

Nottingham City Council Delegated Decision



Nottingham
City Council

Reference Number:

5089

Author:

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Department:

People

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Subject:

To create a Special Educational Needs provision at Nottingham Girls Academy

Key Decision (decision valued at more than £1million):

Yes

Total Value:

£1.980m (Type: Capital)

Decision Being Taken:

1) To approve Education S106 funding of £1,084,950 and High Needs Capital Grant of £895,050 (£1,980,000 in total) to be allocated to create a specialist SEND provision at Nottingham Girls Academy. The estimated total cost of this scheme includes a 10% contingency and is based on the high level scope and cost estimate received from a Scape Framework contractor who has reviewed the site and the proposal. The Council is in receipt of the full funding.2) To authorise the procurement of any necessary contracts to carry out the works and to delegate authority to the Corporate Director for People to award any procured contracts.3) To procure external Legal Advice through the EM Lawshare framework to support the project with both the build contract and the necessary agreements to allow the City Council to undertake works on an academy site and to delegate the approval to either the Director of Legal and Governance or the Head of Legal.To note that the associated spend has been approved by the Section 151 Officer through the Spend Control

Board (Reference: ID 978)

Reasons for the Decision(s)

The High Needs Capital funding is intended to ensure that the Council is able to fulfil its sufficiency duties in relation to the availability of school places for young people with complex SEND. It is apparent from the work carried out as part of the development of the SEND Sufficiency Strategy and the subsequent consultation, that there is an urgent, significant and increasing need for additional capacity for pupils with SEND, both within mainstream and special schools. The need for this provision at Nottingham Girls Academy was identified as a priority in Phase 1 of the SEND Sufficiency Strategy 2023-2025 which was approved by Executive Board in September 2023. The schemes are subject to design/feasibility investigations, to ensure the most appropriate and cost-effective solutions.

The specialist SEND provision at the Nottingham Girls Academy is for 24 pupils aged 11-16 who have moderate learning difficulties (MLD), including Autism or behaviour support needs relating to their MLD. 10 of the places will be additional and commissioned by the LA, to support and accommodate children and young people in the wider community, subject to the SEND requirements of the individuals.

The provision is to be standalone building adjacent to the current teaching block on the site. It will consist of 4 class bases and a number of support spaces in the building. Overall the building is approximately 350m2 and will be single storey.

This proposal aligns with our priorities and will deliver additional capacity which is accessible for pupils in areas of highest need, evidenced by the data set out in the strategy. The Specialist Resourced Provision will support pupils to remain in their local mainstream school, and taught in mainstream classes, while also benefiting from additional focused facilities and support according to their need. In November 2023, Nottingham Girls Academy was awarded an outstanding Ofsted rating and their inclusive practice and excellent support for those with complex needs has been highlighted. Aligning with the national picture, there has been a growth in the number of girls with complex learning needs, including autism and social, emotional and mental health needs. More specialist places are required to address the existing cohorts as well as to make provision for the identified growing need.

In continuing to get value for money from the High Needs budget the SEND capital strategy is a key pivotal point to achieve this. It is essential that there are sufficient local places for the growing number of high needs pupils to avoid costly out of area provision in independent provision and reduce the resultant requirement for longer distance transport provision.

The estimated cost of £1.980m for this scheme includes a 10% contingency and is based on the high level scope and cost estimate received from a Scape Framework contractor who has reviewed the site and the proposal. The project will be funded by Education Section 106 funding of £1,084,950 and High Needs Capital of up to £895,050. The Council is in receipt of the full funding. Combining the two streams of S106 Education funding with High Needs Capital funding will provide value for money for a key project which delivers the priorities of the SEND Sufficiency Strategy, to support the increasing number of pupils with significant SEND in the area.

The S106 education contribution arises from the Chalfont Drive S106 agreement, planning reference 09/02049/POUT (amended by 14/0247/PFUL3). A total of £1,088,948 was received by the Council, from which The Council has applied a sum of £4,000 from that total figure towards the administration and monitoring of compliance of the above S106 agreement, leaving a total of £1,084,950 available for allocation.

The S106 legal agreement states that this element must be spent or committed for spend by 5 March 2024, which is 5 years after the date of payment in full, as the final instalment of £559,514.51 was received on 6 March 2019. Committed means authorised to be spent by exercise of the Council's powers delegated or otherwise.

Spend obligations set out in the Chalfont Drive S106 agreement are to: "not use the Education Contribution paid by the Owner for any purpose except for primary and/or secondary places in the catchment area of the development." There is no official catchment secondary school in this area but Nottingham Girls Academy is the closest school to the Chalfont Drive development, which therefore aligns with the purpose and legal agreement of the funding.

