

Executive Decision Report

Determination of Statutory Proposal – Proposed Expansion of Ellesmere College

Decision to be taken by: Assistant City Mayor for
Education and Housing

Decision to be taken on: 11 May 2021

Strategic Director: Martin Samuels

Useful information

- Ward(s) affected: All
- Report author: Tracie Rees, tracie.rees@leicester.gov.uk ext. 37 2301
- Report version number 1.0

1. Summary:

- 1.1. To determine the statutory proposal dated 2 March 2021 to approve the expansion of Ellesmere College by a further 60 placements to support children and young people with complex Autistic Spectrum Disorders to be located at a satellite site at Knighton Fields Centre.
- 1.2. Following the expiry of a statutory notice on 30 March 2021, it is also the Councils intention to permit Ellesmere College to use the Knighton Fields Centre as a satellite site to accommodate the 60 additional placements.

2. Recommendations:

- 2.1. The Executive is recommended to:
 - i) Note the outcome of the 4 week statutory notice period that expired on 30 March 2021
 - ii) Note that no representations were received during the 4 week statutory notice period
 - iii) To permit Ellesmere College to use the Knighton Fields Centre as a satellite site to expand its existing capacity by 60 pupils with effect from 1 September 2021.
 - iv) To note that a further report will be issued shortly which shows the additional associated costs for the occupation of the Knighton Fields Centre building by Ellesmere College.

3. Supporting information including options considered:

- 3.1 The City Council Local published a statutory notice on 2 March 2021 proposing to enable Ellesmere College to expand its pupil numbers by a further 60 placements at a satellite site at Knighton Fields Centre. The four week notice period ended on 30 March 2021, and no representations were received. Therefore, the Council proposes to support the expansion of Ellesmere College and to permit them to use the Knighton Fields Centre as a satellite site for pupils with complex Autistic Spectrum Disorders (ASD).
- 3.2 Additional building work will be required to the Knighton Fields Centre to accommodate children and young people with complex ASD and to separate the building from the adjoining Millgate School. An assessment of the required building work will be completed and a further report presented to the Executive with detailed costings. Any costs will be allocated from the Councils Capital

Expansion programme.

- 3.3 The Council has also issued a statutory notice to permit Ellesmere College to use The Rowans as a second satellite site. If approved, this would increase the school capacity by a further 80 pupils. However, these two matters are not connected.

3.4 The role of the LA as decision maker

Decisions on school organisation are taken by the City Council as the relevant Local Authority or by the schools adjudicator dependent on the decision required by 'The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013. As this proposal is for a change to existing schools, then in this instance, the decision falls to the city council and not the Schools Adjudicator.

3.5 Statutory Guidance - factors to be considered by the LA as decision maker in making changes to maintained schools.

Decision makers are required to have regard to guidance issued by the Secretary of State when they take a decision on proposals. The guidance documents are available at

<https://www.gov.uk/government/publications/school-organisation-maintained-schools>

The "Guidance for Decision-makers" sets out some the factors that decision-makers should consider when deciding a proposal. These factors are not exhaustive and the importance of each will vary depending on the type and circumstances of the proposal. All proposals must be considered on their individual merits.

The format of this report follows the framework of the guidance for this proposal. The text in italics at the start of each section contains extracts from the guidance to assist the Executive to understand the context. The text beneath the extracts in each section contains officer comment in relation to the factors.

3.6 Related proposals

Any proposal that is 'related' to another proposal must be considered together. A proposal should be regarded as 'related' if its implementation (or non-implementation) would prevent or undermine the effective implementation of another proposal. Decisions for 'related' proposals should be compatible.

A statutory proposal is proposed for The Rowans to become a sixth form satellite site for Ellesmere College. Whilst these proposals both relate to the expansion of Ellesmere College the Council does not consider that they are related because the implementation or non-implementation of either proposal would not prevent or undermine the implementation of the other. Therefore, the Knighton Fields Centre proposal is not related to any other project.

3.7 Conditional approval

Decision-makers may give conditional approval for a proposal subject to certain prescribed events. The decision-maker must set a date by which the condition should be met but can modify the date if the proposer confirms, before the date

expires, that the condition will be met later than originally thought.

There are no prescribed events related to this proposal that would require a conditional approval.

