

Children and Families Committee

Date of Meeting:	16 January 2023
Report Title:	School Organisation - new DfE funded SEN free school applications
Report of:	Deborah Woodcock, Executive Director of Children's Services.
Report Reference No:	CF/64/22- 23
Ward(s) Affected:	All Wards

1. Purpose of Report

- 1.1. The purpose of this report is to advise committee of the submitted application (21 October 2022) to expand the number of in-borough special educational needs (SEN) special schools through engagement with the Department for Education (DfE) 'special free school programme for local authorities' to provide additional SEN free schools. The education directorate have recently submitted two applications for two new free schools; if successful in our applications, this would provide capital investment via the DfE to develop these two new schools. This would align with our SEN sufficiency statement to increase local provisions and the requirement to reduce financial pressures on the High Needs Dedicated Schools Grant (DSG) funding as identified in our involvement in the DfE 'Developing Better Value'(DBV) initiative.
- 1.2 The actions outlined in this report have clear benefits for the council if we are successful in our applications. Securing external funding which addresses the increasing demand for school places in SEN special schools

is a positive action and is a key mitigation in our SEN high needs funding management plan.

- 1.3. The application process stated that *‘You do not need to have a site to submit an application, however, we will give preference to those projects where our site assessment shows that we are likely to secure a value for money site in a timely manner with an acceptable level of risk. This will reduce the risk that your project will be delayed or cancelled during the pre-opening phase.’* Cledford House in Sandbach has been identified as a specific named site (as discussed at Finance Sub Committee on 6 July 2022) along with a site in the ‘Giants Wood’ housing development in Congleton. The Congleton site has been identified for a potential new primary school and there is an opportunity to utilise this option for dual usage by having two education provisions progressed through liaison with planning and developers. The naming of sites supports the application process and therefore this report outlines our ambition to use these two sites as potential options for new SEN provisions within Cheshire East if the application process is successful.
- 1.4 The increasing levels of engagement with the Delivering Better Value (DBV) programme continues to highlight the importance of seeking solutions to the continuing SEN deficit. If successful, having two further SEN special schools will provide an additional 120 in-borough places (proposal of 60 per school) which will reduce the dependency on high-cost independent provisions.
- 1.5 The deadline for submitting applications to this latest SEN wave of new free schools was 21 October 2022; this deadline was met with two applications being submitted. It is expected that the local authority will know if it has been successful with these applications during the spring term; we have had feedback that site visits have taken place prior to the Christmas break.

2. Executive Summary

- 2.1. As the strategic commissioner of school places, Cheshire East Council has a statutory duty to ensure that there are sufficient places in our schools to meet the needs of residents. Having the right educational placement for all children and young people is key to supporting children and young people achieve their potential and to develop the range of skills and experiences they need to equip them for adulthood. This approach is in line with our

strategy to increase local specialist provisions as set out in the high needs recovery plan as presented to Committee in September 2022.

- 2.2.** Due to the increasing level of complexities of children and young people identified through SEN assessments, the demand for special school places continues to increase. The council has published its updated sufficiency statement for children and young people with special educational needs (SEN), in October 2020, this was endorsed by the SEND Partnership Board on 27 November 2020. This document highlights a need to increase specialist provision in the borough as the number of SEN provisions currently available does not match the needs identified.
- 2.3.** The Department for Education (DfE) released information on the 10 June 2022 relating to the process through which local authorities could apply to open new free schools for both specialist SEN provisions and alternative provision (AP). The initial stage of this national process was for the local authority to register an interest by 31 July 2022. Basic details were needed at this stage however, the naming of potential sites for consideration for such new provisions was an advantage at this initial application stage.

Due to the time restraints in this process and the importance of increasing our special school's estate, two submissions were submitted by the October deadline. The completion of these applications was reviewed by the Director of Education in association with the Executive Director.

