

CABINET	AGENDA ITEM No. 6
17 June 2019	PUBLIC REPORT

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Cabinet Member(s) responsible:	Cllr Ayres (Cabinet Member for Children’s Services Education, Skills and University)	
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ESTABLISHING NEW SCHOOLS INCLUDING FAITH SCHOOLS

R E C O M M E N D A T I O N S	
FROM: Service Director: Education	Deadline date: N/A
<p>It is recommended that Cabinet:</p> <ol style="list-style-type: none"> 1. notes the routes and processes for establishing new schools, 2. adopts the proposed policy position set out in section 4.8 when considering proposals for the establishment of a new voluntary aided faith school or academy with religious designation, and 3. adopts the proposed policy position set out in section 4.9 regarding whether new schools in Peterborough should be single sex or mixed. 	

1. ORIGIN OF REPORT

1.1 This report is submitted to Cabinet following a request from the Cabinet Member for Children Services, Education Skills and University.

2. PURPOSE AND REASON FOR REPORT

2.1 This report is being presented:

- to provide Cabinet with an understanding of the different routes and associated processes for opening new schools; and
- for Cabinet to agree to adopt a policy position regarding the establishment of new faith schools and single sex schools which will provide a context within which to consider any future applications or proposals to open new schools with a religious designation and/or single sex designation

2.2 This report is for Cabinet to consider under its Terms of Reference No. 3.2.1, ‘To take collective responsibility for the delivery of all strategic Executive functions within the Council’s Major Policy and Budget Framework and lead the Council’s overall improvement programmes to deliver excellent services.’

3. TIMESCALES

Is this a Major Policy Item/Statutory Plan?	NO	If yes, date for Cabinet meeting	N/A
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4. BACKGROUND AND KEY ISSUES

4.1 Statutory duties

The Council 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. Under the Education and Inspections Act 2006, it also has to adopt a strategic role, with a duty to promote choice, diversity and fair access to school provision.

4.2 The Processes For Establishing New Schools

The Education Act 2006 made Local Authorities (LAs) commissioners, rather than providers, of new schools. There are two routes to open new schools. Either via the Department for Education's (DfE) central free school programme or the free school presumption route. The DfE is the decision maker in both instances.

Free School is the DfE's policy term for all new provision academies. Academy is a legal term for state-funded schools that operate independently of local authorities and receive their funding directly from the government.

Table 1: Differences between the central and presumption route for new schools	
<u>Centrally delivered free schools</u>	<u>Presumption free schools</u>
Demand led	Led by basic need for school places in that town/area
Type of school (size, faith, location etc.) is determined by the applicant	Type of school and its location is determined by the Council in its specification
The Council is consulted but each application is considered on its own merits	The Council assesses applications and puts its preferred option to the Regional Schools Commissioner for approval (or not)
Construction costs met centrally by the DfE, but additional capacity created by centrally funded free schools is reflected in future basic need allocations to Councils	Construction costs met by the Council from within basic need funding allocation and the council delivers the building project
Revenue start-up costs met by the DfE	Revenue start-up costs met by the Council

4.3 The central free school programme

Under this route potential school sponsors apply directly to the DfE to open new schools. Application windows are published by the DfE inviting academy trusts to apply to establish high quality new schools in areas with the lowest educational performance and a demonstrable basic need for a high proportion of the additional school places a proposed new free school would provide. Interested trusts submit expressions of interests (EOI), prior to any formal application.

The DfE invites LAs to comment at EOI stage and on firm applications. However, Officers do not see the full applications. They are informed of the name of the sponsor, the location, age range and size of the proposed school and asked to comment on whether there is a basic need for such new provision.

Where an application is successful, the DfE approves the new free school to 'pre-implementation stage'. This is the period between the approval of the free school application and the opening of the free school. During this phase the free school proposer will finalise plans, develop policies

(including admissions arrangements) and undertake a statutory consultation. The latter must happen before the Secretary of State for Education will enter into a funding agreement with the relevant Trust.

