

## Report of the Cabinet Member for Education

Cabinet – 15 December 2016

### ESTABLISHMENT OF SPECIALIST TEACHING FACILITIES FOR PUPILS WITH AUTISTIC SPECTRUM DISORDER (ASD)

<b>Purpose:</b>	To seek approval to consult on a proposal to establish three new specialist teaching facilities (STFs) in schools from January 2018
<b>Policy Framework:</b>	Corporate priorities: <ul style="list-style-type: none"><li>• Improving pupil attainment</li><li>• Safeguarding vulnerable people</li></ul>
<b>Reason for Decision:</b>	To meet need and reduce pressure on existing specialist places. Approval must be sought prior to statutory consultation on the proposals.
<b>Consultation:</b>	Finance, Legal and Access to Services
<b>Recommendation(s):</b>	It is recommended that: <ol style="list-style-type: none"><li>1) Approval is given to consult on the establishment of specialist teaching facilities (STFs) at three schools (Birchgrove Comprehensive School, Portmead Primary School and Duvant Primary School) in January 2018 for learners with Autistic Spectrum Disorder (ASD).</li><li>2) Agreement is given to seek additional corporate funding to support the establishment of these STFs (both capital and revenue).</li><li>3) Cabinet considers responses following the consultation period.</li></ol>
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#### 1. Introduction

- 1.1 Diagnosis of Autistic Spectrum Disorder (ASD) is on the increase nationally. Currently, approximately 1 in 60 children and young people are being diagnosed with ASD in the UK. This figure has been checked and confirmed by local health colleagues.

- 1.2 In August 2016, there were 413 primary and secondary-phase pupils with statements of special educational needs (SEN) and a diagnosis of ASD in Swansea.
- 1.3 81 pupils were in designated ASD specialist teaching facilities (STFs) hosted by mainstream schools.
- 1.4 The City and County of Swansea's inclusive education principles over the last 20 years have driven the creation of STFs in mainstream schools wherever possible. This is in line with the principles laid out in the 1996 Education Act and the SEN Code of Practice 2002.
- 1.5 In addition, of the 179 planned places in moderate learning difficulties/severe learning difficulties (MLD/SLD) primary school-based STFs across Swansea, there were 41 pupils whose primary diagnosis is ASD.
- 1.6 At secondary phase, MLD-SLD provision (of 128 places), there were 16 pupils with ASD.
- 1.7 In August 2016, there were currently 46 primary school-aged pupils on a pending list for moderate ASD places and, of these, 39 were being taught in mainstream classes with additional teaching assistant (TA) support. There were four pupils on the pending list for the same type of secondary school-age provision.
- 1.8 There were potentially 66 pupils in this period seeking placement who are currently in primary school ASD STFs, MLD/SLD STFs or mainstream classes.
- 1.9 We are currently only able to offer four places each September to meet this need.
- 1.10 Table 1 (below) provides further information in respect of the growing demand for ASD STF provision at secondary level over the next five academic years.

**Table 1** Demand for Year 7 ASD STF provision for the next five years up to and including the 2020-2021 academic year

	<b>ASD STF</b>	<b>MLD STF</b>	<b>Pending list</b>	<b>Total</b>
<b>September 2017</b>	3	3	4	10
<b>September 2018</b>	8	6	0	14
<b>September 2019</b>	6	2	4	12
<b>September 2020</b>	3	8	3	14
<b>September 2021</b>	5	6	5	16

## **2. Background**

2.1 In response to the increased need identified above there is a requirement to address the additional ASD specialist places required for pupils from Swansea.

2.2 An options paper has been produced (see Appendix A) to review the most appropriate way of addressing this increased need. The following main options are available:

**Option 1** Do nothing

**Option 2** Establish new ASD STF provision/s to support increased demand

**Option 3** Increase planned pupil places in existing STF provisions

**Option 4** Change designation of current STF provision

**Option 5** Schools work collegiately to set up and host specialist provisions within a cluster

**Option 6** Accommodate identified pupils in special schools

**Option 7** Increase out-of-county placements

## **3. Risk**

3.1 If provision is not increased:

- learners with ASD whose needs have been assessed as requiring an ASD STF placement will not receive the appropriate provision in order to meet their complex needs. This will have a significant impact on those pupils' wellbeing and reaching their potential in life;
- there would be a negative impact on schools and learners of having learners with ASD whose needs require STF provision being placed in mainstream classrooms, as the social and communication difficulties that are a feature of ASD often manifest themselves in extremely disruptive behaviour. This is likely to impact negatively on the City and County of Swansea's exclusion figures and attendance data. Also this could increase pressure on education otherwise than at school (EOTAS) provision which would not be an appropriate alternative for autistic children;
- Swansea would be in breach of its legal obligations and at significantly increased risk of SEN Tribunal challenge and, ultimately, judicial review and ombudsman complaints and

investigations;

