

Executive Board – 17 December 2024

Subject:	To create a Special Educational Needs Provision at Rise Park Primary School and The Milford Academy Primary School
Corporate Director(s)/Director(s):	Jill Colbert, Corporate Director for Children and Education Services Nick Lee, Director for Children and Education Services
Executive Member(s):	Councillor Cheryl Barnard, Executive Member for Children, Young People and Education
Report authors and contact details:	Lucy Juby, School Organisation & Place Planning Manager Neil Brettell, Service Manager SEND
Other colleagues who have provided input:	Caroline Butrymowicz, Corporate Programme Management Office David Solomon, Corporate Programme Management Office
Subject to call-in:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Key Decision:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Criteria for Key Decision:	
(a)	<input checked="" type="checkbox"/> Expenditure <input type="checkbox"/> Income <input type="checkbox"/> Savings of £750,000 or more taking account of the overall impact of the decision
and/or	
(b)	Significant impact on communities living or working in two or more wards in the City <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Type of expenditure:	<input type="checkbox"/> Revenue <input checked="" type="checkbox"/> Capital If Capital, provide the date considered by Capital Board Date: 14 November 2024
Total value of the decision:	£2,000,000
Section 151 Officer expenditure approval	Has the spend been approved by the Section 151 Officer? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/a Spend Control Board approval reference number: Not required
Commissioner Consideration	Has this report been shared with the Commissioners' Office? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Any comments the Commissioners wish to provide are listed below.
Wards affected:	Bulwell Forest and Clifton East
Date of consultation with Portfolio Holder(s):	14 November 2024
Relevant Council Plan Key Outcome:	
Clean, Green and Connected Communities	<input type="checkbox"/>
Keeping Nottingham Working	<input type="checkbox"/>
Carbon Neutral by 2028	<input type="checkbox"/>
Safer Nottingham	<input type="checkbox"/>
Child-Friendly Nottingham	<input checked="" type="checkbox"/>
Living Well in Our Communities	<input type="checkbox"/>
Keeping Nottingham Moving	<input type="checkbox"/>
Improve the City Centre	<input type="checkbox"/>
Better Housing	<input type="checkbox"/>
Serving People Well	<input checked="" type="checkbox"/>
Summary of issues (including benefits to citizens/service users):	
<p>Nottingham is experiencing considerable growth in the number of young people identified as having Special Educational Needs and Disabilities (SEND) and there is an urgent, significant and increasing need for additional capacity to meet this demand. The Council is committed to supporting our schools and settings within the city to offer high quality, inclusive education.</p> <p>The need for SEN provisions at both Rise Park Primary School and the Milford Academy Primary School, as proposed in this report, were identified as priorities in Phase 1 of the Council's SEND Capital Strategy 2023-28, to support the Council's statutory sufficiency duties in relation to the delivery of suitable</p>	

specialist educational provision for children and young people with complex SEND.

The development of provision at Rise Park Primary School and The Milford Academy Primary School, will offer access to high quality specialist educational provisions for local pupils. The developments set out within the SEND Capital Strategy are aspirational for pupils with SEND residing in Nottingham and are supported by local parent carer forums and schools. The provisions are also positive for the council's general fund, ultimately reducing reliance on home to school transport by avoiding the need to place pupils in costly out of area independent provision, therefore avoiding longer distance transport provision.

It is evident from the work carried out as part of the development of the SEND Capital Strategy and the subsequent consultation, that there is a significant and increasing need for additional capacity for pupils with complex SEND, both within mainstream specialist units and in special school provision. The Strategy was consulted on and approved by Executive Board in September 2023. The schemes were still subject to design/feasibility investigations, to ensure the most appropriate and cost-effective solutions to deliver quality provision in areas of high need.

Additional specialist capacity is urgently needed for primary children in mainstream settings. Both SEN units will be within the mainstream schools, with the pupils taught partly in mainstream classes while also benefitting from additional specialist support according to their individual need. More specialist places are required to address the existing cohorts as well as to make provision for the identified growing need.

High Needs Capital funding received from central government is intended to support the Council to fulfil its sufficiency duties in relation to the availability of suitable specialist school places for young people with complex SEND. There is also an Education S106 funding contribution aligned to the scheme at Rise Park Primary, as set out in the recommendations and background to this report.

Does this report contain any information that is exempt from publication?

