

CHILDREN AND YOUNG PEOPLE OVERVIEW AND SCRUTINY COMMITTEE

12 NOVEMBER 2018

CALL-IN: SPECIAL EDUCATIONAL NEEDS AND DISABILITIES PROVISION PROPOSAL

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Summary

This report advises the Committee of a notice of call-in received from eight Members of the Council of Cabinet decision 125/2018 to:

Approve the progression by Medway Commercial Group of an Independent Autism Spectrum Disorder (ASD) Special School on the Cornwallis site, which includes provision for residential and respite care.

1. Budget and Policy Framework

1.1 In accordance with Chapter 4, part 5, paragraph 15.3 of the Constitution with regard to decisions, Cabinet decision 125/2018 has been called-in to this Committee by eight Members (Labour Group) of the Council.

2. Background regarding the Call in

2.1 The Cabinet considered a report at its meeting held on 23 October 2018 which outlined a proposal to establish an Independent Free School including residential, respite and outreach provision.

2.2 The discussion and decision from the Cabinet meeting are set out below.

2.2.1 This report outlined a proposal to establish an Independent School including residential, respite and outreach provision. This proposal

would address increasing demand for school places within Medway for children who have complex needs and disabilities with challenging behaviour, but whose cognitive ability was average or just below and who could not be supported in a mainstream school.

2.2.2 It was noted that currently 82 pupils with this diagnosis were placed out of area, some in residential provision, at a cost of approximately £5.2m per annum. The report advised that this proposal would aim to enable more pupils to be educated in Medway, close to their families and communities. Something parents and families have highlighted as a priority for them. It would also provide cost savings and opportunities for income generation which will support the high needs block and those young people with these specific needs. The benefits of an Independent School were set out in paragraph **3.5 of the (Cabinet)** report.

2.2.3 It was agreed that Medway Commercial Group (MCG) will deliver the construction of this Independent School. The report explained that MCG would manage the design and planning process and oversee the delivery of the facilities. They would also be a part of the appointment process of a suitable independent provider/sponsor that would ensure the provision met the required educational standards. The Cabinet approved the leasing of the site at Cornwallis Avenue to MCG (decision number 112/2018 refers).

2.2.4 It was stated that a Programme Board and Steering Group had been established to oversee the project's progress. The board comprises:

Ian Sutherland	Director of People – Children and Adults Services
Ann Domeney	Deputy Director – Children and Adults Services
Ian Price	Chief Executive Officer – MCG
David Watkins	Head of Education
Katey Durkin	Head of Finance Strategy

Decision number:

125/2018

Decision:

The Cabinet approved the progression by Medway Commercial Group of an Independent Autism Spectrum Disorder (ASD) Special School on the Cornwallis site, which includes provision for residential and respite care.

Reasons:

Agreement to this proposal would:

- ensure that the Council's duty to provide school places is met;
- meet the recommendations of the SEND Ofsted report and the SEND strategy objectives that children should be placed in local provision close to their families wherever possible;

- reduce reliance upon limited and expensive out of area provision, which will ease the pressure on the High Needs Block funding;
- make more cost effective use of funding from the High Needs Block; and
- Present a new commercial opportunity for Medway Commercial Group as the Councils LATCO.

2.3 The above decision was subsequently called in by eight Members of the Council. The reasons for the call in are as follows:

2.3.1 “Although we recognise the need for increased ASD provision for 7-19 year olds in Medway, especially in relation to reducing out of area placements and strengthening in area provision, we have concerns in the following areas:

- 1) We have no confidence in MCG delivering a large scale project of this nature following their recent track record regarding Governor Services and CCTV, and their lack of track record in delivering an education provision of any kind.
- 2) There is a lack of clarity around the capital financing of this project which is not helped by the inclusion of MCG as the suggested delivery model of the project.
- 3) Is this proposed site the most suitable for provision of this specific nature?”

3. Director’s Response to the Call-In

3.1 The comments from the Director of People – Children and Adults Services on the points raised by Members in the reasons for the call-in are set out below:

3.1.1 Confidence in MCG

This programme of work is being managed within a formal project management methodology and as such, MCG’s role is to provide project management support to the programme board. As part of the formal Royal Institute of British Architects (RIBA) stages of design and build projects, they have appointed a number of well respected, industry leaders which include Gleeds, Guy Holloway Architects, BAN and Jane Simpson Consulting, all of whom are specialists in their own disciplines which include the design and build of specialist SEN provision. Specific activities they have responsibility for include design/architectural services, employer’s agent, planning consultants, and travel, traffic and highways consultants. These organisations are used by both the Department for Education (DfE) and the Education Schools Funding Agency (ESFA) in the design and delivery of school expansions and new build projects.