- there have been two recent tribunals where Swansea has been directed to place children over and above the planned places in ASD STF provision. Should this continue, there would be a significantly negative impact on the provisions' effectiveness and therefore the pupils' wellbeing; and
- there is a risk that more parents would be seeking out-of-county placements. This is an expensive alternative at between £40k and £73k per child per annum (plus transport and therapy costs). Providing additional ASD provision in Swansea could help to mitigate further costs for out-of-county placements, investing to prevent additional spend.

#### **4. Recommendation**

- 4.1 Officers recommend that Option 2 is considered as the preferred option for Cabinet to proceed to consultation upon. That is, to increase the number of primary and secondary school ASD STF places within City and County of Swansea by establishing three additional STFs (one secondary school and two primary schools).
- 4.2 Establishing two additional primary school ASD STFs would create an additional 32 places for primary-school-aged pupils and one additional secondary school ASD STF would create an additional 16 places for secondary-school-aged pupils.
- 4.3 Officers' advice is that this option optimises value for money, meets the needs of learners within the local authority, would minimise the risk of SEN tribunals and reduce out-of-county places. This option plans for current predicted demand.
- 4.4 There will be a need within the next few years to further increase provision. In particular, there is an increase in pupils with high-functioning ASD (pupils who are highly intelligent); however this requires additional investigation and resources. A further update to the SEN Development Plan is anticipated in the autumn term.
- 4.5 Officers seek approval to begin the statutory consultation process of establishing additional ASD STF provision (as identified in Option 2 above).

#### **5. Location**

- 5.1 In order to reduce current and future transport costs, it is desirable that at least one of the additional ASD STFs be established in the west of the local authority. The two existing ASD STFs are in the north-east of Swansea and pupils from the west of the City and County of Swansea are being transported to these facilities. The

establishment of at least one of the ASD STFs in the west should reduce travel time and costs for these pupils.

- 5.2 A review of capacity has been undertaken to identify which schools have the potential space that could be utilised with modest investments and remodelling to establish the required places.
- 5.3 Initially five schools were identified as having the potential to host an ASD STF:
- Dunvant Primary School
  - Penclawdd Primary School
  - Portmead Primary School
  - Trallwn Primary School
  - Birchgrove Comprehensive School

Subsequently, two further schools were identified:

- Mayals Primary School
  - Morriston Comprehensive School
- 5.4 Visits and site surveys were carried out to review the schools' capacity and commitment as well as the deliverability of the option.
- 5.5 Following further discussion, it has been agreed that Dunvant Primary School, Portmead Primary School and Birchgrove Comprehensive School are the most appropriate locations at this time in terms of cost, deliverability and school commitment.
- 5.6 Going forward, a review of the potential impact and options of the Local Development Plan (LDP) will be completed now the potential schools have been confirmed.
- 5.7 Links and opportunities will be made with the Welsh Government's capital investment programme (Band B) proposals and the LDP opportunities and can be built into business cases where opportunities and need exists.
- 5.8 The timeframe on these opportunities is likely to be a medium to long-term strategy rather than addressing the immediate need as stated in 4.4. However, the need for these additional ASD STFs is the immediate priority, and as timescales are pressured the urgency of approval for these additional ASD STFs is imperative.

## **6. Financial implications**

### **Capital**

- 6.1 We are seeking corporate funding to support the capital works that the remodelling to facilitate the additional ASD STF provisions will require.

The estimated cost of providing the three STFs in the three schools identified above is £350k. The cost of additional build would of course be significantly greater. Approval of this scheme will increase the substantial funding deficit on the capital programme.

## **Revenue**

- 6.2 The annual revenue costs of 48 F Band places (using the Section 52 document) would be approximately £593k per annum once fully established.
- 6.3 The revenue funding is delegated to the host schools. Host schools then manage the staff and pupils accordingly.
- 6.4 Table 2 (below) explains the estimated revenue implications of establishing three additional ASD STF facilities. Option A is the preferred option.
- 6.5 The investment to save argument is very difficult to provide data for, it is more about children we already know about having their needs met appropriately rather than money. However, providing additional ASD STF places could reduce expensive out-of-county placements at a cost of between £40k and £73k per annum per child (plus transport). Therefore, this is a proposal to invest-to-mitigate and contain further additional spend, in relation to out-of-county placements.
- 6.6 Presently, there are 18 students who are educated in out-of-county placements of which we estimate 8 could have their needs met within ASD moderate STFs.
- 6.7 There is therefore, a possibility that there could be a reduction in recoupment spend because if there is sufficient provision within the local authority, parents will be less likely to look to other local authorities or private providers.
- 6.8 It is possible that this increase in ASD provision could provide opportunities for income generation in the future, though at this point we are requesting the facilities to meet the current demand for existing pupils in Swansea.
- 6.9 Approval of this scheme would require additional revenue budget funding that can be devolved to the individual schools that will host the STFs.

**Table 2** Revenue implications of establishing three additional ASD STF facilities.

Option	Revenue cost	Places established	Considerations
<p><b>Option A</b></p> <p>Three additional STFs established September 2017</p>	<p>Year 1: £148,313 Year 2: £593,250</p>	<p>48 F band places (x3/12<sup>th</sup>) 48 F band places full-year equivalent (FYE) places</p>	<p>Two primary school STF provisions (2 x 16 places)</p> <p>One secondary school STF (1 x 16 places)</p> <p>Note individual transport costs would be in addition to the figures provided here</p>
<p><b>Option B</b></p> <p>Phased implementation. Establish two Foundation Phase (primary school) STFs and one key stage 3 (secondary school) STF.</p> <p>Increase to full capacity by 2019 (ie to include key stage 2 and key stage 4 provision)</p>	<p>Year 1: £74,156 Year 2: £296,625 Year 3: £469,656 Year 4: £593,250</p>	<p>24 F band places (x3/12<sup>th</sup>) 24 F band places (FYE) 24 F band places (FYE) + 24 (x7/12<sup>th</sup>) 48 places (FYE)</p>	<p>This phased approach carries the risk that the local authority would not be able to meet the level of demand required.</p> <p>Note individual transport costs would be in addition to the figures provided here</p>

## 7. Timeframe

- 7.1 Establishing additional ASD STF provision will require statutory notice for implementation in January 2018. The following timetable (Table 3) summarises a timeframe that will need to be met (for expanded timeframe please see Appendix C).
- 7.2 Failure to meet these timelines would result in a delay of establishing additional provision and therefore appropriate places.

**Table 3** Timetable to establish additional ASD STF provision

<b>Activity</b>	<b>Timescale</b>
Exploratory work and discussions with officers and elected members	June to November 2016
CMT	16 November 2016
Corporate Briefing	1 December 2016
Cabinet	15 December 2016
Start consultation	04 January 2017
End consultation	16 February 2017
Publish consultation report	By 17 March 2017
Corporate Briefing	3 April 2017
Cabinet	20 April 2017
Publish statutory notice	05 May 2017
If there are no objections to the statutory notice, then Cabinet can confirm the proposal. If there are objections then this will need the determination of Council on:	27 July 2017 (estimated date for next municipal year)
Appointment of staff	Interviews before 30 September 2017
Implementation	01 January 2018

## **8. Next steps**

8.1 School organisation proposals must adhere to the School Organisation Code and the School Standards and Organisation (Wales) Act 2013. A period of consultation must be undertaken with interested parties and relevant information must be provided in a consultation document. The Welsh Government and Estyn must be consulted at this stage of proposal. All views received during the consultation period will be collated into a further report for Cabinet who will then decide if the proposal should move to the next stage – a period of Statutory Notice. Formal objections can be lodged during the Statutory Notice period. If any objections are received, then a local determination will be needed by Council on the outcome of the proposal.



8.2 Establish communication plan in line with approval and timeframe as above.

8.3 Complete activities as identified in timeline above and Appendix C.

## **9. Legal implications**

9.1 The City and County of Swansea adopted in July 2012 an Inclusion Policy and an Inclusion Strategy. These documents provide key principles and strategic priorities which as current policy should be considered throughout the process of identifying and establishing increased education provision of any type.