The local authority has a robust medium term financial plan for the High Needs revenue budget. Revenue funding has been identified to ensure ongoing running costs for any newly created provision associated with the High Needs capital plans outlined in the strategy. This involves budgeting for the High Needs place and top-up funding associated with the creation of additional specialist high needs places.

Remodelling of the high needs block was undertaken in November 2023 which confirmed affordability of all phase 1 schemes in the SEND Sufficiency Strategy. The modelling covers finance from the high needs block to cover High Needs place (element 1 and 2) and top-up (element 3) funding associated with the creation of additional specialist high needs

places.

Other Options Considered:

This is one of 6 schemes in Phase 1 of the SEND Sufficiency Strategy. Risks of not investing the funds: we will be unable to meet the needs of the growth in the numbers of young people identified as having SEND and there is insufficient capacity to meet this growing need in secondary settings. National research and recent reviews into safeguarding disabled children identify the inherent risks in children attending residential provision a long distance from home. Nottingham has few children placed in these settings and this proposal will enable this to continue. Additionally, without this investment, there will be an increase in revenue costs as the number of expensive out-of-city placements increases. Currently construction inflation is high and there is a continued pressure on both supply and labour market. In order to mitigate this, the funding requirements factor in 10% contingency. Any delay to funding approvals is also likely to have a negative impact on what can be delivered within the available budget as costs are increasing. It will also cause delay to pupils with significant needs benefitting from the new educational facilities proposed.

Background Papers:

None

Published Works:

SEND Sufficiency and Capital Strategy 2023 - 2028 report to Executive Board 19 September 2023 (minute ref: 34)

Affected Wards:

Leen Valley

Colleague / Councillor Interests:

None

Consultations:

Date: 23/01/2024

Ward Councillors: Audrey Dinnall, Nadia Farhat

Consulted by email 23/1/24 and responses due by 31/1/24. Met with Cllr Dinnall and Cllr Barnard 24/1/24 to discuss the proposal - they are fully supportive,

Those not consulted are not directly affected by the decision.

Crime and Disorder Implications:

None

Equality:

Please login to the system to view the EIA document: EIA - Nottm Girls Academy SEND provision (2).docx

Relates to Council Property Assets:

Yes

Relates to Building Services:

Yes

Decision Type:

Leader's Key Decision

Subject to Call In:

Yes

Call In Expiry date:

21/02/2024

Advice Sought:

Legal, Finance, Procurement, Equality and Diversity

Legal Advice:

In relation to the S106 funding, as set out above, the Council is required by the S106 agreement in respect of Chalfont Drive, planning reference 09/02049/POUT (as varied on three occasions and in particular by Deed of Variation dated 27 August 2015 under planning reference 14/0247/PFUL3) ('the Chalfont Drive S106') "not to use the Education Contribution for any purpose except for primary and/or secondary places in the catchment area of the development".

No alternative agreement(s) in relation to the spending of the education contribution which the Council has received pursuant to the Chalfont Drive S106 ('the Education Contribution') have been brought to my attention, and, as identified in this Decision, the Council may be liable to repay the Education Contribution if it is not spent or allocated for expenditure within 5 years of receipt (by 5 March 2024). It is noted in the Decision that there is no official catchment secondary school for the area of the Chalfont Drive development but that the Nottingham Girls Academy is the closest Secondary School to this development and therefore would appear to be a school where the Education Contribution can be used. It is also noted that the proposal is to provide a standalone building for the specialist SEND provision at the Nottingham Girls Academy which will provide 24 additional places for pupils aged 11-16 who have Autism and other complex learning difficulties. The spending proposals detailed in this Decision would therefore appear to fall within the Council's obligations on the use of the Education Contribution.

Advice provided by Tamazin Wilson (Senior Solicitor) on 24/01/2024.

This is a request for the use of a total of £1.98m of funding for the creation of a standalone building adjacent to the current teaching block at the Nottingham Girls Academy where specialist educational provision for pupils aged 11 - 16 with Autism and other complex learning difficulties will be offered. My comments are limited to the proposed use of £895,050 of High Needs Capital funding.

The Council must ensure that this proposed use of the High Needs Capital funding complies with any conditions attached to that funding by the Department for Education, including the use of that funding to create a 10% contingency. It is assumed that as the contingency is made up of both s106 funding and High Needs Capital funding, that element of the contingency made up of s106 funding will be used first so that if any of the High Needs Capital funding contingency is left unspent, it can be re-purposed for other permissible activities allowed in using the High Needs Capital funding.

Those pupils accessing this provision will do so as a result of their EHC plan. Care will be needed by colleagues undertaking EHC assessments that their recommendations remain driven by the pupils needs as opposed to what provision, including the proposed provision, is available. Otherwise, it is assumed that the new proposed provision will assist the Council to meet its duties to such pupils.

