

New Okehampton Special School: Approval of Capital Funding and Commencement of the Free School Presumption Process

Report of the Head of Planning, Transportation and Environment

Please note that the following recommendations are subject to consideration and determination by the Cabinet (and confirmation under the provisions of the Council's Constitution) before taking effect.

Recommendation:

- (a) that Cabinet approve revenue funding, and the allocation of existing capital funding, to support the delivery of a new special school in Okehampton, the preparation of a reserved matters planning application following a grant of outline planning permission (which is presently being sought) and full design subject to securing the necessary planning consent;
- (b) that Cabinet approve the Commencement of the Presumption Free School process subject to securing the necessary planning consent;
- (c) pursuant to s.122 of the Local Government Act 1972, that Cabinet approve the appropriation of land at East Okehampton Business Park such that it be held for planning purposes under s226(1)(a) of the Town and Country Planning Act 1990;
- (d) that Cabinet delegates to the Head of Planning, Transportation and Environment power to negotiate and authorise compensation payments and agreements which may be required pursuant to s.122 of the Local Government Act 1972 as a result of the appropriation of the land.

1. Summary

Presentation of this report to Cabinet seeks to obtain the necessary approvals to establish a new Special School through the Department for Education's Free School Presumption process on land at East Okehampton Business Park, approval of capital funding and revenue funding to provide the new school, approval of the appropriation of land and delegated powers to the Head of Planning, Transportation and Environment.

2. Background and Introduction

With the demand for Special Education provision in recent years and children's needs becoming more complex there is a requirement to offer more flexible provision which meets local needs. This is due to demographic change, high inward migration and significant house building. The Education Infrastructure Plan supports the development of Devon over the next 20 years in relation to educational provision and how it will be delivered, including minimising our reliance on school transport and the need for unnecessary journeys, ensuring pupils are able to attend local provision.

<https://new.devon.gov.uk/planning/planning-policies/pupil-place-planning>

The need for new provision is outlined in The SEND Strategic Review 2017/18 which also sets out the priorities to improve the outcomes for children and young people with SEN and disabilities and their families, see:

<https://www.devon.gov.uk/educationandfamilies/archives/6396>

At their meeting on 18 March 2018, Cabinet approved the Strategic Review of Special Needs Places (CS/18/10). Since that meeting, additional special school places have been delivered through the delivery of new schools in Tiverton and Newton Abbot, as well as expansions in Exeter and North Devon. Whilst significant progress has been made, demand still outstrips supply.

On 20 February 2020, the Council approved the Medium-Term Capital programme which included an investment in providing additional Special Educational Needs (SEN) totalling £20m, of which approximately £7m was identified toward specific projects in Dawlish, Barnstaple and Dartington.

In Devon, there is a high number of Children and Young People whose Special Educational Need (SEN) is Social Emotional and Mental Health (SEMH) and there is a pressure on places across the County resulting in the need to commission the independent sector. There is a gap in provision and a resulting need for additional provision along the A30 corridor (east of Exeter). This is required to meet the growing demand for places and provide additional capacity for more localised services. Allocated sites to the east of Okehampton continue to deliver long term housing and employment growth. As a result, the already large, dispersed and rural 'Local Learning Community' of Okehampton is growing. An opportunity has arisen to secure land in the County Council's ownership to bring forward a new special school in Okehampton subject to gaining planning consent.

3. Proposal

A new Special Needs School is proposed to the east of Okehampton to meet the growing demand for these places and will provide 80-100 places for pupils with Social, Emotional and Mental Health/Autistic Spectrum needs for primary and secondary aged students.