A detailed paper has not been presented to committee ahead of this report for the following reasons:

- a. There is no guarantee that the two submitted applications will be successful and that further liaison was required with DfE officials at an early stage regarding the proposed sites. This liaison has now taken place including site visits and therefore it was felt appropriate to present this option to committee following the site assessments and not earlier.
 - b. There was a requirement within the application process to ensure that the 'lead member' for property services was informed of applications being submitted. This particularly relates to the potential for certain costs being applied to the local authority for 'abnormal site development costs' (see legal section for detail). Education services undertake close liaison with asset services in the progression of any build scheme and robust processes are in place to consider site issues which may impact on overall costs. Such discussions have initially taken place and would be fully investigated if successful in these applications.
- 2.4.** In terms of potential sites, the education directorate had already expressed an interest in acquiring Cledford House in Middlewich via the Assets Board. Officer advice was sought to allow for the progression of the application to

utilise Cledford House for a new SEN free school. Giants Wood in Congleton was already identified for a new education provision and this free school opportunity allows us to develop this site for dual usage.

- 2.5. In preparation for submitting DfE applications within the short window available, senior officer advice was sort to progress the applications. The Finance Sub-Committee considered this matter at their July 2022 meeting of this committee. The outcome of this meeting was agreement to add this council asset to the disposal list thus allowing for its future change of use/disposal.
- 2.6 Cledford House is currently occupied by local authority service teams within the Children and Family directorate. The formal process to move these specialist teams to alternative venues as their base had already been initiated and a structured consultation process has been undertaken to ensure adequate bases are available for staff to undertake their duties. The Giants Wood site in Congleton is currently part of a sizeable housing development and therefore is a 'ground level development' which requires a full build programme.

3. Recommendations

3.1 For committee to note the submission of two applications for SEN Free Schools. If, successful, these new resources would provide a key mitigation within the SEN High needs management plan.

3.2 For committee to agree to provide indemnity if one or both schemes are successful. Indemnity would need to be provided relating to any 'abnormal site development' costs. Such a task is part of any new school development site, and the initial analysis of the two site is that there are low levels of risk.

3.3 For committee to note that if successful, that these schools would progress through the free school presumption route and appropriate reports would be provided to committee as projects progress to seek relevant delegated approvals.

4. Reasons for Recommendations

- 4.1. The DfE opened a further round of applications for new SEN free schools with the initial phase of the process being to formally register interest by the 11 July 2022. The local authority then submitted a formal application to the DfE by 22 October 2022. Due to the critical demand for additional SEN

special school places, it was essential that the local authority progressed with applications to secure potential external capital investment.

- 4.2 Committee have been updated on the progression of the free school presumption process for the new primary school at Kingsley Fields, Nantwich and therefore a similar reporting process would be followed if successful with these two SEN applications.

5. Other Options Considered

- 5.1. The option to do nothing and not increase special school provision across the borough would result in increasing costs for out of borough places and failure to provide high quality local provision to meet the local need of our families.
- 5.2. There is an option to consider alternative sites for the increasing demand. The service is working closely with colleagues in the assets team to identify other potential local sites to address the forecasted demand for specialist school places across the borough. The two sites identified have initially been vetted by DfE officials and seen as appropriate to allow the local authority to then formally apply by the October deadline (see Appendix 1)
- 5.3. There is the option to not increase in-borough SEND provisions but utilise independent and/or out of borough specialist provisions. This is not a viable option due to the significant increase in costs for such places which will only further increase the financial pressures on the council due to SEND.

6. Background

- 6.1 The DfE wants to open new special free schools in areas where good new schools are most needed. They will prioritise applications which:
- *are in areas where a new school fits with the local authority's wider SEN and high needs strategy*
 - *make a strong strategic case for why a new special free school is needed, and will better meet the needs and achieve better outcomes for children and young people in the area*
 - *demonstrate that a new special free school will help local authorities reduce their dedicated schools grant (DSG) deficit*
 - *demonstrate that a new school will be financially sustainable and that local authorities will commit to commissioning, funding and supporting places*
 - *will contribute to the wider aims of the SEND green paper*
 - *include details of a viable site which is likely to secure value for money, in a timely manner, and with an acceptable level of risk*

6.2 The summary below outlines the pertinent points relating to this DfE programme:

This guidance sets out the process for local authorities to apply to set up a new special free school in their area.

