



Report of the Cabinet Member for Education Improvement, Learning & Skills

Cabinet – 18 March 2021

Increased Planned Places at Ysgol Pen-y-bryn

Purpose:	To seek approval to consult on a proposal to increase the planned places at Ysgol Pen-y-bryn from January 2022.
Policy Framework:	Corporate priorities: <ul style="list-style-type: none">• Improving education and skills
Consultation:	Access to Services, Finance, Legal.
Recommendation(s):	It is recommended that: <ol style="list-style-type: none">1) Approval is given to consult on increasing the planned places at Ysgol Pen-y-bryn from January 2022;2) Cabinet considers the responses following the consultation period.
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1. Introduction

- 1.1 Special school places in Swansea are running at maximum capacity, and increasing demand for places is projected for the future. The significant demand for places is leading the local authority to have no other option than to place pupils into independent and out-of-county schools.
- 1.2 In mainstream schools, there are a number of specialist teaching facilities (STFs) which support pupils with moderate/severe learning difficulties (E band funding), and STFs to support pupils with moderate/severe autistic spectrum disorder (ASD) (F and G band funding). There are very few surplus spaces across the ASD STFs.
- 1.3 There is significant pressure for ASD specialist places, despite opening three additional STFs at Portmead and Duvant Primary Schools and Birchgrove Comprehensive School. The local authority placed the pupils with the most significant need into these STFs, which has required the provision of additional

funding to increase staffing over the base level. Over 200 additional teaching assistant (TA) hours per week have been provided to the two new ASD Primary STFs alone.

- 1.4 In turn, having full STFs presents issues for the future placement of children that are currently supported in mainstream provision with TA support funded by the school from their delegated budget.

2. Increasing Planned Places

- 2.1 Special schools are funded on planned places. Ysgol Pen-y-bryn is set up to cater for 150 pupils in total. There are 101 places (E band) for secondary aged pupils who have moderate to severe learning difficulties. The school also provides for pupils (both primary and secondary aged) with severe autism. There are 49 (G band) places for these pupils.
- 2.2 Ysgol Pen-y-bryn has recently been given approval to take over the vacated Arfryn Pupil Referral Unit building, that is approximately a mile away from their main site, to provide additional space and facilities. 14 additional planned places will be funded at the school from April 2021 to help to ease the pressure outlined in section 1 of this report. These places can be added without the need for a statutory proposal, as the additional places do not breach the 10% increase threshold that is specified in regulations.
- 2.3 School organisation regulations require a statutory proposal to take place if a special school increases their planned places by more than 10% (or 20 places, whichever is the lesser). Assessments indicate that the Arfryn site can accommodate a maximum of 45 special school places, taking the total number of places at Ysgol Pen-y-bryn to 190 places, and this increase triggers the need for a statutory proposal if we are to fully utilise the Arfryn site. Therefore a statutory proposal would be needed to add 31 extra planned places to the school (as 14 of the 45 extra places can be added without a proposal).
- 2.4 Increasing planned places at Ysgol Pen-y-bryn would enable the authority to better meet the needs of more pupils in local provision. Pupils requiring special school ASD places could be offered places at Ysgol Pen-y-bryn, as opposed to provision in the independent sector or out of county, and would also alleviate pressure on mainstream schools and STFs that are struggling to cope with the demands of managing pupils with more severe learning difficulties.

3. Equality and engagement implications

- 3.1 The Council is subject to the Public Sector Equality Duty (Wales) and must, in the exercise of their functions, have due regard to the need to:
 - Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
 - Advance equality of opportunity between people who share a protected characteristic and those who do not
 - Foster good relations between people who share a protected characteristic and those who do not

Our Equality Impact Assessment (EIA) process ensures that we have paid due regard to the above. An Equality Impact Assessment screening (Appendix A) has been produced and a full Equality Impact Assessment report is required. If

Cabinet approval is received to consult, the EIA report will form part of the consultation papers.

The impact of the scheme on the Children and Young People (0-18), Other Age Group and Disability will be positive in providing learners with moderate or severe Autistic Spectrum Disorder (ASD) aged 3-19 with a designated space for their education whilst also ensuring that more learners can access this specialist provision within the boundaries of the city and county of Swansea.

- 3.2 A Community Impact Assessment has been undertaken and will form part of the consultation papers.
- 3.3 A Welsh-medium Impact Assessment is not needed under the School Organisation Code.
- 3.4 Swansea Council acts in accordance with the Well-being of Future Generations (Wales) Act in all it does. Sustainable development has been a central organising principle since 2012 and each year the council aims to further embed and build on sustainable practice. An assessment against the Act will be included in the consultation papers, should this report be approved.
- 3.5 If this report is approved by Cabinet, a statutory consultation will take place.
- 3.6 Due regard should be paid to the United Nations Convention on the Rights of the Child at all times when developing proposals, and particularly in relation to proposals which directly impact upon young people.

4. Financial Implications

Capital

- 4.1 No capital funding is being sought for the additional 31 planned places. Capital funding has already been approved for the Arfryn site to accommodate the additional 14 planned places.

Revenue

- 4.2 The annual revenue costs for the 31 additional planned places at Ysgol Pen-y-bryn i.e. 15 Band E places and 16 Band G places, is £504,104 per annum once fully established (based on FY2020-2021 planned place funding). This should be considered in the context that a single pupil placed into the independent sector is costing the local authority in excess of £100,000 per annum.
- 4.3 The revenue funding would be delegated to Ysgol Pen-y-bryn each year. The school will then manage the staff and pupils accordingly. Initially this will be a transfer of funding for each place from the independent/out-of-county Education budget to the school, until all places are filled.
- 4.4 There could be some additional associated transport costs for the learners to attend the school, as per the Home to School Transport Policy; however, these will be lower costs than providing out of county placements in other specialist provision, as well as potential for reduced associated Social Services costs.

5. Legal Implications

5.1 The increasing of special school planned places above the current level at Ysgol Pen-y-bryn constitutes a Regulated Alteration which requires consultation and the publication of statutory notices in accordance with s44 and Schedule 2, Part 4, Paragraph 19 of the School Standards and Organisation (Wales) Act 2013 (“the Act”) and the Welsh Government’s School Organisation Code (the Code).

5.2 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:

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.’

5.3 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, relevant bodies should consider:

- Whether there is a need for a particular type of SEN provision in 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.

5.4 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.

5.5 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.

Background papers:

Welsh Government School Organisation Code

Appendices:

Appendix A Equality Impact Assessment Screening