

## Report of the Cabinet Member for Children, Education & Lifelong Learning

Cabinet – 20 July 2017

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

<b>Purpose:</b>	To report on the outcome of the Statutory Notice period and to seek determination on the proposals to establish Specialist Teaching Facilities for pupils with Autistic Spectrum Disorder (ASD) at Portmead Primary, Dunvant Primary and Birchgrove Comprehensive Schools from January 2018. No objections were received for Portmead Primary and Birchgrove Comprehensive School. One objection was received for Dunvant Primary School.
<b>Policy Framework:</b>	QEd 2020 (strategic programme) Children & Young People Plan (priority 7)
<b>Consultation:</b>	Legal, Finance and Access to Services.
<b>Recommendation(s):</b>	To determine that the City and County of Swansea establishes Specialist Teaching Facilities for Pupils with Autistic Spectrum Disorder (ASD) at Portmead Primary, Dunvant Primary and Birchgrove Comprehensive Schools from January 2018.
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#### 1. Introduction

- 1.1 Cabinet agreed at a meeting held on 15 December 2016 that consultation should take place on proposals to establish Specialist Teaching Facilities (STF) for Pupils with Autistic Spectrum Disorder (ASD) at Portmead Primary, Dunvant Primary and Birchgrove Comprehensive Schools from January 2018.
- 1.2 Following this consultation period, Cabinet considered the responses received on 20 April 2017 and approved the publication of statutory

notices inviting any formal objections to the proposal. The statutory notice periods ran from 5 May 2017 to 5 June 2017.

1.3 No objections were received during this period for Portmead Primary School or Birchgrove Comprehensive School and therefore Cabinet must determine the outcome of the proposal.

1.4 One objection was received for the Duvant Primary School proposal and, under the revised Council constitution, it now falls to Cabinet to consider the objection and determine the outcome of this proposal. The objection summary can be found at Appendix 1, together with the local authority response. The recommendation is to establish the STF at Duvant Primary School, as per the statutory notice.

## **2.0 Equality and Engagement Implications**

2.1 A full Equality Impact Assessment is needed for school organisation proposals. The current draft of the EIA report is included as a background paper to this report and will continue to be updated as work progresses.

## **3.0 Financial Implications**

3.1 Capital funding - corporate funding has already been identified 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 is £350k.

3.2 Revenue funding - the annual revenue costs of 48 'F band' places would be approximately £593k per annum once the STFs are fully established. If the proposals are successful, the revenue funding would be delegated to the host schools who would then manage the staff and pupils accordingly. The anticipated funding required for FY2017-2018 is included in the budget.

## **4.0 Legal Implications**

4.1 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.

4.2 The establishment or discontinuance of provision which is recognised by the local authority as reserved for children with special education needs, including STFs, 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).

4.3 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.

4.4 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.

4.5 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:**

School Standards and Organisation (Wales) Act 2013; The Welsh Government's "School Organisation Code" Circular 006/201; Community Impact Assessment; Equality Impact Assessment; Reports to Cabinet 15 December 2016 and 20 April 2017.

**Appendices:**

Appendix 1. Objection Report for Dunvant STF proposal

## City and County of Swansea

### Objection Summary

#### Proposal to Establish a Specialist Teaching Facility at Duvant Primary School

The City and County of Swansea has published proposals to establish Specialist Teaching Facilities (STF) for pupils with Autistic Spectrum Disorder (ASD) at Portmead Primary, Duvant Primary and Birchgrove Comprehensive Schools from January 2018.

Following approval by the Council's Cabinet meeting on 20 April 2017, statutory notices were published on 5 May 2017 inviting any written objections to be submitted by 5 June 2017. No objections were received to the proposals for Portmead Primary School and Birchgrove Comprehensive School; however one objection was received for the Duvant Primary School proposal and therefore the local authority is required to publish this objection summary under Section 49 of the School Standards and Organisation (Wales) Act 2013. This objection summary is published electronically on the Council's website at [www.swansea.gov.uk/newspecialiststfs](http://www.swansea.gov.uk/newspecialiststfs)

To request a hard copy of this document please write to Education Department, Civic Centre, Swansea SA1 3SN or email [education@swansea.gov.uk](mailto:education@swansea.gov.uk)

The table below summarises the points raised in the one objection letter and gives the response from the local authority.

	Objection	Local Authority Response
1	Would the LA be kind enough to supply me with work based details supporting their statement that the present head teacher is sufficiently qualified and experienced to take responsibility for this new challenge?	The new headteacher has been a headteacher previously and has dealt with many learners with special educational needs. Prior to appointment at Duvant she worked as our senior primary school challenge adviser, overseeing all primary schools in Swansea.
2	Will the head teacher be remunerated for taking on this additional duty which I would imagine falls outside of her original contract of employment?	Schools that host STFs are provided with additional funding for one leadership point for headteacher and deputy headteacher but it will be for the governing body to determine if these points are allocated.
3	Which school buildings are to be used to accommodate the STF? Rooms within the Infants school or the Junior school?	The proposed location of the STF classrooms and associated areas will be in the infant building with one a class relocated to the junior building.

		If the proposal is successful the remodelling plans will be agreed in consultation with the headteacher and governing body.
4	Will the rooms commandeered for this project have a negative/detrimental effect on the educational standards and well-being of pupils currently attending the school and indeed any future intake of pupils?	There is no reason why any rooms used for the STF will have a negative or detrimental effect on existing or future learners.
5	Who would be responsible for carrying out the said assessments of STF learners and for determining whether they are suitable to be placed in mainstream?	The school will make this determination for individual learners, with support and guidance from the local authority.
6	Would the Head teacher and Board of Governors be fully consulted and have the opportunity to approve or disapprove any such recommendations put forward?	The headteacher has day-to-day control of school operations.
7	If a mainstream pupil should innocently attempt to interact with a STF pupil during lessons or at play and the STF pupil reacted with physical force, who would take legal responsibility for the situation?	The welfare and safeguarding of all pupils in all schools is taken seriously by the Council and school Governing Bodies. All necessary risk assessments will be put in place as outlined in 9. below. Legal responsibility is fact specific. However all schools have liability insurance in place to cover such a situation if it should arise.
8	Would responsibility fall on the STF pupil, the Head teacher, the Board of Governors or the LA?	See 7 above.
9	Would it be possible to have a copy of any/all up to date risk assessments carried out specific to the proposed STF Unit?	As our proposal is yet to be determined and specific pupil profile is unknown we have not undertaken any risk assessments regarding learners. As the school remodelling develops we would take appropriate advice from our health and safety team. Based on other STF units, it is not anticipated that risk assessments would be a bar to this proposal moving forwards. Appropriate training and support will be given as necessary.

10	I do not believe the school is in a position to take on the extra responsibility that would arise from the introduction of a STF Unit with its perimeters.	The local authority, headteacher, staff, governors and learners have been consulted on the proposal and all believe that the school is able to take on this responsibility. Appropriate training and support will be given as is necessary.
11	How long will the annual revenue costs associated with the STF be guaranteed as an additional payment to Dunvant Primary School?	For as long as the STF is located at the school as it would become part of the funding formula for the school.
12	Who would be financially responsible for any required repairs and maintenance within the STF Unit?	There is a division of responsibility document for school repair and maintenance. The additional funding for the school includes a premises element and if the repair/maintenance fell under the responsibility of the school then the school would need to pay.
13	My main concern is the effect on the educational advancement of mainstream pupils.	There is no reason why the establishment of this STF should have anything other than a positive effect on the educational advancement of mainstream pupils.