



## Report of the Cabinet Member for Education Improvement & Learning

Cabinet – 20 December 2018

### Increased Planned Places at Ysgol Penybryn Special School

<b>Purpose:</b>	To report on the outcome of the Statutory Notice period and to seek determination on the proposal to increase the planned places at Ysgol Penybryn Special School. No objections were received.
<b>Policy Framework:</b>	Corporate priorities: <ul style="list-style-type: none"><li>• Improving pupil attainment</li><li>• Safeguarding vulnerable people</li></ul>
<b>Consultation:</b>	Access to Services, Finance, Legal.
<b>Recommendation(s):</b>	It is recommended that: <ol style="list-style-type: none"><li>1) Cabinet determine that the City and County of Swansea increases the planned places at Ysgol Penybryn Special School to from 130 to 150.</li><li>2) The additional delegated revenue funding to support the establishment of these increased planned places within Penybryn Special School and associated potential additional transport costs are both accommodated within existing and future education overall revenue budgets.</li></ol>
<b>Report Author:</b>	Kelly Small
<b>Finance Officer:</b>	Chris Davies
<b>Legal Officer:</b>	Stephanie Williams
<b>Access to Services Officer:</b>	Rhian Millar

#### 1. Introduction

- 1.1 Special schools are funded on planned places. Ysgol Penybryn Special School is set up to cater for 130 pupils in total. There are 93 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 37 (G band) places for these pupils. 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) from a count date of 19 January 2013. Ysgol Penybryn Special School had 118 planned places on the count date and therefore require a statutory proposal to increase planned places over 130 (the current number of places).

- 1.2 Increasing planned places at Ysgol Penybryn Special School would alleviate pressure on the moderate autistic spectrum disorder Specialist Teaching Facilities (ASD STFs). The pupils with the more severe needs (i.e. high ASD symptomatology) would transfer to Ysgol Penybryn Special School, allowing the authority to place pupils with moderate ASD into the appropriate STFs. It would also alleviate pressure on secondary mainstream schools and STFs who are struggling to cope with the demands of managing pupils with more severe learning difficulties.
- 1.3 Cabinet agreed at a meeting held on 17 May 2018 that consultation should take place on increasing the number of planned places at Ysgol Penybryn Special School from April 2019.
- 1.4 Following this consultation period, Cabinet considered the responses received at their meeting on 20 September 2018 and approved the publication of statutory notices, inviting any formal objections to the proposal. The statutory notice period ran from 1 October 2018 until 29 October 2018. No objections were received to the notice.

## **2. Financial Implications**

### Capital

- 2.1 No capital funding is being sought as the school have used their own delegated funding to create additional classroom and ancillary spaces.

### Revenue

- 2.2 The annual revenue costs for 20 additional planned places at Penybryn Special School i.e. 12 Band G places plus 8 Band E places, is £343,630 per annum once fully established (based on FY2017-2018 planned place funding, additional pupil numbers and adopting the revenue costs for the increase in floor area). This should be considered in the context that a single pupil placed into Ty Danycoed (independent sector), is costing the local authority in excess of £100,000 per annum.
- 2.3 The revenue funding would be delegated to Penybryn Special School each year. The school would then manage the staff and pupils accordingly.
- 2.4 There could be associated transport costs for the learners to attend the school, as per the Home to School Transport Policy; however it is anticipated that there will be reduced costs for out of county placements in other specialist provision, as well as potential for a reduction in associated Social Services costs.

### 3. Legal Implications

3.1 Increasing special school planned places above the current level at Penybryn Special School 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 (Circular 006/2013) (the Code).

3.2 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.’

3.3 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 to the considerations listed in 1.4 of the School Organisation Code, 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.

- 3.4 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.

- 3.5 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.

#### **4. Equality and Engagement Implications**

- 4.1 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
- 4.2 An Equality Impact Assessment Screening Form (Appendix A) was revised following the consultation period, scrutiny at Corporate Briefing and the Statutory Notice period, with the outcome being that a full Equality Impact Assessment report was not required.
- 4.3 A Community Impact Assessment had been undertaken and has been available on the Council website <https://www.swansea.gov.uk/penybrynproposal>

#### **Background Papers:**

Welsh Government School Organisation Code (Circular 006/2013)  
Reports to Cabinet 21 June 2018 and 20 September 2018

#### **Appendices:**

Appendix A      EIA Screening