default is that a school opening in response to demographic pressures in an area already served by a primary school would only provide Reception places in its first year of opening. This helps to limit the impact on existing schools.

As Cabinet-approved policy is for new primary schools to usually open as either 210 place schools (an intake of 30 children into Reception) or 420 place schools (an intake of 60 children into Reception), the default assumption is that the number of Reception places available on opening would be either 30 or 60. However, there will be some instances where the Authority plans to establish a 630 place primary school. In such cases, the number of Reception places available on opening would be 90.

In cases where the new school is to serve a new community, the number of places available in other year groups would be determined through analysis of housing development trajectories and forecast demand. The default would be

that higher intake numbers would be set for Key Stage 1 year groups than Key Stage 2 year groups.

All sponsors are required to abide by the Codes of Practice on Admissions and Admission Appeals, participate in the Authority's co-ordinated scheme for admissions and its In Year Fair Access Protocol.

Partnership Working and Collaboration:

The school will be built with accommodation suitable for delivery of early years and childcare for children aged 2-4yrs. The sponsors will need to make this accommodation available for this purpose from the day on which the school opens. The school will be expected to work in partnership with childcare providers to deliver the early years services and out of school activities in a timely manner.

The sponsors are expected to make an active contribution to school-to-school support; including peer-to-peer support, network/cluster/partnership working, and the sharing of good practice

Teaching and Learning:

The sponsors will be expected to demonstrate their ability to:

- ensure teachers' expectations, reflected in their teaching and planning, including curriculum planning, are sufficiently high to extend the previous knowledge, skills and understanding of all pupils in a range of lessons and activities over time;
- enable pupils to develop skills in reading, writing, communication and mathematics;
- facilitate well-judged teaching strategies, including setting challenging tasks matched to pupils' learning needs, successfully engage all pupils in their learning;
- ensure pupils understand how to improve their learning as a result of frequent, detailed and accurate feedback from teachers following assessment of their learning;
- promote learning through teachers' questioning and use of discussion;
- maximise the pace and depth of learning through teachers' monitoring of learning during lessons and any consequent actions in response to pupils' feedback;
- engage and motivate pupils to learn and foster their curiosity and enthusiasm for learning;
- develop pupils' knowledge, skills and understanding across a range of subjects and areas of learning;

- enable pupils to develop the skills to learn for themselves, where appropriate, including setting appropriate homework to develop their understanding; and
- Monitor and evaluate the quality of teaching and other support provided for pupils with a range of aptitudes and needs, including disabled pupils and those who have special educational needs, so that their learning improves.

Leadership and Management:

Sponsors will be expected to:

- demonstrate an ambitious vision for the school and high expectations for what every pupil and teacher can achieve, and sets high standards for quality and performance;
- aim to continually improve teaching and learning, including the management of pupils' behaviour;
- provide a broad and balanced curriculum that: meets the needs of all pupils; enables all pupils to achieve their full educational potential and make progress in their learning; and promotes their good behaviour and safety and their spiritual, moral, social and cultural development;
- evaluate the school's strengths and weaknesses and use their findings to promote improvement;
- develop capacity for sustaining improvement by developing leadership capacity and high professional standards among all staff;
- engage with parents and carers in supporting pupils' achievement, behaviour and safety and their spiritual, moral, social and cultural development; and
- ensure that all pupils are safe.

Contact details and further information: