

NATIONAL FREE SCHOOL PROCESS

To: **Children and Young People Committee**

Meeting Date: **24 May 2016**

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

Electoral division(s): **All**

Forward Plan ref: **2016/023** *Key decision:* **Yes**

Purpose: **To advise the Committee of the new Advice from the Department for Education (DfE) regarding the Free School Presumption as part of the process for the establishment of new schools and to seek their endorsement of the proposals set out in sections 4 and 5 of the report.**

Recommendation: **Members are asked to endorse the proposals set out in sections 4 and 5 of the report in response to the DfE's advice:**

- (a) To continue to complete and evaluate new school proposals if a free school proposal comes forward after the Council's usual competitive process has been launched and before it has closed, with the following modifications:**
 - **The inclusion of a DfE representative on the joint officer/Member assessment panel,**
 - **which is one of the options available to authorities as detailed in section 5 of the report**
 - **The adoption of the DfE's model specification template, application form and criteria as the basis for the future evaluation of proposals to provide consistency of response**
 - **To only hold a public presentation by the potential school sponsors where the new school is to be established in an existing community**
- (b) To not run a competition where the Regional School Commissioner proposes a free school before the Authority has launched its sponsor selection competition and if it is deemed that the proposed free school would meet the identified need**
- (c) To advise any potential free school sponsor interested in establishing and running a school where the Council has an identified need for a new school, to submit their proposals to the Regional School Commissioner (RSC) and the Council simultaneously for evaluation**

| <i>Officer contact:</i> | |
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| Name: | Clare Buckingham |
| Post: | Strategic & Policy Place Planning Manager |
| Email: | Clare.buckingham@cambridgeshire.gov.uk |
| Tel: | 01223 699779 |

1.0 BACKGROUND

- 1.1 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 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 The 2011 Education Act sets out the requirements for Local Authorities with regard to the establishment of new schools. The Council has a well-established, very rigorous joint officer Member process for selecting its preferred school sponsor. This is set out in **Appendix 1**. The Regional School Commissioner (RSC) and his head teacher reference group take this into account when reaching a decision on which potential sponsor they will recommend that the Secretary of State enters into a funding agreement with to establish and run the new school.
- 1.3 With effect from 7 May 2015, all new schools established through the Academy presumption process (as opposed to applying directly to the Department for Education (DfE) to set up a free school) have been classified as free schools. This is known as the free school presumption and is intended to remove confusion around different routes for delivering new schools. It reflects the fact that "free school" is the DfE's policy term for all new provision academies whereas "academy" is a legal term for state-funded schools that operate independently of local authorities and receive their funding directly from the government. This is part of the government's wider programme and its policy objective to establish 500 new free schools by the end of this parliament. However, new schools established in this way are not required to use the term "free school" in their name.

2 NEW ADVICE ON THE ESTABLISHMENT OF FREE SCHOOLS

- 2.1 On 12 February 2016, the DfE published new Advice on the Free School Presumption. This confirms:
- the requirement for Local Authorities to seek proposals to establish a free school where they have clearly identified the need for a new school in their area
 - the Authority's responsibility for providing the site and meeting associated capital and pre-/post opening costs
- Authorities can liaise with groups that are thinking about applying for a free school via the DfE.
- 2.2 Where a free school, proposed via the DfE route i.e. where a sponsor has applied directly to the DfE to establish a free school, might meet the identified need, the Authority can:
- a) Decide not to run a competition on the grounds that the proposed free school would meet its identified need;
 - b) Hold a competition to run in parallel to the DfE's consideration of the free school application; or
 - c) Postpone a competition i.e. if a free school proposal comes forward after a

competition has been launched.

- 2.3 Regardless of whether or not the Authority runs a competition, it will still need to publish a specification for any new school which it has identified as necessary to meet its place planning responsibilities.
- 2.4 As part of the planning process for new schools, officers always assess the impact on existing educational institutions. Under the new Advice, Authorities are required to submit an equality impact assessment to the DfE as part of the process of compiling the specification for the new school.
- 2.5 As currently, when running a competition, the Authority may assess all the proposals received and can then recommend its preferred sponsor. A representative of the Secretary of State will provide the Authority with the DfE's evidence/data about each sponsor. This could take the form of a DfE official sitting on the assessment panel either in an observational capacity or taking part, feeding in any information the DfE holds on a sponsor where relevant. Alternatively, the DfE official can provide written feedback on each sponsor prior to the assessment.
- 2.6 The decision making process, post assessment of the proposals, remains unchanged, i.e. the Authority makes a recommendation to the RSC who decides which sponsor to recommend to the Secretary of State she should enter into a funding agreement with. As currently, the Secretary of State reserves the right to agree to a sponsor of her own choice (from the DfE's list of approved sponsors) on the basis that she may have further evidence about a proposer, or proposers, which means that none of those put forward is deemed suitable.

3 IMPLICATIONS OF THE NEW ADVICE

- 3.1 Until the latest Advice was issued, running a competition has ensured that communities and Councillors have had a say in who they would like to establish and run new schools in their local areas. In future, it is possible that the Authority could run the process of seeking a sponsor only to find that the RSC appoints a new Free School sponsor before the Council's selection process has been completed or even started.
- 3.2 The impact of this new approach is already manifesting itself. Cambridgeshire's RSC wrote to The Executive Director: Children, Families & Adults on 6 January 2016 about the potential he had identified for a number of free school developments in Cambridgeshire, both primary and secondary. More recently, on 11 March 2016, the DfE confirmed that it has received applications to establish three free Schools in the County.
- 3.3 The proposed timescales would result in schools opening much sooner than the Authority has identified the need for the additional capacity to be available in these locations and we have expressed our concerns about this in our response to the DfE about these proposals.
- 3.4 Given that information about new developments is in the public domain it is highly likely that potential sponsors will continue to approach the DfE to open Free Schools before the Authority's strategic planning of new school places indicates a need to launch a sponsor selection process.

3.5 One approach to respond to this scenario would be to launch sponsor selection processes sooner. However, this presents some risks particularly if the development stalls or is delayed for any reason. Experience gained from Northstowe is that sponsors (in this case selected in 2009) can become very frustrated and disillusioned if there is a long delay between their selection and the construction and opening of their new school(s). Officers' advice is that, on balance, the Authority should continue to align the timing of the launch of its school sponsor competition process to available intelligence with regard to time required to design and build a new school, the proposed build out of housing (in new development) and pupil forecasts.

3.6 The latest DfE Advice also serves to highlight an emerging issue with regard to the plans for educational provision to serve Northstowe. In 2009, following the competition process, Cabinet approved Cambridge Meridian Academy Trust (CMAT) to establish and run the new town's secondary school. Subsequently the need for an area special school has been identified and a site, next to the secondary school site, has been secured through s106 with the developers, Gallagher. A competition has not yet been launched for a sponsor for the special school. CMAT have expressed their strong interest in sponsoring this school. This would follow the model the Authority has adopted in Littleport where one sponsor has been appointed to run both the secondary and co-located special school.

4 PROPOSALS FOR DETERMINING WHETHER OR NOT TO RUN A COMPETITION

4.1 In light of the new Advice we need to review the processes we use to identify new school sponsors including when and whether to run a competition to identify a new school sponsor.

4.2 Circumstances where it is proposed to run a competition

4.2.1 Officers propose the following steps:

- 1) Where officers have established the need to establish a new school and the Regional Schools Commissioner has not advised officers of any free school proposals, officers will launch and operate the Authority's existing sponsor selection process;
- 2) If a free school proposal comes forward, via the DfE route, after the competition has been launched but before the deadline for the submission of proposals by potential sponsors, officers:
 - Will halt the competition after the deadline has closed;
 - Will evaluate all written submissions, jointly with CYP Spokespersons and local Members; and
 - Will comment when invited to do so by the Regional School Commissioner, on the Free School Proposal submitted via the DfE route
 - Will submit a report to CYP Committee setting out the outcome of the evaluation of the written submissions, any comments on any Free School proposal submitted via the DfE route and recommend a preferred sponsor
- 3) If a free school proposal comes forward, via the DfE route after the

competition has been launched and after the closing date for applications, the Council will proceed to complete the sponsor selection process in the usual way

4.3 Circumstances where it is proposed not to run a competition

4.3.1 There will be circumstances where the Authority has identified a basic need requirement for a new school, has not yet launched its sponsor selection competition, and an existing sponsor comes forward to establish and run a Free School, via the DfE route, to meet that need. It is proposed that in these circumstances, where the Authority has sufficient knowledge and confidence in the sponsor to secure and maintain high quality and standards of teaching and learning, the working assumption is that there would be no grounds to run a competition. The Council reached this view when it chose to support the Comberton Village College Academies Trust bid to establish Cambourne Village College as a Free School which opened in September 2013.

4.3.2 In these circumstances it is proposed that officers and Members evaluate the Free School proposal on its own merits, taking into consideration the following:

- is there an established basic need for school places in the area in which it is proposed to establish the school
- is the proposed school part of a planned or existing education campus and, if so, which sponsors currently run or have been appointed to run existing or planned schools in that campus
- the potential sponsor's track record including the standard of teaching and learning and the educational outcomes achieved for pupils at its schools
- is the proposer is able to evidence that it has the capacity to meet the Authority's requirements for the new school.

If it is deemed that the proposed free school would meet identified need, officers will submit a summary of the process to the Committee recommending not to run a competition.

4.3.3 In circumstances where an existing sponsor is aware of the Council's intention to open a new school in the future e.g. a special school at Northstowe and that sponsor wishes to run that school it is proposed that the potential sponsor should submit a proposal to the RSC and to the Council at the same time. The Council will consider the proposal as in 4.3.2 above.

4.3.4 There are scenarios which may emerge where a short term solution for providing additional school places and meeting the Council's statutory duty requires the Council to work with a sponsor that wishes to consider such a solution as part of its longer term business plan or its future plans for that particular area it is working in. This situation has arisen in Chatteris. Local development proposals mean that additional primary provision will be required and officers were already working with an existing primary school sponsor, the Active Learning Trust (ALT), about increasing places in Kingsfield Primary which they run. Events have now overtaken these discussions as the RSC has received a bid from ALT to establish a new Free School in the town. Officers will bring this particular matter to the Committee at its July 2016 meeting.

5 **THE FOLLOWING SECTIONS OUTLINE THE ASPECTS OF THE ADVICE WHICH ARE LARGELY ADMINISTRATIVE**

5.1 DfE involvement in the assessment of proposals

- 5.1.1 At the most recent sponsor selection competition for the new secondary school for the Darwin Green development in north west Cambridge, a representative from the DfE attended both the public meeting where potential sponsors presented their proposals and also participated in the joint officer/Member assessment panel. This extended to asking questions and contributing to the discussion of the strengths and areas for development of each of the potential sponsors.
- 5.1.2 The alternative option of gathering the DfE's views on potential sponsor proposals in writing, would extend the overall length of the process (currently about 26 weeks/6 months) as it requires a 4 week/20 day gap after receipt of all the proposals, before the Council can assess the proposals, to allow the DfE officials to gather evidence to inform the Authority's assessment. Currently the assessment panel takes place on average within 2 to 3 weeks/10 to 15 working days of the closing date for receipt of proposals.
- 5.1.3 **Proposal:** to include a representative of the DfE on the joint officer/assessment panel

5.2 Assessing proposals

- 5.2.1 The new Advice also includes:
- a model specification template
 - a model application form for potential sponsors
 - model criteria against which Authorities assess proposals from potential sponsors
- <https://www.gov.uk/government/publications/establishing-a-new-school-free-school-presumption>
- 5.2.2 These are broadly similar to the Authority's existing approach although the model recommends a 4 point scoring scale of 0-3 whereas the Authority uses a 6 point model, 0-5.
- 5.2.3 **Proposal:**
- to adopt the model specification template;
 - to adopt the model application form;
 - to adopt the model criteria

5.3 Public meeting

- 5.3.1 The Advice does not include the use of a public presentation as part of the assessment process. The Council's process to date has included this element. There is a perceived value to this as a public facing event if a new school is to be established in an existing community e.g. Trumpington Meadows or Bearscroft (Godmanchester). However, where the assessment is to identify a sponsor in a new development e.g. Alconbury Weald, the community that it will serve has not yet been established there is perhaps less benefit to be gained from holding such an event.
- 5.3.2 **Proposal:** to continue to hold a public presentation by the potential school sponsors where the new school is to be established in an existing community

6 ALIGNMENT WITH COPORATE PRIORITIES

6.1 Developing the local economy for the benefit of all

- 6.1.1 Providing access to local and high quality education and associated children's services will enhance the skills of the local workforce and provide essential childcare services for working parents or those seeking to return to work. The school and early years and childcare services are providers of local employment.

6.2 Helping people live healthy and independent lives

- 6.2.1 If pupils have access to local schools and associated children's services, they are more likely to attend them by either cycling or walking rather than through local authority-provided transport or car. They will also be able to access more readily out of school activities such as sport and homework clubs and develop friendship groups within their own community. This will contribute to the development of both healthier and more independent lifestyles.

6.3 Supporting and protecting vulnerable people

- 6.3.1 Providing a local school will ensure that services can be accessed by families in greatest need within its designated area.

7.0 SIGNIFICANT IMPLICATIONS

7.1 Resource Implications

- 7.1.1 Local Authorities are responsible for all start up and post-opening costs associated with new schools, including diseconomy of scale costs, funding for which may be needed over a number of years. Given this burden of revenue expenditure, the Council will only consider commissioning new schools where there is no possible alternative.
- 7.1.2 Pre-opening funding for secondary schools is currently £150,000 and is calculated on the basis of two terms prior to the date of opening. Post-opening diseconomies funding is provided at the rate of £250 for each new mainstream place created in the secondary phase on an annual basis, plus an additional allocation to reflect the number of year-groups that the school will ultimately have that do not yet have pupils. For primary schools the sums are £50,000 and (calculated on the basis of 1 term prior to the date of opening) and £125 respectively.
- 7.1.3 Following review of the levels of post-opening diseconomies funding for secondary schools at its meeting on 16 October 2015, Schools Forum agreed to increase the post-opening diseconomies funding rate to £500 for each new mainstream place created and provide an additional £312,000 spread over four years to reflect the number of year groups that do not yet have pupils.
- 7.1.4 The Government have recently started a consultation process on the future funding arrangements for schools. Following the first stage of this process there are still significant areas of uncertainty in respect of funding for new schools and as such the implications detailed below are based on current legislation and processes.