3.8 Publishing decisions

*All decisions (rejected and approved – with or without modifications) must give reasons for such a decision being made. **Within one week** of making a decision the decision-maker should arrange (via the proposer as necessary) for the decision and the reasons behind it to be published on the website where the original proposal was published.*

The decision will be communicated to all affected parties, and will be published on the website where the original proposal was published.

3.9 Consideration of consultation and representation period

*The decision-maker will need to be satisfied that the appropriate fair and open local consultation and/or representation period has been carried out and that the proposer has given full consideration to all the responses received. If the proposer has failed to meet the statutory requirements, a proposal may be deemed invalid and therefore should be rejected. The decision-maker must consider **ALL** the views submitted, including all support for, objections to and comments on the proposal.*

On 2 March 2021 the Local Authority published a statutory proposal for the expansion of Ellesmere College.

A four week period of statutory representation followed, ending 30 March 2021.

The statutory notice was published in the Leicester Mercury, placed on the schools' gates, and publicised within the e-bulletin sent to all Education settings. Copies of the proposals were sent to:

- The Chair of Governors
- Parents and carers
- Local MP
- Ward Councillors
- Secretary of State, c/o School Organisation DfE
- Leicestershire County Council
- Church of England and Roman Catholic Diocese education representatives

During the period of representation, any person or organisation could submit comments on the proposals to the Local Authority. No representations were received.

Whilst there was no formal representation within the statutory consultation relating to the expansion of Ellesmere College. One of the governors at Millgate School and local ward Councillor raised concerns about the data used to determine if Ellesmere College should be permitted to use the Knighton Fields Centre. Therefore, an independent review was commissioned which validated the data and this was fed back to the individual Governor/Councillor before the decision was taken.

3.10 Education standards and diversity of provision

Decision-makers should consider the quality and diversity of schools in the relevant area and whether the proposal will meet or affect the needs of parents; raise local standards and narrow attainment gaps.

The school is rated good by Ofsted. The school has combined KS3 and KS4 results above the Leicester average and in line with national averages. The proposed satellite site will provide the additional accommodation needed for the increase in pupil places.

Current standards at this school gives confidence that an expanded school will be able to provide high quality outcomes for its pupils.

3.11 A school-led system with every school an academy

The 2016 White Paper Education Excellence Everywhere, sets out the department's aim that by the end of 2020, all schools will be academies or in the process of becoming academies. The decision-maker should, therefore, take into account the extent to which the proposal is consistent with this policy.

The Government's policy on academies is not directly applicable to this proposal, as the proposal does not create a new school which is when the 'academy presumption' applies.

3.12 Demand v need

In assessing the demand for new school places the decision-maker should consider the evidence presented for any projected increase in pupil population (such as planned housing developments) and any new provision opening in the area (including free schools).

The decision-maker should take into account the quality and popularity of the schools in which spare capacity exists and evidence of parents' aspirations for a new school or for places in a school proposed for expansion. The existence of surplus capacity in neighbouring less popular schools should not in itself prevent the addition of new places.

Reducing surplus places is not a priority (unless running at very high levels). For parental choice to work effectively there may be some surplus capacity in the system as a whole. Competition from additional schools and places in the system will lead to pressure on existing schools to improve standards.

The forecast for the City indicate that there is a deficit of SEND School places. The number of pupils with an EHCP or statement in the city have risen by 77% since 2010. Demand for special school places has increased every year for the last 6 years. This trend is forecast to continue for future years.

3.13 School size

Decision-makers should not make blanket assumptions that schools should be of a certain size to be good schools, although the viability and cost-effectiveness of a proposal is an important factor for consideration. The decision-maker should also

consider the impact on the LA's budget of the need to provide additional funding to a small school to compensate for its size.

The additional pupils will help support the viability and cost effectiveness of the school.

3.14 Proposed admission arrangements

In assessing demand the decision-maker should consider all expected admission applications, not only those from the area of the LA in which the school is situated. Before approving a proposal that is likely to affect admissions to the school the decision-maker should confirm that the admission arrangements of the school are compliant with the School Admissions Code. Although the decision-maker cannot modify proposed admission arrangements, the decision-maker should inform the proposer where arrangements seem unsatisfactory and the admission authority should be given the opportunity to revise them.

The admissions procedure for special schools will be adhered to.

3.13 National curriculum

All maintained schools must follow the National Curriculum unless they have secured an exemption for groups of pupils or the school community.

The school will follow the National Curriculum.

