

CHESHIRE EAST COUNCIL

REPORT TO: Children and Families Scrutiny Committee

Date of Meeting:	11 September 2012
Report of:	Lorraine Butcher: Strategic Director Children, Families and Adults
Subject/Title:	School Competition process for an ASC-specific Special School
Portfolio Holder:	Councillor Hilda Gaddum

1.0 Report Summary

- 1.1 In 2010, Cheshire East Children and Families Service began the process of reviewing its arrangements for children and young people with Special Educational Needs and Disability (SEND).
- 1.2 One of the priority recommendations emerging from this ongoing review was the identified need to develop local specialist provision for children and young people with Autism Spectrum Condition (ASC) between the ages of 4 to 19.
- 1.3 The SEND review has an aspiration to develop an outstanding ASC-specific special school and service for children with Autism as close to their local community as possible, underpinned by our vision that 'no child, or young person is left behind', enabling every child and young person to achieve the best possible outcomes.
- 1.4 An outline business case for the proposal in principle was submitted to Cabinet in November, 2011. The Cabinet approved the proposal in principle and voted in favour of commissioning a feasibility study on siting the school on the former Church Lawton Primary School site.
- 1.5 In February this year, changes were made to the Education and Inspections Act (EIA) 2006 part 2 in relation to the process for establishing new schools including the Academy/Free School presumption. This paper explains those changes and their implications on the proposal to establish an ASC-specific special school for children and young people with Autism.

2.0 Decision Requested

- 2.1 To comment on the project in light of the new legislative changes

- 2.2 To comment on seeking permission from Cabinet to notify the Secretary of State of an intention to seek proposals to establish a new special school under s.6A of the EIA (2006) and to seek Secretary of State consent to move to a competition under s.7 EIA (2006) if no proposals or no suitable proposals are forthcoming.

3.0 Reasons for Recommendations

- 3.1 Under the new Schools White Paper, Local Authorities will move from being providers of education to a more strategic role as commissioners of educational services, promoting:
- High standards and fulfilment of every child's educational potential;
 - Increase diversity in school provision and greater parental choice, and
 - Champion educational excellence and fair access for all.
- 3.2 This involves a shift from managing maintained provision to strategic commissioning by:
- Promoting a good supply of strong schools, encouraging the development of Academies and Free School;
 - Ensuring fair access to all schools;
 - Supporting vulnerable pupils, including looked after children, those with Special Educational Needs and those outside mainstream provision;
 - Supporting maintained schools performing below the floor standards to improve quickly or convert to Academy status with a strong sponsor
- 3.3 In line with changed regulations the LA cannot proceed without notification to the Secretary of State for Education regarding our intention to establish any new school.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All

6.0 Policy Implications including - Carbon reduction - Health

- 6.1 The schools funding formula will need to be changed in negotiation with Schools Forum to accommodate the establishment of the school and the ongoing costs

7.0 Financial Implications (Authorised by the Director of Finance and Business Services)

- 7.1 The feasibility study recommends a capital figure of **£4,786,486** for the demolition of the existing building and the construction of a new school (option 1) or **£5,024,626** for the alteration and refurbishment of the existing building and the construction of an extension (Option 2).
- 7.2 The revenue costs are estimated at approximately **£1,669,915** per annum, once the school is fully populated.
- 7.3 The capital funding requirements for the school are to be funded via specific capital grants £2.52 (modernisation and 14-19 SEN); Supported borrowing of £681k, and £1,050 of prudential borrowing; Specialist Special Needs Provision (£950k).

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 8.1 Existing statutory requirements under section 14 of the Education Act (EA) 1996 mean that local authorities in their role as commissioners, must plan and secure sufficient school places for their area.
- 8.2 Where a local authority identifies the need to establish a new school (including a new special school) the presumption for an academy or free school introduced by Education Act 2011 and contained in the new section 6A EA Act (2006) requires local authorities to seek proposals to establish an academy/free school in the first instance.

If there is no suitable academy or free school proposal forthcoming, a statutory competition under s.7 of the Education and Inspections Act 2006 can be held with the consent of the Secretary of State. Where consent to hold a competition is given, the LA must follow the statutory process set out in Schedule 2 to the EIA 2006 (as amended by EA 2011) and the School Organisation (Establishment and Discontinuance of Schools) Regulations 2007.

This process is detailed in **Appendix 1**.

- 8.4 Notwithstanding the presumption in favour of academies, it is still possible to open new maintained schools via the “special cases” route under section 11 of EIA 2006 as amended by EA 2011. This follows previous exceptions from the competition requirement but, in the interests of reducing bureaucracy, will no longer require the formal consent of the Secretary of State. So, statutory proposals for new maintained schools can be published (following established procedures) where;
- The new school will be formed by amalgamation of previously separate infant and junior schools
 - A new school is technically created as a result of reorganisation or changes to the formal designation of faith schools

- Where there is a proposal for a new voluntary aided school or a new community nursery school; including where a former independent school wishes to join the maintained sector.
- The local authority is proposing a new foundation or community school where no suitable academy proposals have been identified and a competition has been held but did not identify a suitable provider..