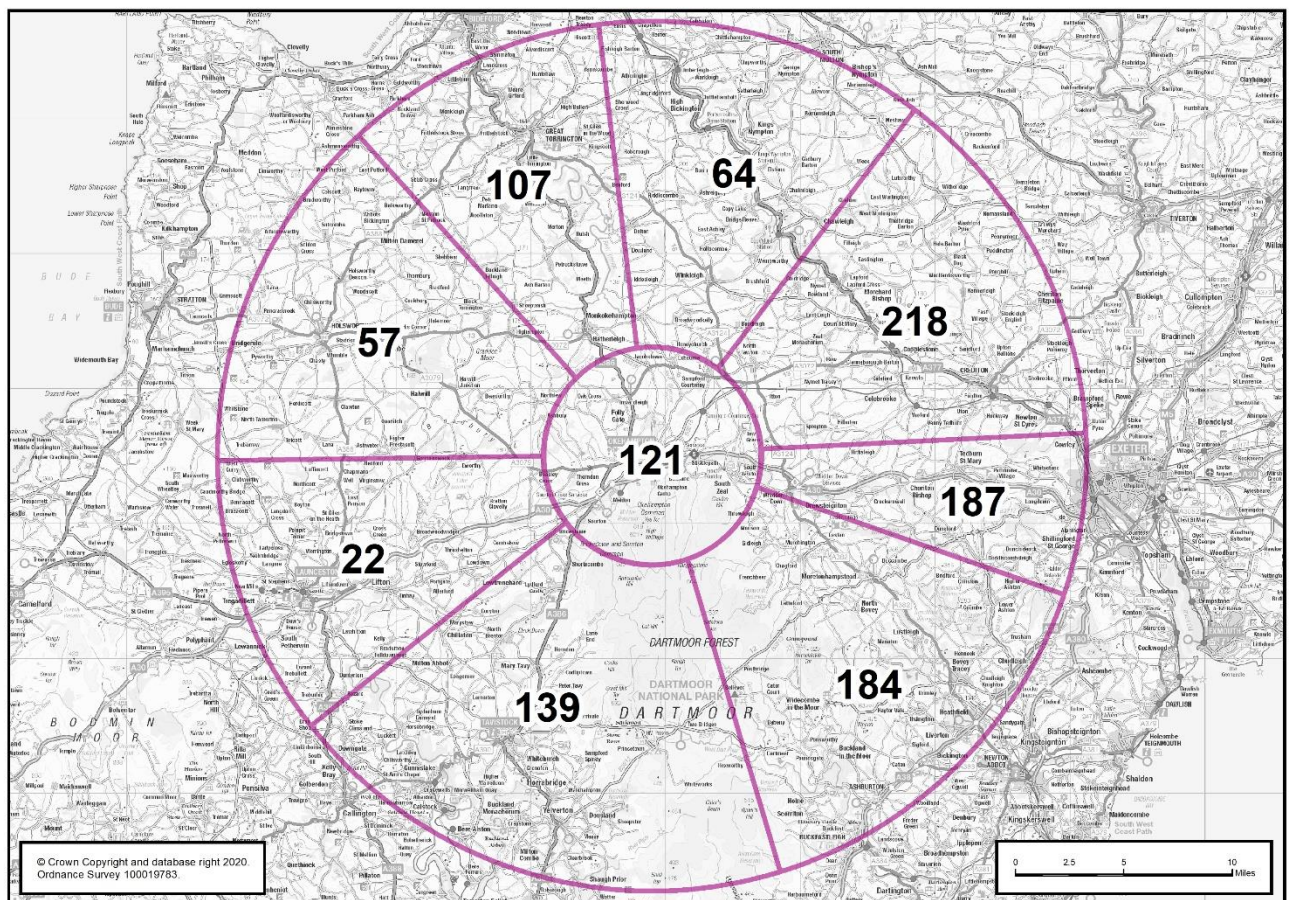
The site ('the Site') identified for the school is shown edged red on the plan annexed to this report (Appendix 1) and forms part of East Okehampton Business Park. Okehampton is very well located for easy access to the A30 strategic road network, connecting the town with Exeter and the M5. The location of the school is also well placed in the centre of western Devon to support other market towns that do not have any dedicated Special School provision. Most of the children will arrive by vehicle transport, the site has a good access with good local transport connections.

There are limited facilities for SEND children in this area of Devon which means these children currently have a long journey to school which is detrimental to their education and wellbeing. Within a 20 mile radius of the proposed new school site, there are only two Special Schools: Marland School at Peters Marland (some 13 miles distance from Okehampton) and Barley Lane in Exeter (some 18 miles distance from Okehampton). Marland School provides for children with SEMH as their primary need but is not a day school and provides residential provision only.

Barley Lane in Exeter provides day places for children with SEMH needs but is already at capacity.