3.14 Equal opportunity issues

The decision-maker must have regard to the Public Sector Equality Duty (PSED) of LAs/governing bodies, which requires them to have 'due regard' to the need to:

- *eliminate discrimination;*
- *advance equality of opportunity; and*
- *foster good relations.*

The decision-maker should consider whether there are any sex, race or disability discrimination issues that arise from the changes being proposed, for example that where there is a proposed change to single sex provision in an area, there is equal access to single sex provision for the other sex to meet parental demand. Similarly there should be a commitment to provide access to a range of opportunities which reflect the ethnic and cultural mix of the area, while ensuring that such opportunities are open to all.

The school is fully committed to meeting all their statutory duties in respect of equality of opportunity, especially in respect of protected characteristics. In particular, the governing body advised that it is committed to meeting its public sector duties in respect of:

- eliminating discrimination, harassment and victimisation among pupils of all ages, irrespective of their backgrounds, and particularly where it is directed at pupils with protected characteristics.
- promoting equality of opportunity by meeting the needs of pupils where they are different from the needs of other pupils.
- fostering good relations between the full range of different groups represented in the school and the local community.

The schools' main aim is to ensure that all pupils achieve highly, irrespective of their backgrounds or characteristics.

3.15 Community cohesion

Schools have a key part to play in providing opportunities for young people from different backgrounds to learn with, from and about each other; by encouraging, through their teaching, an understanding of, and respect for, other cultures, faiths and communities. When considering a proposal, the decision-maker must consider its impact on community cohesion. This will need to be considered on a case-by-case basis, taking account of the community served by the school and the views of different sections within the community.

The school promotes a set of values through which the pupils grow to be mature, reflective and contributing adults.

3.16 Travel and accessibility

Decision-makers should satisfy themselves that accessibility planning has been properly taken into account and the proposed changes should not adversely impact on disadvantaged groups.

The decision-maker should bear in mind that a proposal should not unreasonably extend journey times or increase transport costs, or result in too many children being prevented from travelling sustainably due to unsuitable walking or cycling routes.

A proposal should also be considered on the basis of how it will support and contribute to the LA's duty to promote the use of sustainable travel and transport to school.

To minimise the impact of the additional pupils transport assessments have been undertaken and were submitted as part of the planning application for the building work.

An Accessibility Plan will be drawn up in compliance with current legislation and requirements as specified in Schedule 10, relating to Disability, of the Equality Act 2010. School Governors are accountable for ensuring the implementation, review and reporting on progress of the Accessibility Plan over a prescribed period.

The aim is to provide an accessible environment which values and includes all pupils, staff, parents/carers and visitors regardless of their education, physical, sensory, social, spiritual, emotional and cultural needs.

The plan will be updated annually and fully when the proposal is completed.

The Accessibility Plan will contain relevant actions to:

- Improve access to the physical environment of the school, adding specialist facilities as necessary. This covers reasonable adjustments to the physical environment of the school and physical aids to access education.
- Increase access to the curriculum for pupils with a disability, expanding and

making reasonable adjustments to the curriculum as necessary to ensure that pupils with a disability are as, equally, prepared for life as are the able bodied pupils;

3.17 Funding

*The decision-maker should be satisfied that any land, premises or necessary funding required to implement the proposal will be available and that all relevant local parties (e.g. trustees or religious authority) have given their agreement. A proposal **cannot** be approved conditionally upon funding being made available.*

Where proposers are relying on the department as the source of capital funding, there can be no assumption that the approval of a proposal will trigger the release of capital funds from the department, unless the department has previously confirmed in writing that such resources will be available; nor can any allocation 'in principle' be increased. In such circumstances the proposal should be rejected, or consideration deferred until it is clear that the capital necessary to implement the proposal will be provided.

If this statutory proposal is approved it will require building works to be undertaken to the satellite site. The funding for the original refurbishment of the building was approved in a separate decision report and a further report will be presented to the Executive detailing the costs of any additional building work required to support children and young people with complex ASD.

3.18 School premises and playing fields

Under the School Premises Regulations all schools are required to provide suitable outdoor space in order to enable physical education to be provided to pupils in accordance with the school curriculum; and for pupils to play outside safely.

Guidelines setting out suggested areas for pitches and games courts are in place although the department has been clear that these are non-statutory.

Government regulations and guidelines are considered in relation when undertaking the design work to accommodate the additional pupils.