Colleagues should ensure their routes to market for contractors continues to meet the requirements of the Council's constitution and the Public Contract Regulations 2015. In negotiating arrangements with contractors, colleagues will need to have a budget for external legal support and take into consideration the time that may be required to identify a suitable law firm. At present, the Legal Services team does not have any construction law expertise available in-house. Legal Services are happy to support colleagues in finding an external law firm - we can either run a mini-competition or make a direct award (with good reason and subject to sign-off by either the Director of Legal and Governance or the Head of Legal) using the EMLawshare framework.

Section 106

Section 106 agreement 09/02049/POUT, varied by 14/02427/PFUL3 contained an obligation to pay an Education Contribution of £1,021,517 index linked. This was received in two instalments: £529,435.20 on 10/05/2017 and £559,514.51 on 06/03/2019, totalling £1,088,949.71. The agreement also stipulated that a sum of 3% to a maximum of £4,000 may be subtracted from this for administration and monitoring costs. This was done, leaving £1,084,949.71 available to be applied as set out in Schedule 2: "Not use the Education Contribution paid by the Owner for any purpose except for primary and/or secondary places in the catchment area of the Development."

The sum must be committed by the fifth anniversary of the payment in full of the contribution - 6th March 2024.

Upon approval, this sum will be marked as committed within S106 records.

High Needs Funding

The General Fund Capital Programme includes a line of £14.836m in relation to uncommitted Higher Needs Grant awarded to the Council. This is in the planned section of the Programme and specific schemes utilising High Needs Grant then move through the approval process and are added to the Approved section of the Programme, with the planned line decreasing accordingly.

Therefore following the formal approval of this decision, the Planned Higher Needs Grant line will be reduced by £895,050 with a balance remaining of £13,941,319.

Following approval of this decision a capital project will be set up within the Approved Capital Programme, named Creation of specialist SEND provision at Nottingham Girls Academy, funded by £1,084,949.71 S106 09/02049/POUT and £895,050 Higher Needs Grant.

The bottom line of the overall (Approved & Planned) Capital Programme will therefore only increase by the S106 element.

Advice provided by: Sarah Baker, Senior Commercial Business Partner and Tom Straw, Senior Accountant (Capital Programmes) on 01/02/2024

Procurement Advice:

It is proposed to awarded contract/s using the appropriate SCAPE (Direct Call-off) single supplier Frameworks. Best Value has already been achieved through the respective procurement processes when setting up the individual Framework Agreements. The main contractors are supported by an extensive local supply chain, many of which are locally based or employee their workforce from within the local region.

The proposals raise no significant procurement issues, but care must be taken to ensure compliance with the SCAPE Framework terms. The contracts to be entered into between the contractors and the Council will be based on the SCAPE framework template call off contracts which are from the NEC suite of construction and professional services contracts and are fully compliant with the Public Contract Regulations 2015.

As these schemes are externally grant funded there will not be any cashable savings for the Council.

Advice provided by Sue Oliver (Procurement Category Manager for Places) on 24/01/2024.

Building Services Advice:

We support the proposal and would remind colleagues that we will require a full electronic Health and Safety folder complete with all architectural drawings, operations manuals etc so this can be saved in to the CAFM system. We will need to understand who is managing the defect warranties and if statutory testing is required we will need to be notified of this as soon as is possible. Advice provided by Trevor Bone (Property Maintenance Manager) on 24/01/2024.

Property Advice:

Greenwood Academies Trust hold a 125-year lease for the Nottingham Girls Academy site. It has full repairing and insuring terms on the lessee, and consideration will need to be given, in conjunction with colleagues from the Legal Services Conveyancing team to ensure that there are no issues with any part of this lease as a result of the council undertaking the recommended decision.

It is crucial that it is understood by all parties, and reflected in relevant agreements that the control, repair and maintenance of these new buildings are passed to the Academy Trust at practical completion, or on a clearly defined timetable thereafter (taking in to account warranty periods etc). It is the intent of the council that the new buildings should be included and treated in line with the site and buildings as were in place at the time of signing the lease. Advice provided by John West (Estates Surveyor) on 30/01/2024.

Equality and Diversity Advice:

The EIA has been reviewed. There are no impacts to any of the protected characteristics. I am therefore happy to sign off. Advice provided by Rosey Donovan (Equality and Employability Consultant) on 05/02/2024.

Signatures:

David Mellen (Leader/ PH Strategic Regeneration & Communications)

SIGNED and Dated: 14/02/2024

Catherine Underwood (Corporate Director for People)

SIGNED and Dated: 14/02/2024