There are 5281 children (September 2020) with an EHCP with their primary need identified as Social, Emotional and Mental Health, Autistic Spectrum Disorder or Speech, Language and Communication Needs (SLCN) in Devon. Children with SLCN have been included as many children with SEMH needs also have speech, language and communication needs. Of those 5281 children, 1099 live within 20 miles of Okehampton rising to 3362 children living within 25 miles of Okehampton.

The illustration below shows the number of children with an EHCP with a primary need of SEMH, ASD or SLCN (1099) living within a 20 mile radius of the proposed school site.



Whilst these figures show a high level of children with an EHCP, it is reassuring that most children with an EHCP can be appropriately supported in our mainstream schools. Nevertheless, some of these children have more complex needs and require a more specialist provider. It is this need for specialist places that the Local Authority cannot meet locally resulting in the need to commission the independent sector.

Officers have undertaken a search for sites which would be available in the short term, but this has not identified any other suitable sites at this time and there will be a need to secure addition sites in the future.

Under Section 6A of the Education and Inspections Act 2006 the Local Authority is under a duty to seek proposals to establish an academy/free school under the free school presumption process. A Cabinet Member decision was given on 20 March 2020 to proceed to the initial consultation that would inform the specification for the new school, which is now being prepared.

Approval to proceed to the formal process of seeking a sponsor is now requested. The statutory process will include advertising for a sponsor, assessment of applications and making a recommendation to the Regional Schools Commission (RSC) on Devon County Council's preferred sponsor. Decision on the preferred sponsor will be made through a Cabinet Member decision in consultation with officers but the decision rests with the RSC. The new school is planned to be operational by September 2023 at the latest, potentially 2022 and the process can take a year to complete.

Approval is also requested to the funding package as described in section 6 below as well as approval to submit a full planning application, commence full design and proceed to let a tender.

4. Options and Alternatives

Do Nothing - Without the provision of a new special school there will be increased use of the independent sector with associated costs and risk and will not address the shortfall of special school places near to where children live. Capacity in neighbouring authorities remains under pressure. Children and young people will continue to have to travel long distances to access their statutory education.

Expand Existing Schools - opportunities to expand existing schools to support students with SEMH have been broadly exhausted.

Consider other sites – Officers continue to explore other potential school sites but they cannot be brought forward in a timely manner. Other potential sites may not be unlocked for many years and there is expected to be a further need to bring forward additional Special School provision in the medium term.

5. Consultations and Representations

The Local Member has been informed of the proposal and there has been communication with West Devon Borough Council, Okehampton Town Council and Okehampton Hamlets Parish Council prior to the submission of an outline planning application.

As required, an initial consultation has been undertaken to gain views on the new special needs school and to inform the specification. The consultation ended on 18th September 2020 and positive responses have been received.

For example, a response to this initial consultation from a parent welcomed the establishment of a new special school in Okehampton as their child currently travels by taxi to an independent placement near Holsworthy, a 45 minute journey each way and their child struggles with the daily journey. The parent commented that a school

much closer to home that allows children to make local friends would be absolutely amazing. A local primary school Headteacher, part of the Okehampton Local Learning Community, expressed their whole-hearted support for the provision commenting that they have a high proportion of SEN children with a high percentage of those having SEMH or autism of SEN register respectively. The respondent states there are some children who would clearly benefit from a more specialist environment where their needs could be better met but that provision does not exist locally. The Headteacher comments that for some of the youngest children with high need, travelling to schools in Barnstaple or Newton Abbot is just not an option given the distress and fatigue such a journey would cause on a daily basis and confirms this local provision is desperately needed to support these children, and, if possible to support schools with specialist advice for those whose needs can be met in mainstream education. The CEO of a large Multi Academy Trust in the local area also responded that he has continually expressed a real need for special school provision in this area of Devon with the view very much shared by primary colleagues and Trustees of the Multi Academy Trust. The response outlined how children with SEND who require specialist provision have to travel miles to access such support, at a cost to themselves in terms of losing their social identity and interaction and also at a cost to the County in terms of transport. Most importantly is the issue that provision isn't presently available to them in their area, so generating a feeling of social isolation which compound students' own individual needs and difficulties.

With information received from the consultation the next stage will be to advertise for a sponsor.