No

Recommendation(s):

- 1** To approve the total allocation of funding of £1,200,000.00 comprising £1,141,835 from the High Needs Capital Fund and £58,165 Education S106 funding contribution, **to create a specialist SEN provision at Rise Park Primary School** and to amend the capital programme accordingly..
- 2** To approve the total allocation of funding of £800,000 from the High Needs Capital Fund, **to create a specialist SEN provision at The Milford Academy Primary School** and to amend the capital programme accordingly.
- 3** To authorise the procurement of necessary contracts and consultants to develop and deliver the projects using the SCAPE framework and delegate authority to the Corporate Director for Children & Education Services to award any procured contracts, complying with the Council Constitution and the relevant regulations, subject to costs being contained within the financial envelope.
- 4** To authorise the procurement of the construction contract for the expansions utilising the SCAPE framework to carry out the building works and to delegate authority to the Corporate Director for Children & Education Services to award any procured contracts, complying with the Council Constitution and the relevant regulations, subject to costs being contained within the financial envelope.
- 5** To procure external legal resources using compliant frameworks and to delegate authority to the Corporate Director for Children & Education Services to award any procured contracts, complying with the Council Constitution and the relevant regulations, subject to costs being contained within the financial envelope.
- 6** To enter into the necessary agreements with The Milford Academy Primary School to carry out the works and delegate authority to the Corporate Director for Children & Education Services in consultation with the Director of Legal Services to award the agreements.

1. Reasons for recommendations

- 1.2 High Needs Capital funding is intended to support the Council to fulfil its sufficiency duties in relation to the availability of suitable specialist school places for young people with complex SEND. More specialist places are required to address the existing cohorts as well as to make provision for the identified growing need. The proposals align with strategic priorities and will deliver additional capacity which is accessible for pupils in high areas of need, evidenced by the data set out in the strategy.
- 1.3 The provision at Rise Park Primary will create additional physical space, suitable to meet the needs of pupils with specialist needs who are already on roll at the school. The provision at The Milford Academy Primary will grow the number of specialist places beyond their normal admission number, creating additional places as set out below in 1.9 and 1.10, and which will be commissionable by the LA.
- 1.4 It is essential that there are sufficient local places for the growing number of high needs pupils, to avoid the need to place pupils in costly out of area independent provision, while also helping to reduce the resultant requirement for longer distance transport provision.
- 1.5 Remodelling of the high needs block was undertaken in November 2023 which confirmed affordability of all Phase 1 schemes in the SEND Capital Strategy at that point in time. The 2023/24 out turn position has suggested a different outlook following an in year deficit, and further modelling is now being undertaken to ensure sustainability.
- 1.6 The need for SEN provisions at both Rise Park and Milford Academy Primary Schools, were identified as priorities during Phase 1 of the SEND Capital Strategy 2023-28, which was consulted on and approved by Executive Board in September 2023. The LA has been working in successful partnership with both schools to develop specialist provisions within the mainstream schools and for the local area.
- 1.7 The specialist resourced provision at Rise Park Primary School will be created by extending the existing building to create a classroom, sensory room and ancillary accommodation. An area for outdoor play and learning will also be created. This provision will enable school to further support their inclusive provision for pupils with complex SEND. It will be designed to provide specialist support to 8 children already on roll who may have a diagnosis of autistic spectrum condition (ASC), or moderate learning difficulties, the level at which requires additional specialist educational support to enable the children to have their needs met effectively in their local, mainstream school. Whilst also making provision for the increasing SEND demands in future. The new extension will meet all current standards and guidelines and will be fully compliant. The planned completion date is currently October 2025.
- 1.8 The application of £58,165 of S106 funding meets the conditions set out in the S106 agreement for the development at the Former Padstow Secondary School south of Eastglade Road, planning application: 21/02506/PFUL3. This proposal seeks to approve £58,165 of the specified S106 funding to be allocated towards the cost of the SEN unit, leaving a remaining balance of £1,496,000.41 still to be allocated to alternative projects. The spend condition is "to be used towards the provision of new and/or enhanced primary and secondary education facilities within the City of Nottingham to accommodate pupils generated by the Development." Rise Park Primary School is located in the same 'planning area' of schools as the housing development the funds are linked to.
- 1.9 The specialist resourced provision at The Milford Academy Primary School will be created by repurposing and reconfiguring an existing building, which was formerly a

nursery, to create two classrooms, a sensory room a calming room and ancillary accommodation. An area for outdoor play and learning will also be created. This provision will enable the school to further support their inclusive provision for pupils with complex SEND. It will be designed to accommodate 16 children who have a diagnosis of autistic spectrum condition (ASC), or with complex moderate learning difficulties, who find it challenging to learn in whole class situations in mainstream education. The new extension will meet all current standards and guidelines and will be fully compliant. The planned completion date is currently September 2025.