Currently decisions are awaited, in late May, on applications made under Wave 13 of the central free school programme. Applications were submitted to open the following new schools:

- Secondary at Paston Reserve
- Primary at Hampton Waters
- Primary at Gt Haddon

The following were approved to pre-implementation stage under Wave 12:

- Primary school at Paston Reserve (Meadow Drive) – proposed opening date has been put back to September 2022
- Hampton Lakes Primary School – due to open in temporary accommodation on site of Hampton College, September 2019

4.4 The free school presumption route

The 2011 Education Act sets out the requirements for Local Authorities with regard to the establishment of new schools. Where LAs have identified a clear, ‘basic need’, for a new school in their area and there is no free school proposal in play, the Council must run a competition to commission a new school.

The Council has an established, joint officer/Member process for selecting its preferred school sponsor and the Regional School’s Commissioner (RSC) and her 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. However, the Secretary of State reserves the right to agree to a sponsor of his own choice (from the DfE’s list of approved sponsors) on the basis that he may have further evidence about a proposer, or proposers, which means that none of those put forward is deemed suitable.

The school most recently established via this route was Hampton Gardens Academy which opened in September 2017.

New schools established under the presumption route are not required to use the term “free school” in their name.

4.5 Establishing special and alternative provision (AP) free schools

Similar to the programme described in section 4.3 above the DfE has operated a central programme for opening new special schools or new alternative provision since 2017.

The DfE invites EOI from LAs, setting out key features of the school they want to commission. It decides which proposals to pursue and invites MATs to apply to be considered as part of a competition.

An application was made jointly by Peterborough City Council and Cambridgeshire County Council in 2107 to open a 50 place special school for young people with high end ability, autistic spectrum disorder and/or complex emotional and mental health needs to serve the north of Cambridgeshire. Unfortunately this application was unsuccessful. Decisions by the DfE on the current round, are expected in summer of 2019.

4.6 Establishing maths schools

Maths Schools are also part of the government’s central free school programme. They are specifically linked to the government’s Industrial Strategy and designed to address shortage of highly skilled graduates in sectors that depend on science, technology, engineering and maths (STEM) skills with the DfE working with the best university maths departments and/or partner organisations. There are only a handful of these in the country, including one approved to pre-implementation stage in Cambridge City.

4.7 **Establishing new voluntary aided schools**

Voluntary schools are those where the land and buildings are typically owned by a charitable foundation or trust, usually a religious organisation, which has a substantial influence in the running of the school. There are two types, aided and controlled.

In voluntary controlled (VC) schools the foundation appoints about 25% of the governors. The Authority employs the school's staff and is the admission authority for the school.

By contrast, Voluntary Aided (VA) schools have more autonomy. For example, the foundation appoints a majority of the school's governors, the governing body runs the school, employs the staff and decides the school's admission arrangements subject to the statutory Schools Admissions Code. In addition, specific exemptions from Section 85 of the Equality Act 2010 enable voluntary faith schools to use faith criteria in prioritising pupils for admission to those schools. VA schools with a religious character can admit up to 100% of pupils on basis of faith. Whereas free schools with a faith designation, can admit no more than 50% of its pupils on the basis of faith.

Anyone, including a Diocese or Local Authority, may publish a proposal for a new VA school in response to clear demand for places that the new school would provide.

In December 2018 the DfE launched a capital fund to support the establishment of new VA schools, which would meet 90% of the capital costs of the new school. Three applications have been submitted to secure capital funding to open new Roman Catholic (RC) VA primary schools: 2 in Peterborough and 1 in Cambridgeshire. The LA would be the decision maker as to whether or not the proposals for which funding is approved by the DfE, should proceed to opening.

4.8 **Proposed policy for establishing new faith schools**

The DfE's VA capital funding programme has highlighted the fact that although the Council has a policy and process for opening new schools, it does not have a policy on responding to requests from faith groups to establish new denominational schools.

Such a policy is needed to provide clarity and transparency for whatever voluntary body, including RC and Church of England (CE) diocesan authorities, parents/carers and other interested parties who might wish to establish a maintained school with religious character in the future in Peterborough, by setting out the factors that the Council would take into account when determining whether or not to support or approve proposals for the establishment of new faith schools.

It is proposed that the following questions should form the basis on which the Council considers and responds whenever a denominational group/trust submits a proposal to sponsor or establish a new voluntary aided school or an Academy with a faith designation/religious character. Is there:

- unmet local demand for additional relevant faith provision?
- an established trend where parental preference for places in existing denominational schools exceeds the number of places available and this is forecast to continue into the foreseeable future?
- the potential for new denominational provision to alleviate the demand on places in other schools in areas of high basic need?