An indicative timetable for a September 2022 opening is as follows:

Date	Sponsor	Construction
October 2020	Decision to commence proposal	Submit planning application
December 2020/January 2021	Advertise for Proposer	Submit planning application
March 2021	Receipt of Expressions of Interest	Detailed design and Tender
May 2021	Receipt of Applications	Detailed design and Tender
June/July 2021	Assessment of Proposals and submit to Regional Schools Commissioner	Construction stage
October 2021	Decision of Regional Schools Commissioner	Construction stage
January 2022	Proposer to set up Governing Body, recruit staff, etc.	Construction stage
February 2022	Allocation date	Construction stage
September 2022	Implementation	Open

6. Financial Considerations

The Local Authority is required to meet associated capital and pre/post opening costs related to the new school. The estimated capital cost of the proposal is £8m and will be met from existing SEND capital funding approved within the Planning Transportation and Environment Capital Programme, this includes the construction, professional fees, furniture and equipment and land.

The capital profile has been estimated as follows:

2021/22 £4 millions

2022/23 £4 millions

Capital expenditure will be funded £227,650 from External Grants, £3,650,000 from Capital Receipts and the remaining £4,122,350 from Internal Borrowing at a revenue cost (Minimum Revenue Provision) in the region of £165,000 per annum. This cost is already included within the approved Revenue budget.

Revenue Funding will be met from the High Needs Block as follows:

- Proposed funding per place at Special School level of £26,303
- Guaranteed place funding for first three years of operation:
Year 1: £360,000; Year 2: £660,000; Year 3: £800,000 - £1,000,000 (80-100 pupils).

A potential saving on the high needs block between £1.7 millions - £2.1 millions per year could be achieved as demand is removed from the Independent sector.

The school will be guaranteed place funding for Years 1 to 3 based on gradually building up to 80-100 pupils. Analysis on expenditure on the Independent Sector suggests an initial cost avoidance on the high needs block of around 2m per year that will lead to a potential saving as the demand is removed from the Independent sector.

Discussions with the School Transport Team has indicated that the location of the school is well placed as a high number of children are travelling from the town and other nearby market towns to access their education. It is expected that over time there will be a nil impact on the transport budget. In the short term some existing children may remain at their current school.

7. Appropriation

Devon County Council acquired East Okehampton Business Park from the Rural Development Agency (RDA) in 2011 in order to bring forward a Business Park on the site and aid economic growth in Okehampton. The Council exercised its powers under s120 of the Local Government Act 1972 in order to acquire the land, however the precise statutory power pursuant to which the land was acquired and is currently held is not revealed by Council records. The Site forms part of the East Okehampton Business Park so was intended, at the time of acquisition by the County Council, for commercial development. The Site is currently allocated in the local plan for

employment use. It appears therefore that the Site was acquired by DCC for the purposes of future development for employment purposes.

Since acquiring East Okehampton Business Park, 5 out of the 7 plots have been sold on for employment use to enable the establishment of a Business Park within the site. The development of a large part of the land acquired in 2011 as a Business Park has therefore been successful and brought employment and businesses into the area. However, the party most recently registering an interest in developing the Site has decided not to continue with their plans. It is unclear as to when the Site can be expected to be developed for employment purposes. As against this, and for reasons set out elsewhere in the report, there is a pressing need for further SEN school places to serve the area and the Site at the East Okehampton Business Park with which this report is concerned is considered suitable to contribute to meeting that educational need. The need for further SEN school provision is therefore considered to be greater and more pressing, and would be more beneficial in the public interest, than the need to retain the Site for development for employment purpose at this time. It is noted that development of the Site as a school would, to an extent, itself support employment opportunities for local people through direct and indirect employment opportunities.

However, before proposals for development of a School on the Site can be progressed, it is necessary for the County Council to ensure that it holds the Site for a purpose which is consistent with its development as proposed and which would allow that development to proceed. Given the lack of certainty as to the statutory power pursuant to which East Okehampton Business Park was acquired and the fact that it appears that it was acquired and is held for development for employment purposes, it is considered that appropriation of the Site to a purpose which is consistent with the proposed development and so as to allow that development to proceed is required.