New schools approved through this process are part of the central free school's programme and will be delivered and funded as such. Free schools are legally academies, which are state-funded educational institutions operated by academy trusts.

This process does not replace the [free school presumption](#) process and does not replace a local authority's duty to secure sufficient appropriate education for children and young people

Assessment criteria include that local authorities:

- demonstrate that the places in each of the school's first 2 years of operation will be commissioned and confirm the rate at which top-up funding will be paid
- confirm that all places will be commissioned beyond the first 2 years
- make a sound strategic case for new provision that will better meet the needs of children and young people in the area
- explain how they will afford to fund this in the future and demonstrate that the new school will not add financial pressures
- use data to show that there would not be an over-supply of places in the area if a new special free school were created

6.3 Cheshire East has been invited to be part of the Delivering Better Value (DBV) programme that was announced by the Department for Education (DfE) in February 2022. The DBV programme is designed to provide dedicated support and funding to help 55 local authorities with substantial deficit issues in their high needs block of the dedicated schools grant (DSG) to reform their high needs systems, with the aim to put more local authorities on a more sustainable footing so that they are better placed to respond to the forthcoming special educational needs and/or disabilities (SEND) reforms.

6.4 The application submissions were made on the 21 October 2022 and included details of both potential sites being put forward. These are included in appendix 3 in terms of size and location of each option.

6.5 The two SEN special schools applied for would have the focus on the two SEN primary needs which show the highest level of demand. The following information provides a brief outline as to why these primary needs are required.

School 1 – Cledford House, Middlewich: 5-19 60 place school for Social, Emotional and Mental Health (SEMH)

The last 2 years (Jan 2020-2022) of SEN data shows that there has been an overall 16% increase in the number of EHCPs issued. Our overall increase in EHCPs from 2020-2022 (39.6%) is the highest compared to our statistical neighbours; this was confirmed by our DBV officials in recent meetings. The highest percentage increase in setting types (30%) is within the use of non-maintained/independent sector due to the lack of in-borough special school places. In addition to this, in recent years we have seen a significant increase in the requirement for special school places for early years children especially around primary need of Social Emotional and Mental Health (SEMH). Currently, 25% (955) of the 3834 EHCP plans are identified for SEMH, and it is on this basis that this application has been put in. Further, we are anticipating a further 600 EHCP plans being issued in this academic year which adds to the acute and challenging position which the local authority finds itself in. It is positive that 477 of the SEMH learners have successful placements in our mainstream schools but the increasing number of change of placements and 'expectation' of a specialist provision adds to the case for a new special school.

School 2 – Giants wood Site, Congleton: 5-19 60 place school for Autism Spectrum Condition (ASC).

In recent years we have seen a significant increase in the requirement for special school places for early years children especially around primary need of ASC. Currently, 25% (943) of the 3834 EHCP plans are identified for ASC, and it is on this basis that this application has been submitted. Furthermore, we are anticipating a further 600 EHCP plans being issued in this academic year which adds to the acute and challenging position which the local authority finds itself in. It is positive that 346 of the ASC learners have successful placements in our mainstream schools but the increasing number of change of placements and 'expectation' of a specialist provision adds to the case for a new special school.

7. Consultation and Engagement

7.1. In accordance with the guidance issued by the Department for Education for opening new schools, the council would ensure all consultation and due diligence processes would be followed and reports would be generated for consideration by CLT and committee as these processes are completed.