3.19 Closure proposals (under s15 EIA 2006)

The decision-maker should be satisfied that there is sufficient capacity to accommodate displaced pupils in the area, taking into account the overall quality of provision, the likely supply and future demand for places. The decision-maker should consider the popularity with parents of the schools in which spare capacity exists and evidence of parents' aspirations for those schools.

This is not applicable to this statutory proposal.

3.20 Schools to be replaced by a more successful/popular school

Such proposals should normally be approved, subject to evidence provided.

This is not applicable in this instance.

3.21 Schools causing concern

In determining proposals decision-makers must ensure that the guidance on schools causing concern (Intervening in falling, underperforming and coasting schools) has been followed where necessary.

This is not applicable in this instance.

3.22 Rural schools and the presumption against closure

There is a presumption against the closure of rural schools. This does not mean that a rural school will never close, but the case for closure should be strong and the proposal clearly in the best interests of educational provision in the area.

This is not applicable in this instance

3.23 Early years provision

In considering a proposal to close a school which currently includes early years provision, the decision-maker should consider whether the alternative provision will integrate pre-school education with childcare services and/or with other services for young children and their families; and should have particular regard to the views of the Early Years Development and Childcare Partnership.

The decision-maker should also consider whether the new, alternative/extended early year's provision will maintain or enhance the standard of educational provision for early years and flexibility of access for parents. Alternative provision could be with providers in the private, voluntary or independent sector.

This is not applicable in this instance.

3.24 Nursery schools and the presumption against closure

There is a presumption against the closure of nursery schools. This does not mean that a nursery school will never close, but the case for closure should be strong.

This is not applicable to this proposal.

3.25 Balance of denominational provision

In deciding a proposal to close a school that has been designated with a religious character, decision-makers should consider the effect that this will have on the balance of denominational provision in the area.

This is not applicable to this proposal.

3.26 Community services

Some schools may be a focal point for family and community activity, providing extended services for a range of users, and its closure may have wider social consequences. The effect on families and the community should be considered when considering proposals about the closure of such schools. Where the school is providing access to extended services, provision should be made for the pupils and their families to access similar services through their new schools or other means.

The school currently does not have high community use.

3.27 Decision making options

The representation period was 4 weeks. The representation period finished on 30 March 2021. Decisions must be made within a period of two months of the end of the representation period. Therefore a decision must be made by 30 May 2021.

When issuing a decision, the Decision Maker (LA) can decide to:

- Reject the proposals;
- approve the proposals;
- approve the proposals with a modification (e.g. the implementation date);
or
- approve the proposals subject to them meeting a specific condition

3.28 Conclusions

On the basis that there have been no negative representations to the statutory notice and detailed proposals, the commentary set out in this report, and statutory considerations, the Executive is invited to determine the proposals by approving the expansion of this school with effect from 1 September 2021.

4. Details of scrutiny

- 4.1. The statutory notice was published in the Leicester Mercury on 2 March 2021. Copies of the notice were also posted at the entrances to the schools.
- 4.2. Copies of the statutory notice and complete proposals were also sent to:
 - The Governing Body
 - Parents and carers of pupils
 - The Church of England Diocesan Board of Education (Leicester)
 - The Roman Catholic Diocesan Board (Nottingham)
 - Secretary of State for Education via School Organisation Unit
 - Member of Parliament
 - Leicestershire County Council, as the neighbouring Local Authority

5. Financial, legal and other implications

5.1. Financial implications

There are no financial implications arising from this report. The cost of the additional places has already been included in the High Needs Block budget for 2021/22.

Martin Judson, Head of Finance

5.2. Legal implications

The relevant legal framework is contained in Chapter II, Part II of the School Standards and Framework Act 1998 and the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013. This is supported by the statutory guidance *Making significant changes ('prescribed alterations') to maintained schools*.

This report follows the formal representation (consultation) period which must have lasted for a period of at least four weeks.

A decision must be made within a period of two months of the end of the representation period. If this timeframe is not complied with, the proposal must be referred to the Schools Adjudicator for determination.

The statutory guidance makes it clear that when making a decision, the Council will need to be satisfied that the appropriate fair and open local consultation and/or representation period has been carried out and that the proposer has given full consideration to all the responses received. This report details the process carried out for the consultation period and the responses received.

If a decision is made to proceed with the expansion, within one week the Council must publish their decision and the reasons for it, on the website where the original proposal was published and send copies to all the parties identified in the guidance who received the proposals during the representation period.

Certain bodies do have the right of appeal against the decision made and any appeal must be made to the Schools Adjudicator within four weeks of the decision.