8.5 Where an academy approach is not considered appropriate and the proposal does not fall within a s.11 special case it is still possible to apply to the Secretary of State for consent to publish proposals to replace a community school, or to create a brand new or replacement foundation or voluntary controlled school. Each case will be considered on its own merits and where consent is given to publish, the statutory process as set out in Schedule 2 to the EIA 2006 and the Establishment and Discontinuance Regulations must be followed.

9.0 Risk Management

- 9.1 The establishment of Academies weakens the local authority's ability to plan and implement Special Educational Needs and Disability provision locally, due to diminished control over any new special school establishment.
- 9.2 If no suitable proposals are received under s.6A, the procedure will move to a s.7 competition which will result in a delay in the progression of the establishment of the new school.

10.0 Background and Options

- 10.1 Where a local authority identifies the need to establish a new school, the new s6A of the Education and Inspections Act 2006 (inserted by the Education Act 2011) places the local authority under a duty to seek proposals to establish an academy or free school and to specify a date by which the proposals must be submitted.
- 10.2 The DfE has introduced advice to help new school proposers and local authorities understand their duties in relation to these changes and this is reproduced at **Appendix 1**.
- 10.3 The DfE leaves it to local authorities to decide how best to seek proposals and how to consult on them but the local authority is also required to take steps to ensure that groups or organisations that might be interested in establishing the new school are aware of the opportunity.
- 10.4 The local authority has to notify the Department for Education at the outset of its intentions to seek proposals for a new academy and confirm the site it will make available.
- 10.5 The DfE will publish the local authority's details on its website including a link to the Cheshire East Website and will inform the Independent

Academies Association and New Schools Network to alert potential proposers/ sponsors to the new school's requirements.

10.6 After the deadline for receipt of proposals has passed the local authority has to send to the Secretary of State an account of the invitation process, copies of all proposals submitted and confirmation that a site and capital funding has been secured. It must also provide the Department with an assessment of the proposals it has received based on certain prescribed criteria which are:

- The quality of the proposers vision and educational plan
- The capability and capacity of the proposer to deliver the proposal on time and to budget
- Value for money

10.7 The Local authority may identify a preferred bidder but it will be for the Secretary of State to decide which one (if any) to choose.

10.8 If there is no suitable Academy/Free School proposal the Secretary of State will give permission for the Local Authority to run a statutory competition under s.7 of EIA 2006 and the local authority will have to follow the statutory process set out in Schedule 2 to the EIA 2006 and the Establishment and Discontinuance Regulations.

11.0 Access to Information

11.1 The outline business case and the feasibility study can be inspected by contacting the report writer:

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Overview of the Statutory Competition Process (s.7)

There are six key statutory stages in establishing a new Special School by competition under s.7 EIA 2006 outlined in figure 1 below.



Figure 1 - Six key stages for competition

Appendix 2

1. **Stage 1 – Requirement to seek proposals for the establishment of an Academy**

- 1.1 *Paragraph 3* of the Education Act 2011, amends section 7 of EIA 2006 so that before publishing proposals for a competition for the establishment of a new school the local authority must obtain the consent of the Secretary of State.

2. **Stage 2 – Consultation**

- 2.1 Under Section 9 of EIA 2006 the LA must consult before publishing a notice inviting proposals for a new school.
- 2.2 When consulting, the local authority must have regard to the Secretary of State's statutory guidance which states that local authorities must allow adequate time for consultation, provide sufficient information to those being consulted, make clear how views can be made known and how they have taken into account the views expressed.
- 2.3 In addition, the LA should consider alternative options and explain the decision-making process. The regulations recommend a minimum of six weeks for the consultation.
- 2.4 The Secretary of State considers that the interested parties who should be consulted by proposers include:
- any LA likely to be affected by the proposals, in particular neighboring authorities where there may be significant cross-border movement of pupils;
 - the governing bodies, teachers and other staff of any other school that may be affected;
 - families of any pupils at any other school who may be affected by the proposals including, where appropriate, families of pupils at feeder primary schools;
 - any trade unions who represent staff at the school; and representatives of any trade union of any other staff at schools who may be affected by the proposals;
 - the local CE and RC dioceses and anyone else who has previously expressed an interest in setting up a school;
 - MPs whose constituencies include the schools that are the subject of the proposals or whose constituents are likely to be affected by the proposals;
 - the local district or parish council where the proposed school is to be situated;
 - any other interested party, where proposals affect early years provision, or those who benefit from a contractual arrangement giving them the use of the premises;

- such other persons as appear to the LA to be appropriate
- 2.5 Once the LA has started their consultation they should inform the Secretary of State in writing, confirming the proposed duration of the consultation.
- 2.6 Paragraph 4 inserts new section 7A into EIA 2006 which provides for the local authority (with the consent of the Secretary of State) to withdraw, or for the Secretary of State to direct the withdrawal of, a section 7 notice at any time before the end of the period that proposals may be submitted. The effect of this new provision is that a competition can be halted at this early first stage.