- 1.10 This project represents a significant investment in vulnerable children in the Clifton community. The new SEN unit will accommodate 8 pupils who already attend Milford Academy Primary and have Education Health Care Plans (EHCPs). The unit will then also accommodate 8 additional children with EHCPs from the local area, with places commissioned by the LA. These places will be in addition to the number on the existing school roll.
- 1.11 The increase in specialist capacity within mainstream education will be beneficial to the local community in providing additional places for children who face barriers to learning and who need more specialist support in order to attend local mainstream education. The new provisions will create purpose-built learning spaces so both schools can continue to meet the needs of all learners. It will be led by the existing school leadership, supported by staff who have developed expertise in this area.

2. Background (including outcomes of consultation)

- 2.1 The LA's place planning strategy, including for SEND, has been to work in partnership with all providers to deliver the required capacity, in a way that best meets our educational priorities. Local factors need to be weighed up and the number of places available should be increased in response to need. To drive consistency and best practice in determining the most appropriate approach, there is also a requirement to work collaboratively with the Department of Education's (DfE) Regional Place Planning and Regional Director teams on these matters.
- 2.2 The DfE allocates High Needs capital funding to LAs. Since 2023, LAs have been required to share with the DfE Regions Group, the capacity and forecast data for High Needs pupils as well as for mainstream. The DfE then reviews the forecast methodology the LA uses, and challenges if they deem it to be required.
- 2.3 The Milford Primary School, as an Academy, is required to submit a 'significant change' application to the DfE to approve the proposal to create a SEND provision. A requirement of this application was for the Academy to undertake a statutory consultation process with all affected stakeholders including parents, schools and local residents. This consultation took place from 14th October to 11th November 2024. Details about the proposal to create a SEND unit were set out and shared on the school website and direct communication to all parents/carers, to the local primary and secondary schools and the local ward councillors. Responses to the proposal were invited via a dedicated email address (or alternatives if required), to capture the views of all stakeholders.
- 2.4 Milford Academy Primary received 2 responses to the consultation. Both were raising questions on the location of the after-school provision. Responses were provided explaining where on the school site the after-school provision will be located.
- 2.5 Rise Park Primary school also undertook a consultation on the proposal to create a SEND unit, from 14th October to 10th November 2024. There was 1 response to the consultation from a member of staff expressing that the proposal is very welcome news for both the staff and children.

2.6 The proposals would also be subject to the full Planning Permission process which would incorporate a statutory consultation process.

3. Other options considered in making recommendations

3.1 The schemes proposed in this report are two of the six schemes identified in Phase 1 of the SEND Capital Strategy. Risks of not investing the funds: there will be fewer specialist places for the growing numbers of children and young people identified with complex SEND. There is currently insufficient provision in primary settings.

3.2 Without this investment, there could be a potential increase in independent school placement cost.

3.3 We await the announcement from the DfE on a further allocation of High Needs capital funding to enable the LA to deliver more capacity, which will also be considered as part of remodelling the revenue impact to ensure sustainability.

4. Consideration of Risk

4.1 Local Authorities have a duty to ensure a sufficiency of places under section 14 of the Education Act 1996.

4.2 Planning permission will need to be sought. The design and project team are working closely with the Planning, Highways and other necessary stakeholders to mitigate and integrate requirements into the scheme, where possible.

4.3 Delay of the completion of the scheme would cause delay to pupils with significant needs benefitting from the new educational facilities proposed. The programme for the building works will be strictly managed with the contractor. An end to end programme has been produced alongside the feasibility carried out, which anticipates completion of building works in September 2025 for Milford Academy Primary and October 2025 for Rise Park Primary.

4.4 Expectations regarding the scope of both schemes must be carefully managed with stakeholders to match the budget envelope throughout the project, ensuring all communication is minuted and emailed and signed if required, to minimise scope creep.

4.5 The costs are based on the Contractor's Viability Report that has been reviewed and agreed by independently appointed Technical Advisors. These costs include allowances for inflation and a priced Risk Register. The contract will be a fixed price contract and will again be subject to a detailed review by the Council's Technical Advisors prior to the contract being signed. There will be a robust change request process to support the management of the stakeholder and their expectations and to avoid scope creep. There is a client contingency of 10% to deal with any changes in the contract that are agreed as necessary by the Project Team and approved by the Senior Responsible officer.

5. Best Value Considerations, including consideration of Make or Buy where appropriate

5.1 The Scape framework which is the proposed procurement route is a fully compliant Public Sector framework. While the framework allows a direct award, the tender process to get onto the framework means that the contractors' staff rates, overhead and profits are competitively tendered.