East Okehampton Business Park is subject to a restrictive covenant which, if it remains enforceable, could prevent development of the Site as proposed without the consent of the party/parties with the benefit of that covenant. The covenant was attached to East Okehampton Business Park when it was sold to the RDA and it may remain enforceable against the Council as the current owner. The Covenant requires that East Okehampton Business Park be used only for uses falling within B1 B2 or B8 of the Schedule to the Town and County Planning (Use Classes) Order 1987 or as a site for an electricity sub-station to supply electricity to the Property or any part therefore. Use of the Site as a school would be in breach of this Covenant as it falls outside of the specified Use Classes.

The potential for this covenant to be enforced so as to prevent the development proceeding is relevant to the identification of the holding power to which the Site is to be appropriated.

Under s.226 of the Town and Country Planning Act 1990 the Council has power to acquire land for "planning purposes" which include where it thinks that the acquisition "will facilitate the carrying out of development/re-development or improvement on or in relation to the land". The Council can also appropriate land which it already holds to such a planning purpose. However, before acquiring or appropriating land for such

a purpose the Council must also be satisfied that the development will contribute to the achievement of one or more of the following well-being objectives, namely the promotion or improvement of economic, social and environmental well-being of the area. Where land is appropriated to planning purposes, and subject to meeting other requirements set out in s.203 of the Housing and Planning Act 2005, the land can be developed notwithstanding that to do so would interfere with a restrictive covenant which affects the land.

Before land can be appropriated from one purpose to another, the requirements of s.122 of the Local Government Act 1972 must be met, namely that the Council must be satisfied that the land is no longer required for the purpose for which it is presently held and that the Council can acquire by agreement land for the purpose to which the land is to be appropriated. The determination as to whether land is “required” for the purpose for which it is presently held is a matter of judgement for the Council and may involve evaluating, by reference to the public interest, the relative importance of competing needs (see *R (Maries) v Merton LBC* (2014)_ EWHC 2689 Admin; *Dowty Boulton Paul Ltd. V Wolverhampton Corporation* (1976) CH 13).

8. Legal Considerations

In order to appropriate the Site for planning purposes, the Council must be satisfied that:

1. The Site is no longer required (to be determined by reference to the approach set out in case law referred to above) for the purpose for which it is currently held and the purpose to which the Site is to be appropriated is one for which the Council can acquire land by agreement;
2. The appropriation facilitates the development of the Site; and
3. That development will likely contribute to the promotion and / or improvement of the economic, and/or social and / or environmental well-being of the area.

In respect of 1, for the reasons which have been set out in earlier in this Report, it is clear that this test is satisfied. Given the pressing need for further SEN school places as compared to need for its retention of the Site for employment related development, it is considered that the Site is no longer required for retention for the purpose for which it is presently held. Moreover, the Council is entitled to acquire land by agreement for planning purposes.

In respect of 3, the development of the Site as a school will promote and improve the social wellbeing of the area. In addition, development as a school will generate jobs, during the construction and operational phases, and will thus contribute to an improvement of the economic well-being of the area.

In respect of 2, appropriation for planning purposes will provide a clear basis for the Council to develop the Site as a school. Moreover, appropriation to planning purposes will operate definitively to override the restrictive covenant referred to above and which may be enforced so as to prevent the development proceeding. Therefore, (subject to obtaining planning permission and meeting the other requirements set out in s.203 of the Housing and Planning Act 2016 (which, it is

anticipated can be met)) appropriation to planning purposes will facilitate the carrying out of development on the Site for a school, as proposed.

Thus, the legal tests which must be met for appropriation to planning purposes are considered to be met.

Where a restriction such as a restrictive covenant is overridden through appropriation (and by operation of s.203 of the Housing and Planning Act 2016) compensation is payable to the person or persons with the benefit of the covenant pursuant to s.204 of the 2016 Act. Compensation is payable on an injurious affection basis. It is considered that the amount of compensation which would be payable (if claimed) would be minimal.

The Proposal is therefore subject to Cabinet's approval that the Site is appropriated for planning purposes as recommended in this Report.

9. Environmental Impact Considerations (Including Climate Change)

An outline planning application for the new Special School has been submitted under the Town and Country Planning Act 1990. In addition, the Plymouth and South West Devon Local Plan sets out clear economic, social and environmental objectives for the area.

As highlighted previously, the school is well placed to reduce home to school journeys as Okehampton is well located in the centre of Devon with easy access from Exeter.