8. Implications

8.1. Legal

8.1.1. Central government set up a proposed scheme for provision of additional schools [How to apply to set up a special free school \(for local authorities\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/guidance/how-to-apply-to-set-up-a-special-free-school-for-local-authorities)

10 June 2022	Mandatory pre-application registration opened.
27 June 2022	Application window opened.
11 July 2022	Mandatory pre-application registration closed.
21 October 2022	Application window closed.
Late 2022	Applications will be assessed against the published criteria. We may ask for additional information during this period

The Application that must be submitted by the 21 October 2022 as part of the requirement to achieve value for money, there is a requirement for applicant authorities to meet 'abnormal site development costs', including:

- geochemical exceedances relative to guidelines for school use
- geophysical conditions
- flooding and alleviation measures
- s278 costs
- new road provision from the adopted highway to the site boundary
- s106 costs
- retaining structures required as a function of topography
- ecological provision - reserves, species protection and relocation
- listed building and heritage community costs
- title consolidation and registration
- utility provision
- environmental conditions that may require specific mitigations such as acoustics or air pollution
- mitigation measures for constrained sites (such as roof top playgrounds)
- other site-specific issues

The application process also provided that, "written confirmation that the relevant Lead Member for Corporate Property has seen the application and understands that the local authority will be required to meet all site abnormal costs and accept the retention of historical ground condition liability"

The giving of an unlimited indemnity for site conditions is a potentially significant and onerous obligation. As Cheshire East Council operates a committee system there is no lead member who is able to give such an undertaking. Full council provided that single member or 'portfolio holder' decision must be taken at committee. The committee is obligation now falls to the committee.

The committee must therefore confirm it has sight of the application process, has received all relevant information in relation to the proposed site history and is content to provide to confirm that Cheshire East is prepared to meet any possible site abnormalities.

Local authorities have a duty to ensure a sufficiency of places in their area under section 14 of the Education Act 1996. The Department of Education has issued Guidance ('the Guidance') 'How to apply to set up a special free school (for local authorities) updated 21 October 2022. The Guidance sets out the process for local authorities to apply to set up a new special free school in their area.

8.1.2. The Guidance states -

New schools approved through this process are part of the central free school programme and will be delivered and funded as such. Free schools are legally academies, which are state-funded educational institutions operated by academy trusts.

This process does not replace the free school presumption process and does not replace a local authority's duty to secure sufficient appropriate education for children and young people. If there is a significant need in an area, the local authority should decide whether a free school presumption competition is needed. If there is a need, they must ask for proposals to establish a free school through the presumption process.

9. Finance

9.1. If successful with these applications, the capital required for building would be provided externally by the DfE. Certain exceptions apply if significant variations are proposed by local authorities. The impact on the council would be that revenue funding would be required for per place funding, but this will be a lower rate than that currently being applied for independent SEN placements. There is detailed information within the national guidance relating to the how the school would be funded for actual places – link provided below. Such funding arrangements would be outlined in subsequent reports to committee if successful in our applications.

9.2 In terms of estimating the mitigation of further SEN spending that this scheme will ultimately achieve; this would be factored into the overall DSG High Needs recovery plan. The information below is based on the cost to the council per pupil per year for placing children in a Cheshire East Council SEND school and the average placement cost per pupil per year for buying placements at independent non maintained schools.

- The average cost per pupil at a CEC School is £13,800 pa.
- The average cost per pupil at an independent non maintained school is £49,500 pa.

This equates to a per pupil mitigation of costs of £35,700 pa.

- 9.3** Cheshire East is now part of the Delivering Better Value (DBV) programme that was announced by the Department for Education (DfE) in February this year. The DBV programme is designed to provide dedicated support and funding to help 55 local authorities with substantial deficit issues in their high needs block of the dedicated schools grant (DSG) to reform their high needs systems, with the aim to put more local authorities on a more sustainable footing so that they are better placed to respond to the forthcoming special educational needs and/or disabilities (SEND) reforms.

10. Policy

- 10.1.** The establishment of SEN free schools would support the council in meeting its duty to provide sufficient school places. Local authorities are under a duty to ensure sufficiency of school places in their area (section 14 of the Education Act 1996).

The SEND Code of Practice requires us to consult with parental preference schools and parents have a right to appeal where we are unable to name their preference school through the tribunal process.