Where there is evidence of the above, the following will be among a number of issues which the Council will also need to be consider:

- the availability of suitable sites
- the availability of capital funding, and
- the potential impact on other schools in the area

4.9 **Whether new schools will be mixed or single sex**

All state funded schools in Peterborough are mixed sex, including those opened most recently via the government's central free school programme and via the free school presumption route. However, the Council does not have a formal policy position.

For the avoidance of doubt, Cabinet is recommended to approve the adoption of a formal policy of establishing mixed sex schools, but is asked to note that there is the potential for parental representations for single sex schools.

5. CONSULTATION

5.1 Officers have shared with the Cabinet Member for Education, Skills and University, a briefing paper on the key considerations around the establishment of faith schools.

5.2 *Suggest here other consultation(s) which could be undertaken.*
If funding is agreed by the DfE for either or both of the two applications made to its Voluntary Aided Capital Fund there will be the opportunity for public consultation on the proposals.

6. ANTICIPATED OUTCOMES OR IMPACT

6.1 The anticipated outcomes of this report are three fold. Namely that Cabinet will:

- (1) have a clear understanding of how new schools are established
- (2) adopt a policy position on the establishment of new faith schools, which will assist them in future if/when the Council receives applications to open new schools with a religious designation
- (3) adopt a policy position on whether new schools opened in Peterborough are single sex or mixed

7. REASON FOR THE RECOMMENDATION

7.1 Establishment of new schools

For Cabinet to understand the routes available for establishing new schools, and how new schools are funded.

Voluntary aided schools

Two applications have been made to the Department for Education's capital fund to open two new voluntary aided primary schools in Peterborough. If either or both of these funding applications are approved by the DfE (decision expected late May 2019) the Council will need to exercise its statutory power as decision maker to determine whether or not to establish the new schools. It is therefore, important that the Council has a policy which will provide the context within which to consider these and any future applications or proposals to open new schools with a religious designation.

Whether the school will be mixed or single sex

The Council does not currently have a policy on whether new schools should be mixed or single sex. It is important that the Council has a policy which will provide the context within which to consider any future applications or proposals to open new schools with single sex designation.

8. ALTERNATIVE OPTIONS CONSIDERED

8.1 Status quo i.e. having no policy on the development of new faith schools could run the risk of legal challenge that the Council was not complying with its duty to promote choice, diversity and equality of education provision. Whereas it would be good practice to consider the provision of sufficient and suitable denominational school places as part of its broader approach to place planning for basic need, with each new development, or area of growth, being considered on its individual circumstances and needs.

9. IMPLICATIONS

9.1 Financial Implications

The Education & Skills Funding Agency (ESFA) funds construction costs and start-up costs for new free schools opened through the central free school programme. Where there is not one already identified as part of the Trust's application, the DfE identifies a site, through its property arm, LocatED.

For schools established through the free school presumption route to address basic need for additional school places, the LA is responsible for providing the site, meeting associated capital costs, and for pre and post opening costs.

New Special Schools are funded on the national Place-Plus methodology. This provides schools with £10,000 per commissioned place. It is then the responsibility of the home local authority to provide Top-Up funding based on the individual needs of the learners in line with their Education Health and Care Plan (EHCP).

9.2 Legal Implications

Recent case law arising from judicial review (*British Humanist Association v London Borough of Richmond upon Thames 2012*) makes it clear that a Council has to consider all sponsor proposals received for new schools.

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

9.3 Equalities Implications

Local authorities have a number of statutory duties including securing diversity in the provision of schools, increasing opportunities for parental choice and ensuring fair access to educational opportunity.

The Public Sector Equality Duty (s149 Equality Act 2010) requires a public authority to have 'due regard' to the need to advance equality of opportunity and to take steps to meet the needs of persons who, for example, are from different faith backgrounds as well as those from no faith.

The bodies making proposals for new schools with religious designation will need to evidence that there is local demand for the relevant faith places sufficient to justify the creation of a new school.

10. BACKGROUND DOCUMENTS

- 10.1 ***Establishing a voluntary aided school: guidance & criteria*** (DfE December 2018)
<https://www.gov.uk/government/publications/voluntary-aided-schools-capital-scheme>

11. APPENDICES

- 11.1 Appendix 1: Overview of denominational school provision across PCC