3 Stage 3 - Invitation to bid and submission of competition proposals

- 3.1 When the LA have considered the responses to the consultation they may then publish a competition notice inviting interested parties to bring forward proposals for setting up the new school. The regulations allow four months for proposals to be submitted.
- 3.2 The regulations specify that part of the notice must be published in an appropriate national newspaper covering educational issues and in at least one local newspaper circulating in the area to be served by the school together with details of how complete copies of the notice may be obtained. It must also be posted in a conspicuous place in the area to be served by the school.
- 3.3 The complete notice must, within one week of publication, be sent to:
- any LA likely to be affected by the proposals;
 - the Secretary of State
 - the Diocesan Board of Education for any diocese of the Church of England, any part of which is comprised in the area of the LA;
 - the bishop of a diocese of the Roman Catholic Church, any part of which is comprised in the area of the LA,
 - any other person or organisation that has expressed an interest in writing to the authority in establishing a new school to serve pupils in the area;
 - the schools adjudicator
 - any other body or organisation that in the opinion of the LA is likely to be interested in the notice; and
 - in cases where the proposed school is to be a special school, sent to the relevant Primary Care Trust , NHS Trust or NHS foundation trust
- 3.4 Where a LA is proposing to change the status or close an existing school, this stage is unnecessary and the LA can move straight to the next stage.
- 3.5 **Submission of Proposals**
- 3.6 The LA's first notice must allow potential proposers at least four months from its date of publication to prepare proposals.

- 3.7 If the LA receives proposals for an Academy, the LA must consult the Secretary of State within two weeks of receiving the proposals.

4 Stage 4 - Publication of Competition Proposals

- 4.1 Within three weeks of the expiry of the date for submitting proposals, the LA must publish a second notice. This notice **must** include a statement referring to the first notice and confirm that the proposals in the second notice are proposals for the new school on the proposed site/location. The notice should provide a summary of the proposals received, and any proposal they wish to make.
- 4.2 The notice must be published in at least one local newspaper circulating in the area and in a conspicuous place in the area that the school will serve. The LA must also publish the second notice, and also complete copies of all proposals they have received, on the LA's website.
- 4.3 Further, the LA must publish a statement explaining that any person may object to or comment on the proposal and include the address to which objections or comments should be sent and the date by which they must be submitted.
- 4.4 The LA must, within one week of the date of publication, send full copies of all proposals to:
- all proposers who have submitted proposals in response to the competition notice;
 - any other LA likely to be affected by the proposals;
 - the Diocesan Board of Education for any diocese of the Church of England which is comprised in the area of the LA;
 - the bishop of a diocese of the Roman Catholic Church which is comprised in the area of the LA;
 - any other person or organisation that has previously expressed an interest in writing to the LA in establishing a school to serve pupils in the area;
 - in cases where the proposed school is to be a special school, the relevant Primary Care Trust and NHS Trust or NHS foundation trust; and
 - Secretary of State together with a copy of the notice that appears in the newspaper summarising the proposals received.
- 4.5 The LA must also send a copy of any particular proposal to any individual or organisation that requests it, within one week of receipt of the request. The LA may also wish to send a copy of the proposals to any schools in the area that may be affected by the proposals, such as local feeder primary schools.

5 Stage 5 – Representation

- 5.1 Comments on the proposals must be sent to the LA within six weeks of the publication of the second notice. Any person can send comments, which

can be objections as well as expressions of support for specific proposals or elements of proposals.

- 5.2 The LA must hold at least one public meeting within two weeks of publishing the second notice. The purpose of this meeting is to inform people of the proposals received and tell them how they can provide their comments and objections. The LA must invite all of the proposers to all of the meetings. This will give them the opportunity to outline their proposals in more detail and give people an opportunity to ask questions.

6 Stage 6 – Decision and Implementation

- 6.1 Decisions on school organisation proposals are taken by the LA or by the schools adjudicator.
- 6.2 If the LA fail to decide proposals within 2 months from the end of the representation period the LA must forward proposals, and any received representations (i.e. not withdrawn in writing), to the schools adjudicator for decision. They must forward the proposals within one week from the end of the 2 month period.
- 6.3 The proposers and LA are under a statutory duty to implement any proposals which an LA or schools adjudicator has approved.