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# **Executive Decision**

**Determination of Statutory Proposals -  
proposed expansion of Ellesmere College and  
Nether Hall Special School**

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

Decision to be taken on: 17 June 2021

Lead director/officer: Martin Samuels

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### Useful information

- Ward(s) affected: All
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- Report version number: 1

## 1. Summary

- 1.1. To seek a determination to statutory proposals for the proposed expansion of Ellesmere College and Nether Hall Special School. The proposals, if approved would create additional pupil places.

## 2. Recommended actions/decision

- 1.2. The Executive is recommended to approve the following:
  - i) Ellesmere College will enlarge its capacity from its current capacity of 286 to 366 with effect from 1 September 2021
  - ii) Nether Hall Special School will enlarge its capacity from its current capacity of 110 to 140 with effect from 1 September 2021

Below is a summary of the expansion site for each school:

- Ellesmere College – satellite site to be **The Rowans for post 16 provision** (this will be a second satellite site, as another statutory proposal has now been determined for the Knighton Field Centre to be a satellite of Ellesmere. The total pupil numbers will be 426)
- Nether Hall Special School - satellite site to be **The Armadale Centre for post 16 provision**

## 3. Scrutiny / stakeholder engagement

- 3.1. The statutory notices were published in the Leicester Mercury on 14 April 2021. Copies of the notice were also posted at the entrances to the schools.

- 3.2. Copies of the statutory notices were also sent to:

The Governing Body of both schools.

- Parents and carers of pupils at both schools.
- 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

## 4. Background and options with supporting evidence

4.1 The Local Authority published a statutory notice and detailed proposals for the proposed expansion of Ellesmere College and Nether Hall Special School. A four-week period of representation followed, during which no representations were received.

### 4.2 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.

## 5. Detailed report

### 5.1 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.

### 5.2 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.*

These proposals are not related and therefore do not need to be considered together. However, Ellesmere has published another statutory proposal to expand by developing the Knighton Field Centre. This has now been approved and determined.

### 5.3 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.

### 5.4 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 proposals were published.

### 5.5 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 14 April 2021 the Local Authority published statutory proposals for the expansion of Ellesmere College and Nether Hall Special School.

A four week period of statutory representation followed, ending 12 May 2021.

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

- The Chair of Governors at both schools
- Parents and carers of both schools
- Local MP
- Ward Councillors
- Secretary of State, care of School Organisation Department for Education
- 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.

## **5.6 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 schools are rated good by Ofsted. The schools have combined Key Stage 3 and Key Stage 4 results above the Leicester average and in line with national averages.

The proposed satellite sites will provide post 16 accommodation, which will mean that the existing schools will have the additional accommodation needed for the increase in pupil places.

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

## **5.7 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 these proposals, as the proposals do not create a new school which is when the 'academy presumption' applies.

## **5.8 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.*

Forecast for the City indicate that there is a deficit of SEND School places. Numbers 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.

## **5.9 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 schools.

## **5.10 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.

## **5.11 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 schools will follow the National Curriculum.

## **5.12 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 schools are fully committed to meeting all their statutory duties in respect of equality of opportunity, especially in respect of protected characteristics. The governing body 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.

### **5.13 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 schools promote a set of values through which the pupils grow to be mature, reflective and contributing adults.

### **5.14 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. Post 16 pupils will transfer to the new site.

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;

### **5.15 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 these statutory proposals are approved, building works will be undertaken to the satellite sites. The funding for the refurbishment of the buildings has been approved in a separate report.

### **5.16 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 when undertaking the design work to accommodate the additional pupils.

### **5.17 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 these statutory proposals.

### **5.18 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 these instances.

#### **5.19 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 these instances.

#### **5.20 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 these instances

#### **5.21 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 these instances.

#### **5.22 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 these proposals.

#### **5.23 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 these proposals.

#### **5.24 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.*

None of schools currently have high community use.

## **5.25 Decision making options**

The representation period was 4 weeks. The representation period finished on 12 May 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 12 July 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

## **5.26 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 these schools with effect from 1 September 2021.

## **6. Financial, legal, equalities, climate emergency and other implications**

### 6.1 Financial implications

The additional places and costs at the two sites have been factored into 2021/22 budgets for the High Needs Block of the Dedicated Schools Grant. The capital cost is included in the existing capital programme.

**Simon Walton, Principal Accountant, Tel ext 37 4053**

### 6.2 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. The proposed expansions are not related or contingent on each other and therefore a decision should be made in relation to each separate expansion. A decision must be made within a period of two months of the end of the representation period.

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 decisions are made to proceed with the expansions, 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**

### 6.3 Equalities implications

Under the Equality Act 2010, public authorities have a Public Sector Equality Duty (PSED) which means that, in carrying out their functions, they have a statutory duty to pay due regard to the need to eliminate unlawful discrimination, harassment and victimisation, to advance equality of opportunity between people who share a protected characteristic and those who don't and to foster good relations between people who share a protected characteristic and those who don't.

Protected Characteristics under the Equality Act 2010 are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation.

The report seeks approval for the proposed expansion of Ellesmere College and Nether Hall Special School. The proposal, if approved would create additional pupil places. 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, and the distance they travel to school.

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 has been taken into account in the development of the proposals and as an integral part of the decision making process.

**Surinder Singh, Equalities Officer, Tel ext. 37 4148**

#### 6.4 Climate Emergency implications

Schools are a major source of carbon emissions in the city. Following the council's declaration of a climate emergency and the development of the council's Climate Emergency Strategy & Action Plan, addressing these emissions is vital to meet Leicester City Council's ambition to reach carbon neutrality.

The climate change implications of the proposed changes should be considered separately at the design stage where they involve any work to school buildings, including consideration of opportunities to increase the energy efficiency and reduce the carbon emissions of the buildings. A toolkit is also being developed to support the achievement of reduced carbon emissions in council capital construction and renovation projects.

**Aidan Davis, Sustainability Officer, Ext 37 2284**

#### 6.5 Other implications (You will need to have considered other implications in preparing this report. Please indicate which ones apply?)

Not applicable

#### **7. Background information and other papers:**

None

#### **8. Summary of appendices:**

Not applicable

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

No

#### **10. Is this a "key decision"? If so, why?**

Yes.

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