- 10.2.** The proposal will allow more children access to in-borough specialist provision with the intention of supporting children and young people in achieving the best possible outcomes.
- 10.3.** The option of new free schools will provide more places for children within their local community, allowing them to build friendships with people who live close to them and spend less time travelling.
- 10.4.** By providing more local school places within Cheshire East the expansion will allow for some savings on transport when compared to educating children out of borough, thus allowing the council to make best use of its resources.
- 10.5.** By providing additional places the expansion will provide more choice for parents and carers who may otherwise maybe not find a place at a local school.

11. Equality

- 11.1.** An Equality Impact Assessment would need to be completed if successful in our bids to open new free schools.

12. Human Resource

- 12.1.** There are no direct human resource implications for the council, but any new school will require the appointment of specialist staffing and the council would work with the successful provider to ensure high quality staffing is achieved.

13. Risk Management

- 13.1.** There are clear risks for the council not being successful in this round of free school applications. The naming therefore of Cledford House and Giants Wood at this stage is low risk allowing for progression of a formal application in October 2022 based upon support from both the Assets Board and Finance Sub- Committee.
- 13.2.** It is anticipated that the Cledford House premises will be available in early 2023 as existing council staff teams are re-located to other council premises for their base of work following staff consultation.
- 13.3.** Planning Permission – The proposal to establish new free schools would be subject to planning approval and should the proposal impact on land designated as playing field then Section 77 of the School Standards and Framework Act will also apply. An added risk to planning is the current delays in achieving approvals.

14. Rural Communities

- 14.1.** The creation of new SEN free schools would bring benefit to rural communities in that it will result in additional special school places which would be available to residents within a more reasonable travel distance.

15. Children and Young People/Cared for Children

- 15.1.** In accordance with the programme to provide more specialist school places within Cheshire East, this proposal will provide more spaces for children to learn and develop friendships with other local children.
- 15.2.** The savings made from providing better value school places will allow for more efficient budgeting by the service which in turn will reduce pressure on the ring-fenced High Needs budget.

16. Public Health

- 16.1.** There are no direct implications for public health however, some children and young people currently travel significant distances to access the

specialist provision they may require. This can have an impact on their emotional wellbeing and can significantly lengthen the school day. The proposal to submit applications for new free schools will mean children getting a placement in their local school thus keeping them in their local community.

- 16.2.** By reducing the distances which children are having to make to attend school the proposal will also help reduce congestion on the roads and therefore reduce emissions improving the air quality and making a better environment to live in.
- 16.3.** Any increase in SEND provision will require strategic joint commissioning of specialist health services to ensure resources for such services as physiotherapy are sufficient to meet increased demand as more localised school places are generated.

17. Climate Change

- 17.1.** Providing additional SEN places will enable Cheshire East children the ability to secure at place at their local school thus reducing the need to travel outside of the area which will reduce energy consumption.
- 17.2.** Cheshire East Council are very aware of their environmental education and stewardship role and are very interested in promoting sustainability in general.
- 17.3.** It is noted that any funding is for a capital project and not for the ongoing running costs. Therefore, as part of the detailed design process, the design team will be exploring how the expansion could be designed to minimize future running costs. Systems that save on energy consumption will be considered, particularly for electricity, with absence detection being the preferred lighting strategy.

Access to Information	
Contact Officer:	Mark Bayley Mark.bayley@cheshireeast.gov.uk 07770 322965
Appendices	Site information – Appendix 1 Other documents attached are the application templates for both options.

Background Papers:	<p>How to apply to set up a special free school (for local authorities) - GOV.UK (www.gov.uk)</p> <p><u>SEN Local Offer including SEN Sufficiency statement</u> https://www.cheshireeast.gov.uk/livewell/local-offer-for-children-with-senand-disabilities/send-developments/assessing-our-local-sendsufficiency.aspx https://www.cheshireeast.gov.uk/pdf/livewell/sen/send-sufficiency-final-forwebsite.pdf https://www.cheshireeast.gov.uk/pdf/livewell/sen/sen-sufficiency-plan-2023-for-website.pdf</p>
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