9.2 The establishment or discontinuance of provision which is recognised by the local authority as reserved for children with special education needs, including STF's, constitutes a Regulated Alteration which requires consultation and the publication of statutory notices in accordance with s42 and Schedule 2, Paragraph 15 (1) of the School Standards and Organisation (Wales) Act 2013 ("the Act") and the Welsh Government's School Organisation Code (Circular 006/2013) (the Code).

9.3 The Code provides statutory guidance a local authority must follow when seeking to making Regulated Alterations to education provision within a local authority area. The Code provides that:

1.4 Local authorities must ensure there are sufficient schools providing primary and secondary education for their area. Schools are regarded as sufficient if they are sufficient in number, character and equipment to provide for all pupils the opportunity of appropriate education. In order to fulfil these duties, local authorities must ensure that they plan thoroughly and engage fully with relevant partners, including the appropriate religious bodies for schools serving their area which have a designated religious character.'

1.13 Additional considerations are applicable when SEN provision is being considered:

'Standards of provision

In addition to the usual considerations in relation to standards of provision, relevant bodies should consider;

- Whether proposals will improve standards of accommodation for pupils with SEN, including building accessibility;
- How proposals will address any health, safety and welfare issues;
- How proposals, where appropriate, will support increased inclusion; and
- The impact of proposals on other SEN provision within the immediate and wider local authority area including out of county where appropriate.

Need for places and the impact on accessibility of schools

In addition to the considerations listed in 1.4, relevant bodies should consider:

- Whether there is a need for a particular type of SEN provision within the area;
- Whether there is a surplus SEN provision within the area;
- Whether SEN provision would be more effective or efficient if regional provision were made; and
- The impact of proposals on the transportation of learners with SEN.

Other factors

Relevant bodies should consider:

- How changes to SEN provision in schools are likely to impact on all other services provided in an area for pupils with disabilities and / or SEN.

9.4 Before publishing any proposals the local authority (Proposer/s) is under a duty, by virtue of s48 of the Act, to consult on such proposals. The Code states that:

- a) At the start of the consultation period Proposers must provide the consultees listed in the Code with a detailed consultation document following the requirements listed in the Code, and give them at least 42 days in which to respond, with at least 20 of these being school days.
- b) Where proposals involve specialist resource bases attached to mainstream schools the following information must be included in the consultation document:
  - the impact on SEN provision;
  - how proposals will contribute more generally to enhancing the quality of education and support for children with SEN.
- c) Consultation comments must be collated and summarised by Proposers. This summary together with the responses to the comments must be published in a consultation report within three months of the end of the consultation period.
- d) A decision must be made by Proposers whether to proceed with changes within 6 months of the end of the consultation period.
- e) If a decision is made to proceed, a statutory notice is published providing a 28-day notice period for objections. The notice must be published on a school day and with 15 school days (not including the day of publication) in the notice period.

- f) If objections are received, an objection report must be published providing a summary of the objections with responses to them before the end of 7 days beginning with the day of the Proposers determination of the proposals.
- g) The proposer must determine under s53 whether the proposals are to be implemented. Proposals must receive final determination within 16 weeks of the end of the objection period. Local determination is a requirement of the School Organisation Code, and The Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) (Amendment) Regulations 2013 allow for this local determination. The Welsh Ministers and Governing Bodies are to be notified of the decision within 7 days of the decision.
- h) If the Proposer determines to implement proposals, they should be implemented in accordance with the date given in the statutory notice, or any subsequent modified date.

9.5 Failure to comply with the statutory consultation requirements in the Act and Code will leave the Authority open to Judicial Review and the decision could be quashed by the Courts.

Case law has established that the consultation process should:

- be undertaken when proposals are still at a formative stage;
- include sufficient reasons and information for particular proposals to enable intelligent consideration and response;
- provide adequate time for consideration and response; and
- ensure that the product of consultation is conscientiously taken into account when the ultimate decision is taken.

## **10. Equality and engagement implications**

10.1 A full Equality Impact Assessment is being drafted and will form part of the papers presented to Cabinet.

10.2 A Community Impact Assessment has been undertaken for each of the proposals and will form part of the consultation papers.

10.3 A Welsh Medium Impact Assessment has been undertaken for each of the proposals and will form part of the consultation papers.

### **Background papers:**

Welsh Government School Organisation Code (Circular 006/2013)

### **Appendices:**

Appendix A Options to address increase need for pupils diagnosed with Autistic Spectrum Disorder (ASD)

Appendix B Existing specialist teaching facilities within City and County of Swansea