10. Equality Considerations

Where relevant to the decision, the Equality Act 2010 Public Sector Equality Duty requires decision makers to give due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other prohibited conduct;
- advance equality by encouraging participation, removing disadvantage, taking account of disabilities and meeting people's needs; and
- foster good relations between people by tackling prejudice and promoting understanding.

Taking account of age, disability, race/ethnicity (includes Gypsies and Travellers), gender and gender identity, religion and belief, sexual orientation, pregnant women/new and breastfeeding mothers, marriage/civil partnership status in coming to a decision, a decision maker may also consider other relevant factors such as caring responsibilities, rural isolation or socio-economic disadvantage.

The process for the selection of an appropriate proposer will ensure the Council exercises its Public Sector Equality Duty. In addition, prospective proposers will need to commit to Devon's policies and practices and be required to comply with relevant policies on Admissions, Transport and Special Educational Needs. An impact assessment has been completed and is required to be provided to the Secretary of

State to meet his duties under Section 9 of the Academies Act 2010 and under Section 149 of the Equality Act 2010.

In progressing this particular proposal, an Impact Assessment, in addition to the submission to the Secretary of State as part of the new schools process, has been prepared which has been circulated separately to Cabinet Members and is also available on the Council's website at:

https://devoncc.sharepoint.com/:b:/s/PublicDocs/Corporate/ESxhBkwsCX9DihV6roBGO5gBI_jL4tuIn60CRAzWK-bAQQ?e=wQeHTU,

which Councillors will need to consider for the purposes of this item.

The investment in the new Special School will have a positive equalities impact for pupils requiring more flexible provision which meets local needs and where there has been an increasing demand for this provision. The wide geographical spread of provision within Devon means there remains unmet need for those children who are finding it increasingly difficult to access mainstream provision particularly to the west of the Region.

11. Risk Management Considerations

The proposal is subject to securing Outline Planning and it should be noted that the land is identified as employment land within the Plymouth and South West Devon Joint Local Plan. The proposal however does provide additional employment opportunities as well as immediate and ongoing economic benefits in terms of capital investment and support the local economy. The current application will be considered by Development Management Committee in October.

The land is subject to a restrictive covenant as identified in sections 7 and 8.

This proposal has been assessed and all necessary safeguards or action have been taken to safeguard the Council's position.

Risks related to start-up costs relevant to the funding for schools have been identified and included within future funding commitments.

Whilst an opening of September 2022 is desirable, it is possible this will not be achievable due to the tight timescale for capital delivery although temporary accommodation will be considered.

12. Public Health Impact

The proposals will take into account the requirements and health and wellbeing of its community and will give pupils the opportunity to attend local sustainable provision, supporting parents and pupils within and closer to their local community, without having to travel long distances to access services. Providers will be asked to demonstrate a commitment to Personal, Social, Health and Economic education aligned to the three core areas of health and wellbeing, relationships and living in the wider world (e.g. economic wellbeing and being a responsible citizen).

13. Summary/Conclusions/Reasons for Recommendations

The need for a new special school is a priority to meet the growing demand for places to enhance choice and diversity for a changing population as well as support meeting the budgetary shortfall on the High Needs Block. All new schools are required to be Free Schools and therefore make it necessary to undertake the statutory procedures to seek proposers for this new special school without delay as well as secure the land, capital and revenue to start the process.

The Okehampton site is well located in an area of Devon where there are very limited other facilities. No other suitable sites have been identified. The site has good transport connections and once open will greatly enhance the education and wellbeing of SEND children in western Devon.

Dave Black, Head of Planning, Transportation and Environment

Electoral Divisions: All

Cabinet Member for Children's Services and Schools: Councillor James McInnes

Chief Officer for Communities, Public Health, Environment and Prosperity: Dr Virginia Pearson

Local Government Act 1972: List of Background Papers

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Background Paper	Date	File Reference
Medium Term Financial Strategy 2020/2114	February 2020	CT/20/05
2017-18 Strategic Review of SEND Provision	14 March 2018	CS/18/10

sn290920cab Proposed New Okehampton Special School Final

Appendix 1
To PTE/20/26

The site identified for the school is shown edged red on the plan below and forms part of East Okehampton Business Park.

