

Operational Decision Record

Publication Date 16/09/2022	Decision Reference Number 4721
Decision Title	
Allocation of Section 106 Education Funding for Middleton Primary School to develop specialist provision.	
Decision Value	
£100,000	
Revenue or Capital Spend?	
Capital	
Department	
Education, People	
Contact Officer (Name, job title, and contact details)	
Lucy Juby, Education Project Manager, lucy.juby@nottinghamcity.gov.uk , Tel. 8765041 Robert Caswell, Programme Manager, Major Projects, robert.caswell@nottinghamcity.gov.uk	
Decision Taken	
1) To apply up to £100,000 of Section 106 education contribution to fund initial minor adaptation / improvement works and further feasibility work to develop specialist provision for children with special educational needs and disabilities (SEND) at Middleton Primary School.	
Reasons for Decision and Background Information	
<p>Middleton Primary is an inclusive school, which welcomes children with complex SEND. In agreement with the Council's Head of SEND and Vulnerable Pupils, the School are committed to improving and adapting a currently un-used building on the school site, to create a specialist area to enable staff to meet the needs of the growing number of children on roll with complex SEND.</p> <p>There are some immediate minor improvement works required, such as reconfiguring the existing toilets to create a changing area, partitioning off a section to create a sensory area and some upgrades to lighting. Beyond this, feasibility funding is required to assess the suitability of the attached conservatory and consider what adaptations will enable it to be a usable area to maximise space and create appropriate facilities. The project scope is being developed and the total cost to be confirmed following feasibility assessment undertaken by the Council's Major Projects team.</p> <p>A Council Plan priority is to support all schools and settings to be inclusive and to ensure that children with additional needs can progress well. This is underpinned by the Nottingham City SEND Strategy 2019-2023, which prioritises developing additional specialist or enhanced provision within mainstream schools, to support the growing number of young people complex needs, particularly Autism Spectrum Disorder (ASD) and Social, Emotional and Mental Health (SEMH).</p>	

The development of an enhanced provision at Middleton Primary would be one of a range of measures developed by the Council in partnership with settings to ensure that the SEND Strategy commitments are delivered for young people in Nottingham. Middleton Primary School was expanded in 2017 to increase capacity and pupil admission number, to meet the increasing pupil growth, partially due to inward migration and significant family housing development happening in the area.

The intended completion date of the initial priority works now required is October 2022. Feasibility works for the building adaptations will commence in the Autumn Term 2022.

The section 106 agreement dated 27 September 2018 linked to the development at land at 100 Woodyard Lane, planning ref 18/00060/POUT ("the S106 Agreement") included an obligation on the owner to pay a total education contribution ("the Education Contribution") of £644,159 (inclusive of indexation), 50% of which comprises the Total Primary Contribution and 50% the Total Secondary Contribution.

£296,845 of the relevant Section 106 education funding allocation is currently available for expenditure and must be spent in accordance with the legal obligation, as specified below in additional information.

The spending proposal to allocate £100,000 of the first instalment of the Education Contribution falls within the Council's obligations in relation to the S106 Agreement. Namely to use the Education Contribution "towards the provision of new or enhanced education facilities to accommodate pupils at the Fernwood and/or Middleton Primary and Secondary Schools." Middleton Primary is also the catchment school for the new development, which this Section 106 funding is linked to.

Other Options Considered and why these were rejected

The legal obligations of the Section 106 agreement determines that the funds must be spent at the specified schools. If the legal obligations are not adhered to, the Council risks clawback of the funds from the landowners who made the payments.

Reasons why this decision is classified as operational

- Its value is below £150,000
- It is taken within agreed policies and budgets.
- The financial value of the decision reflects the total committed financial impact of that decision to the Council.

Additional Information

The Council's Legal and Finance colleagues have been consulted and confirmed that the funds have been received as set out in this document and that the proposed spend is compliant with the legal obligations of the S106 funding.

Finance advice provided by Sarah Baker (Commercial Business Partner - Projects) and Legal advice provided by Tamazin Wilson (Senior Solicitor)

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The Council is required to use the Education Contribution towards the provision of new or enhanced education facilities to accommodate pupils at the Fernwood and/or Middleton Primary and Secondary Schools, and the S106 Agreement included provision for the Education Contribution to be paid in two instalments. The Council received the first instalment of £300,845 on 19 March 2021, of which £296,845 is available for expenditure after applying the deduction for the administration and monitoring of compliance with the S106 Agreement. 50% of the £296,845, which is currently available for expenditure (£148,423) can therefore, be used towards the provision of new or enhanced education facilities to accommodate pupils at the Fernwood and/or Middleton Primary Schools. The remaining balance of £343,314 is now due and payment was requested on 6th July 2022.

Pursuant to the S106 Agreement the Council is liable to repay any contribution or part contribution which remains unspent or uncommitted for expenditure 5 years after receipt, in the event that the owner requests written confirmation of such expenditure or commitment. The first instalment of the Education Contribution is therefore available for the Council to spend until 19 March 2026.

Should the implementation of this decision involve any transfer of monies by the Council directly to the school, a separate agreement will be required in relation to the School's use of the funds, to ensure that it meets the obligations of the S106 agreement. The conditions will include evidence of plans and quotations for the costs of the project and evidence of works carried out via receipt of invoices for works completed. This ensures that the payment will meet with Financial Regulations.

This project was considered by the Capital Officers Group on 1 August 2022 and approved to go forward for delegated decision.

Decision Maker (Name and Job Title)

Catherine Underwood, Corporate Director for People

Scheme of Delegation Reference Number

Date Decision Taken



**Catherine Underwood
Corporate Director for People**

12/9/2022