Whilst MCG will be leading on the project management aspects of the programme, they are part of a wider Programme Board which has been established to oversee the project’s governance, progress and successful delivery. The structure of the board is set out in paragraph 2.2.4 of the report and is chaired by the Director of People – Children’s

and Adults Services, as the project sponsor. There are senior directorate officers and the Council's head of financial strategy as members. This will be augmented to include other officers for example legal and procurement as required. The Head of Education is taking a leading role in the project and will input into the design and specification of the accommodation to ensure that the necessary educational and design standards are met. He will also have a key role in the selection and appointment of a school provider. He has considerable experience across the education sector including the whole life cycle of design, procurement and the successful delivery of new school builds including the selection and appointment of educational providers.

3.1.2 **Capital financing**

The capital costs of this project are estimated to be approximately £25m and therefore appropriate capital funding must be secured. On the Council's behalf, MCG has explored a number of funding sources including ethical social funding models which have been used by other local authorities and have proved a successful mechanism in raising capital funds to deliver this type of provision. Other options are also being considered including a more conventional funding model whereby the Council borrows the money via PWLB at potentially lower interest rates and then makes this available to the project as capital works are undertaken and completed. Determining the funding source therefore remains work in progress at the moment but ultimately the approach adopted will be the most beneficial one for both the Council and the project.

As far as the revenue position is concerned, the viability of the school will be managed through savings and efficiencies made in respect of reducing out of area placements costs and the pressure on the high needs block. In addition, an income stream will be generated from externally commissioned placement fees procured by other local authorities. The school can be utilised 52 weeks a year to provide respite and residential care and also, access by the local community and community groups. The financing of the project is based on a 30 year payback period.

3.1.3 **Proposed site**

The proposed site is deemed suitable by education and planning professionals following a review of sites across Medway. The site has previously operated as a school playing field. Key points to note:

- It is accessible, being central for the main urban areas of Medway.
- It has excellent road links and is on major bus routes.
- It is available, there is a shortage of available land for school developments.
- This site has in the past, been highlighted as a potential site for a mainstream free school with no adverse comment through a consultation period which included the planning authority who are supportive.

- There are no acquisition costs as the site is owned by the Council.
- It will be used for wider community use and is accessible from a wide area given the excellent road links and access to public transport
- Site topography is suitable for educational purposes and requires minimum investment/cost in respect of pre-works before construction can commence.
- Current community uses for example boot fairs and youth football, can continue on the remaining area
- Future development is expected in the Gillingham/Rainham area as part of the local plan so it is reasonable to expect local demand will increase
- This is a central for providing outreach services across the whole of Medway
- There are good road links for pupils placed by other local authorities
- There were no concerns raised after the previous Cabinet decision on the Cornwallis land.

4. Advice from Monitoring Officer and Chief Finance Officer regarding the Call-in

4.1 The Monitoring Officer and the Chief Finance Officer have both further reviewed the Cabinet report and are satisfied that the decision taken by Cabinet is not contrary to the policy framework or contrary or not wholly in accordance with the budget.

4.2 Comments of the Monitoring Officer

4.2.1 The relevant Policy Framework document is the 2016-2021 Council Plan. One of the three priorities set out in the Council Plan is Medway – Supporting Medway's people to realise their potential. The relevant outcomes for that priority are “Resilient Families” and “All children achieving their potential in school.”

4.2.2 The proposal refers to bringing children who are currently schooled out of area back into Medway. There is the potential for this local specialist schooling, with respite accommodation on site to support the outcomes above and the key priority.

4.2.3 In addition, the three Council Plan priorities are to be achieved by working in the following ways:

- Giving value for money (including a commitment to delivering effective and efficient services for Medway residents, business and visitors)
- Working in partnership where this benefits our residents.

4.2.4 The proposal refers to saving the Council significant costs through the substantial reduction of out of area placements and reflects a partnership approach to the building and management of the school.