7.2 Statutory, Risk and Legal Implications

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

7.2.2 The Council will grant a standard 125 year Academy lease of the whole site (permanent school site) to the successful sponsor of a new school based on the model lease prepared by the DfE as this protects the Council's interest by ensuring that:

- The land and buildings would be returned to the Council when the lease ends.
- Use is restricted to educational purposes only.
- The Academy is only able to transfer the lease to another educational establishment provided it has the Council's consent.

The Academy (depending on the lease wording) is only able to sublet part of the site with approval from the Council.

7.3 Equality and Diversity Implications

7.3.1 The Council is committed to ensuring that children with (SEND) are able to attend their local mainstream school where possible, with only those with the most complex and challenging needs requiring places at specialist provision.

7.3.2 The accommodation provided for delivery of early years and childcare and primary and secondary education will fully comply with the requirements of the Public Sector Equality Duty and current Council standards.

7.3.3 As part of the planning process for new schools, local authorities must also undertake an assessment of the impact of the proposal, both on existing educational institutions locally and in terms of impact on particular groups of pupils from an equalities perspective.

7.4 Engagement and Consultation implications

7.4.1 All new school projects initiated by the Council are subject to a statutory process which includes public consultation requirements

7.5 Public Health Implications

7.5.1 It is Council policy that schools:

- should be sited as centrally as possible to the communities they serve, unless location is dictated by physical constraints and/or the opportunity to reduce land take by providing playing fields within the green belt or green corridors;
- should be sited so that the maximum journey distance for a young person is less than the statutory walking distances (3 miles for secondary school children, 2 miles for primary school children)
- should be located close to public transport links and be served by a good network of walking and cycling routes
- should be provided with Multi-use Games Areas (MUGAs) and all weather pitches (AWPs) to encourage wider community use of school

7.6 Localism and Local Member Involvement

7.6.1 The report sets out the implications for this priority in sections 3.1 and 4.1.

| Source Documents | Location |
|---|--|
| The Free School Presumption: Departmental advice for local authorities and new school proposers. February 2016 https://www.gov.uk/government/publications/establishing-a-new-school-free-school-presumption | Clare Buckingham 0-19 Place Planning & Organisation Service |
| Cabinet Report - New Schools Competition Arrangements Policy and Decision-Making Process (11 September 2007) | Octagon 2 nd floor OCT1213 , Shire Hall, Cambridge |
| New School Revenue Funding Policy 2015/16 | |

The Council's process for selecting its preferred school sponsor when the need for a new school has been identified.

The main elements of the sponsor selection process date back several years as they were established in response to the requirements of the 2006 Education Act. The process was reviewed and updated in 2012 to take account of the requirements of the 2011 Education Act, receiving Cabinet approval on 17 April 2012. More recently, some slight adjustments have been made to take account of the Council's new decision-making arrangements. The process consists of six main stages:

- Development and publication of a specification detailing the requirements and expectations of the potential academy/free school sponsor together with a background document which provides the context for the need for the school and the area in which it will be established.
- Invitation to potential sponsors to submit applications within a set timeframe.
- Assessment and scoring of the applications. Only applications deemed to have met a certain standard will be shortlisted and taken forward to the next stage.
- A public meeting at which the applicants are asked to present their proposals and answer questions from the audience. Applicants are requested to prepare a presentation which should take no more than 15 minutes to deliver.
- Assessment and scoring of the way in which the applicant presented their proposals and responded to questions from the audience at the public meeting followed by an interview with a joint officer and Member panel during which the applicants will be asked a series of questions. This usually lasts around 1 hour. The panel is also provided with a summary of any written comments or feedback received following the public meeting. The panel membership is drawn from the following:
 - members of the CYP Committee;
 - the local County Councillor(s) for the area in which the school will be established;
 - the Head of the Schools Intervention Service or their representative;
 - the Head of Service, 0-19 Place Planning and Organisation (Chair)
 - the 0-19 Strategic Policy and Place Planning Manager; and
 - the 0-19 Area Education Officer
- The panel discusses each of the proposals in detail, taking account of what they have read, seen and heard from which a combined score for each application is derived.

Endorsement of the panel's recommendation is then sought by the Children & Young People's Committee. The Regional School's Commissioner (RSC) and his head teacher reference group take this into account when reaching a decision on which potential sponsor they will recommend that the Secretary of State enters into a funding agreement with.