5.2 The Scape framework contractor will then fully tender the sub-contract packages as part of the exercise to build up an agreed contract value. The costs associated with the sub-contract packages will be reviewed by the technical consultants and challenged where appropriate.

5.3 The Scape framework also includes a number of social value key performance indicators including local spend and local employment targets which support the local economy and environmental impact such as reducing waste to landfill sites.

6. **Commissioner comments**

6.1 Commissioners have reviewed and approved with no further commentary.

7. **Finance comments**

7.1 **Capital Programme Implications**

7.2 The below table sets out how the Education capital budget will be increased following the approval of this decision.

Initial Forecast / Budget				
Location	2024/25 £m	2025/26 £m	2026/27 £m	Total £m
Rise Park Primary	0.3	0.9	0	1.200
Milford Academy Primary	0.1	0.7	0	0.800
TOTAL	0.4	1.6	0	2.000

7.3 The Higher Needs element of this approval is currently contained within the uncommitted Planned section of the approved Capital Programme following this formal decision the capital programme will increase by a net amount of £0.599m as set out in the below table:

Capital Programme Net Addition			
	Rise Park Primary £m	Milford Academy Primary £m	Total £m
Capital Funding			
Higher Needs Grant	1.142	0.800	1.942
S106	0.058	0.000	0.058
Total Funding	1.200	0.800	2.000
Less uncommitted Higher Needs Grant contained within Approved Capital Programme	(1.142)	(0.800)	(1.942)
Net Addition in the Capital Programme	0.058	0.000	0.058

7.4 Due to this work being carried out in Schools and as part of the Higher Needs programme no exempt income tax will occur and therefore these projects create no partial exemption pressures.

Comments provided by Tom Straw – Senior Accountant (Capital Programmes) 16th October 2024

7.5 **Revenue comments (including implications and value for money/VAT)**

7.6 Given that the Capital works to be carried out at Rise Park are to better accommodate and meet the needs of pre-existing students, there will be no additional Revenue pressure to the Dedicated Schools Grant (DSG) High Needs Block (HNB) as these pupils will continue to be funded by the High-Level Needs Panel.

7.7 Assuming that Milford take in an additional 4 pupils in commissioned places by January 2026 and a further 4 pupils in commissioned places by September 2026, taking into account the part year impact of these expansions over a five year period there will be an additional DSG HNB Revenue pressure of £588k which will need to be included and accounted for in future HNB budget setting processes

7.8 It should also be noted that the High Needs Block was baselined back in 2013/14 Financial Year and that each subsequent years allocation is referenced back to this point

and increased by a percentage uplift. Historically this has been a floor of 3% and a ceiling of 5%.

- 7.9 For current year 24/25 we are currently forecasting an in-year deficit on the HNB. In the Autumn Statement the Government has indicated additional resources to address the national increase in costs on the HNB. Any additional income received for 2024/25 will be used to address the additional demand and subsequent overspend on the HNB. Its not known at this point in time how much we will receive, however, we will publish this information in due course via Schools Forum.

Comments provided by Donna Munday, Senior Commercial Business Partner – High Needs, 11/11/2024

Sadrul Alam, Strategic Finance Business Partner, 11/11/2024

7.10 Section 106 Financial Implications

7.11 Specialist SEND Provision at Rise Park Primary School

- 7.12 The sum of £1,911,255 for Education was secured via a S111 agreement, reference 21/02506/PFUL3 completed on 14/07/22 and subsequently converted to a S106 agreement on 15/09/2022. The contribution was indexed to £1,922,392.85 and received on 20/09/22. Following deduction of the agreed administration sum, this left £1,917,143.41 to apply to schemes.
- 7.13 The sum of £362,978 is already committed to a separate scheme, and following the approval of £58,165 to this scheme, an amount of £1,496,000.41 will still be available for prospective schemes.
- 7.14 The spend condition within the agreement is “to use the Education Contribution towards the provision of new and /or enhanced primary and secondary education facilities within the City of Nottingham to accommodate pupils generated by the Development”. This proposal would meet this condition.

Comments provided by Sarah Baker, Senior Commercial Business Partner, 15/10/2024

8. Legal colleague comments

8.1 Commercial:

(a) This report seeks endorsement of the allocation of High Needs capital funding to deliver part of the (previously approved) Phase 1 SEND Strategy and agreement to appoint build contractors via framework call-offs.

(b) The investment should allow the Council an opportunity to meet its statutory needs by providing available specialist provision if that is identified as being appropriate to meet a child’s needs, as assessed via an EHC Plan or otherwise.