4.2.5 It would appear therefore that this proposal is not contrary to the policy framework.

4.3 Comments of the Chief Finance Officer

- 4.3.1 The report considered by Cabinet on 23 October clearly articulated the need for additional SEND provision in Medway and indeed the eight Members who requested the call-in: “recognised the need for increased ASD provision for 7-19 year old in Medway...”.
- 4.3.2 The call-in identified three areas of concern, the second of which was the lack of clarity around the capital financing for this project. There are a number of options being explored and these are outlined at paragraph 3.1.2 of this report. There will also need to be a much more detailed business case and due diligence over the financial assumptions therein. The business case will need to demonstrate that the net revenues generated by the new school, from both Medway Council and other local authorities, are sufficient to repay the £25 million required to build it.
- 4.3.3 Subject to a robust business case for the school and a clearer understanding of the potential savings to the local authority, the decision of the Cabinet could therefore be considered to be in accordance with the budget.

5. Options

- 5.1 The options open to this Committee in dealing with this call-in are to:
- a) to consider the matter and accept the Cabinet decision, or;
 - b) ask Cabinet to reconsider its decision if Members have concerns about it/them (setting out in writing the nature of any concerns), or;
 - c) refer the matter to full Council for consideration.
- 5.2 In accordance with rule 15.8 of the Constitution, to avoid the possibility of very many emergency Council meetings, Overview and Scrutiny Committees should normally only use the power to refer a matter to the full Council if it considers either:
- a) that the decision is contrary to the policy framework (i.e. those policies and plans listed in Article 4.1 of Chapter 2 of the Constitution) or contrary or not wholly in accordance with the budget;
 - b) where a request for call-in is signed by six or more members representing at least two political groups.
- 5.3 If the Committee considers the Cabinet decision is, or would be, contrary to the policy framework or not wholly in accordance with the Council’s budget, then it must first ask for advice from the Monitoring Officer and/or Chief Finance Officer. If the officer advice is that the decision taken by Cabinet is within the policy framework or budget, and

this is accepted by the Committee, then a referral to full Council, on the grounds that the decision is contrary to the budget or policy framework, would not be possible. As mentioned in paragraph 4 above, the Monitoring Officer and the Chief Finance Officer have confirmed that the decisions taken by Cabinet set out in paragraph 2 above are not contrary to the Council's budget or policy framework.

5.4 The Committee may refer the call-in to full Council if:

- the officer advice confirms the view of the Committee that the Cabinet decision was outside the budget or policy framework, or
- the officer advice does not confirm the view of the Committee but Members do not accept the officer advice.

5.5 In the event of a referral to full Council for reasons relating to the budget or policy framework, Cabinet will then meet to consider the views of the Monitoring Officer and/or Chief Finance Officer, together with the views of the Overview and Scrutiny Committee. Having considered these views, Cabinet will decide what action to take and prepare a report for Council.

5.6 When the Council meets following a referral on the grounds that an Overview and Scrutiny Committee considers that a Cabinet decision is contrary to the policy framework or contrary or not wholly in accordance with the budget, it can decide:

- a) that the Cabinet decision falls within the existing budget and policy framework, in which case no further action is required, or;
- b) to amend the Council's budget or relevant policy framework document to encompass the decision, in which case the Cabinet decision takes effect immediately and no further action is required, or;
- c) to accept that the decision is outside the policy framework or budget, in which case Cabinet must reconsider the matter taking into account the views of full Council and take a decision which is in accordance with the advice of the monitoring officer/chief finance officer and which complies with the budget and policy framework.

5.7 When the Council meets following a referral on other grounds then it can decide:

- a) to accept the Cabinet decisions and therefore take no further action or;
- b) refer the decisions back to Cabinet for reconsideration, setting out the reasons for the referral back.

6. Risk Management

- 6.1 Risk management is addressed in section 5 of the Cabinet report attached at Appendix A.

7. Financial and legal implications

- 7.1 The financial and legal implications in relation to the Cabinet decisions are set out at sections 7 and 8 of the Cabinet report attached at Appendix A.
- 7.2 In accordance with Chapter 4, part 5, paragraph 15.3 of the Constitution, six members of the Council may call in a decision for scrutiny by the relevant Overview and Scrutiny Committee. Call-ins must be dealt with in accordance with Rule 15 of the Overview and Scrutiny Rules and Rule 7 of the Budget and Policy Framework Rules.

8. Recommendation

- 8.1 The Committee is asked to consider the called-in Cabinet decision 125/2018 and decide either to:
- 8.1.1 Accept the Cabinet decision and therefore take no further action or;
- 8.1.2 Refer the decision back to Cabinet for reconsideration, setting out the reasons for the referral back or;
- 8.1.3 Refer the decision to full Council for consideration.

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Background papers

None

Appendices

Appendix A – Report to 23 October 2018 Cabinet meeting