Julia Slipper, Principal Lawyer (Employment & Education), Tel ext: 37 6855

If Ellesmere ever apply to convert to academy status under the Academies Act 2010, then it's likely that they would be successful in including the KFC as part of the property leased to them under the conversion.

John McIvor, Principal Lawyer (Property & Highways Team), Tel ext: 37 1409

5.3. Equalities implications

When making decisions, the Council must comply with the Public Sector Equality Duty (PSED) (Equality Act 2010) by paying due regard, when carrying out their functions, to the need to eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act, to advance equality of opportunity and foster good relations between people who share a 'protected characteristic' and those who do not.

In doing so, the council must consider the possible impact on those who are likely to be affected by the recommendation and their protected characteristics. Protected Characteristics under the Equality Act 2010 are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

An expansion of Ellesmere College, as recommended in the report would create 60 additional placements to support children and young people with complex Autistic Spectrum Disorders. This is likely to have positive impacts in terms of the aim of the PSED to advance equality of opportunity, particularly in relation to the protected characteristic/s of age and/ or disability and have a positive effect on the lives of children within the city. It will help the council in meeting the needs of children across the city with special educational needs and help to increase the number of school places to ensure we keep up with demand.

Accessible and inclusive design will support the general aims of the PSED and will be beneficial particularly in removing barriers to participation. An equalities impact assessment is being carried out so that the consideration of equalities impacts is taken into account in the development of the proposals and as an integral part of the decision making process. This should be revisited throughout the decision-making process and also take into account any consultation findings.

Schools are also subject to the PSED and have responsibilities to prevent discrimination against and ensure the fair treatment of all children and young people with disabilities. In addition, employers have duties under the Equality Act 2010.

Sukhi Biring, Equalities Officer, Tel ext. 37 4148

6. Summary of appendices

Appendix A – Copy of the statutory proposal notice.

Is this a private report (If so, please indicated the reasons and state why it is not in the public interest to be dealt with publicly)?

Is this a “key decision”?

Yes

If a key decision please explain reason

These linked School Organisation decisions are significant in terms of its effects on communities living or working in two or more wards in the City

Appendix A – statutory proposal notice

Re-organisation of Ellesmere College

Notice is given in accordance with The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 that Leicester City Council intends to make prescribed alterations to Ellesmere College, Braunstone Lane East, Leicester, LE3 2FD with effect from 1st September 2021. This expansion will be achieved by the refurbishment of Knighton Fields Centre, Herrick Road, Leicester LE2 6DD. It is proposed to change the number on roll of Ellesmere College, from its current capacity of 366 pupils to 426 pupils. If approved, this expansion will become a further satellite site, therefore making it a three split site school. This takes into account the November 2020 statutory notice which was published for The Rowans to become a 60 place sixth form satellite site.

Following the identification of key gaps in the provision of children and young people with complex Autistic Spectrum Disorder (ASD). Consideration was given to the ability of all the special schools in the city, based on their current provision to understand if they could extend their existing provision to include individuals with complex ASD. Ellesmere College is considered best placed to provide this support for children and young people as they have the relevant staff and skills in place and a proven track record of successfully meeting the needs of the children and young people with complex ASD.

The intended expansion of 60 will be fully implemented upon the completion of the Knighton Fields Centre refurbishment project.

The new site (Knighton Fields Centre) will be used to accommodate pupils aged 5 – 19. The admissions arrangements will remain the same. Whole school activities and the Senior Leadership Team will be split between the sites. Staff and Governors will oversee all sites. The students reside across the city, for some pupils the new site will be more accessible than the current site.

Statutory consultation requirements relating to this proposal have been complied with.

This Notice is an extract from the complete proposal. Copies of the complete proposal can be obtained from:

Kursheda Williamson, Development Consultant Officer, Sufficiency and Admissions,
0116 4542172 or from kursheda.williamson@leicester.gov.uk

Within four weeks from the date of publication of this proposal, any person may object to or make comments on the proposal by sending them to:

Pauline Killoran, Head of Service, Special Educational Needs and/or Disabilities,
by email to pauline.killoran@leicester.gov.uk

Signed: Tracie Rees, Director for Adult Social Care and Commissioning

Publication Date: 2 March 2021

Notes:

1. The expanded school will retain its school LA/DFE number and unique reference number.
2. An additional site is required for this expansion. This will be subject to the normal planning permission process.