(c) The Council will need to enter into a licence with the academy school (Milford) in order to secure the necessary rights for the construction by the building contractor.

(d) As noted, whilst Legal Services can support with some of the contractual arrangements that may be required, where the contracts relate to construction activity, those contracts will need to be sourced from external law firms who possess that expertise. Legal Services is happy to support colleagues using a process to identify and instruct an external law firm. One option would be to use

an appropriate framework agreement following a mini-competition or, with justification, a direct award. Colleagues should factor both the costs and time required for a process into their planning.

Comments provided by Tom Button, Team Leader – Contracts and Commercial Team, Legal Services, 14/10/24

S106 Education Contribution towards creation of a specialist SEN provision at Rise Park Primary School

As stated above, the agreement made under s106 Town and Country Planning Act 1990 in respect of the development at the Former Padstow Secondary School south of Eastglade Road, planning application 21/02506/PFUL3 (“the Padstow School S106 agreement”) included an obligation to pay an Education Contribution of £1,911,255 Index Linked to the Council (“the Education Contribution”). The Education Contribution in the sum of £1,922,392.85 was received by the Council on 20/09/2022. Of this amount, £5,249.44 was deducted in respect of admin & monitoring costs, and, earlier this year £362,978 of the Education Contribution was allocated to a separate project.

No other agreement(s) have been brought to my attention in relation to the allocation of the Education Contribution and therefore £1,554,165.41 would appear to currently be available for allocation. The proposal seeks to approve that £58,165 of the Education Contribution is allocated towards the cost of the creation of specialist SEN provision at Rise Park Primary School as set out in Recommendation 1 above. The Padstow School S106 agreement does not include any requirement for the Education Contribution to be spent or committed for expenditure within a specified timeframe, but includes a requirement that the Education Contribution is "to be used towards the provision of new and/or enhanced primary and secondary education facilities within the City of Nottingham to accommodate pupils generated by the Development."

It is noted that Rise Park Primary School is located in what is described as the same ‘planning area’ of schools as the development which the funds are linked to and therefore can accommodate pupils generated by the Development and the proposed expenditure would appear to be in compliance with the requirements of the Padstow School S106 Agreement.

The spending proposals in relation to £58,165 of the Education Contribution as set out in this report would therefore appear to fall within the Council's obligations as set out in the Padstow School S106 agreement, and will leave £1,496,000.41 of the Education Contribution available for allocation.

Comments provided by Tamazin Wilson, Senior Solicitor, Legal Services, 9/10/24

1. Procurement Comments

- 1.1 It is proposed to award contracts using the appropriate SCAPE (Direct Call-off) single supplier Frameworks. Best Value has already been achieved through the respective procurement process 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 employ their workforce from within the local region.
- 1.2 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 contracts and are fully compliant with the Public Contract Regulations.
- 1.3 Procurement of legal advisors will be commissioned by NCC legal team and compliant with NCCs Contract Procedure Rules and Public Contract Regulations.

- 1.4 Both proposals were considered at the Commercial Oversight Board on 25 July 2024, no issues were raised and it was recommended to proceed to the Commissioning and Procurement Executive Committee (CPEC) where it was approved.

Comments provided by Sue Oliver – Procurement Category Manager for Places 9/10/24

2. Other relevant comments

10.1 None.

3. Crime and Disorder Implications (If Applicable)

3.1 Not applicable

4. Social value considerations (If Applicable)

4.1 Delivering Social Value, benefits to the surrounding community and local economy is a key success criteria of the wider project delivery in regards to the procurement of the contractor under the SCAPE framework.

5. Regard to the NHS Constitution (If Applicable)

5.1 Not applicable

6. Equality Impact Assessment (EIA)

6.1 Has the equality impact of the proposals in this report been assessed?

No

Yes

Attached as Appendix A, and due regard will be given to any implications identified in it.

7. Data Protection Impact Assessment (DPIA)

7.1 Has the data protection impact of the proposals in this report been assessed?

No

A DPIA is not required because records will be managed in compliance with the Council's legislative requirements and in compliance with the wider regulatory environment described in the Records and Information Management Policy January 2021 v5.0.

Yes

8. Carbon Impact Assessment (CIA)

8.1 Has the carbon impact of the proposals in this report been assessed?

No

Yes

Attached as Appendix B, and due regard will be given to any implications identified in it.

9. List of background papers relied upon in writing this report (not including published documents or confidential or exempt information)

9.1 N/A

10. Published documents referred to in this report

10.1 SEND Sufficiency Strategy 2023-28