

19 December 2016

Agenda Item: 04

**REPORT OF ACTING SERVICE DIRECTOR, EDUCATION STANDARDS AND  
INCLUSION****THE ESTABLISHMENT AND FUNDING ROUTES FOR NEW SCHOOLS****Purpose of the Report**

1. This report presents the current government strategy in relation to the creation and funding of new schools across the country. The report reflects the changing role of the County Council in establishing and opening new schools in the context of national government policy which states that all new schools will be 'Free' schools. However, the Council welcomes the opportunities to work in partnership with the Department for Education (DfE) and District Councils, to ensure that all public resources are used effectively and in the best interests of children and families in Nottinghamshire.
2. The report seeks Committee approval to review its current Place Planning and Schools Capital Strategy (July 2014) to agree the 'direct route' – also known as the 'central free school programme' – as the preferred route to fund the building of new schools in the future as a result of house building and/or Basic Need.
3. The report also seeks Committee approval to review the current Nottinghamshire Schools Policy (last reviewed in November 2013) to reflect the fact that the direction of travel in terms of the establishment of new schools is towards Free Schools and acknowledging that the character of Free Schools has changed significantly from their inception in 2010.
4. Finally the report seeks approval to alert interested local and national sponsors of good and outstanding schools, using public events or other appropriate media such as newsletters and web-based notices, to the areas across the County where new schools may need to be established.

**Information and Advice**

5. The nature of school provision has evolved at a rapid rate over the last two years. As recently as the budget statement of 2015 the government's intention to ensure that every state funded school would become an academy was reinforced by the then Chancellor of the Exchequer. During 2015, the then Prime Minister, David Cameron, announced that the government would create 500 new free schools by the end of parliament in 2020. The *Academy / Free School Presumption*, by which new schools would be established following a need identified by local authorities, was renamed in 2015 as the '*Free School Presumption*'. This means that all new schools will be free schools which are state-funded schools operating outside the control of the local authority.

6. Free schools can be established in one of two ways:
  - a) The 'direct route', whereby an interested party perceives there to be a need for a new school and applies to the DfE central free schools programme to establish a free school. If the bid is successful, the DfE will then source a building/site, fund the school build and also fund the revenue gap throughout the early years of operating the school. The proposal to open Torch Academy Free School in Newark is an example of a free school funded through this 'direct route'.
  - b) The *Free School Presumption* route is used once a local authority has identified the need for a new school. The local authority must then fund and procure the site and school build and must also fund the revenue gap in the early years of operation. The current *Place Planning and Schools Capital Strategy*, already endorsed by Committee, recognises this as a preferred route by Members.
7. In July 2014, the Committee approved the *Schools Capital Programme – Progress Report*, including the *Place Planning and Schools Capital Strategy*, which described the approach used to analyse the supply of and demand for school places and the subsequent models for addressing forecast shortfalls of provision. This document also set out the process for establishing new schools in Nottinghamshire, as defined by the *Academy / Free School Presumption* in place at the time and recognised that there may be occasions in the future when a new school will be required to satisfy the demand for school places caused by the basic need to support the existing but growing local population.
8. The Support to Schools Service has already identified and negotiated the need for 22 primary schools and one secondary school to be built to serve several large housing developments planned across the County up to 2028. Under the above presumption process, these would need to be procured by the County Council which would need to invite bids from prospective sponsors of the free schools at the same time, secure the land and costs required to build the school as well as meeting the funding shortfall during the early years that the new school is in operation.
9. However, since 2014, the DfE has introduced measures to further streamline the processes by which new schools can be established. This includes an approach described in the joint ministerial letter from the Department for Communities and Local Government (DCLG) and the DfE to all local authority chief executives (attached as **Appendix 1**), which offers the opportunity of DfE involvement in discussions about building new schools to serve a new housing development through the 'direct route'. It should be noted that the White Paper, *Educational Excellence Everywhere*, confirms this 'direct route' as a nationally preferred alternative approach.
10. The need for a new school to serve a new housing development is typically identified in a section 106 agreement which details the mitigation required to accommodate the additional pupils generated by the new housing. Developers often state that education contributions are the principle threat to a development's viability. Consequently, contributions might be reduced from the amount requested or, at best, payment triggers are delayed as long as possible to maximise the cash flow of the developer. This has the effect of a new school not being available for use until well into the development cycle and some time after pupils arrive from the new housing, with the potential to create short term pressure on neighbouring schools.

11. The alternative approach to the presumption process suggests that local authorities might encourage a bid from trusted sponsors to the Education Funding Agency Free School Team to establish a free school on the site of the new development. Paragraph 4.38 of the White Paper includes the sentence:

*“DfE will also consider providing funding for schools that are part of housing developments to be built in advance of contributions from developers being paid, to bridge the gap between places being required and funding being available.”*

12. The same paragraph states that the DfE will:

*“continue to work with local authorities and other public sector bodies to secure sites for new free schools and introduce measures that will enable the Secretary of State to require the use of local authority land for new free schools, as well as clarifying and strengthening how the free school presumption works”.*

13. In addition, paragraph 4.79 states:

*“The authority can use its democratic authority to encourage top-performing Multi Academy Trusts (MATs) to set up new schools in their area, or encourage high-performing schools to expand.”*

14. Given that all new schools are deemed to be free schools, the options for establishing a new school, particularly those required to serve a new housing development where viability and other issues delay the provision of school places, provide opportunities for Nottinghamshire County Council to establish new schools in a timely fashion, with no financial risk to the authority. This report therefore, seeks the approval of Committee to review its current *Place Planning and Schools Capital Strategy*, to recognise the opportunities by the ‘direct route’ in relation to the funding and building of new schools where they are needed.

15. In addition, given that Nottinghamshire’s Schools Policy November 2013 does not support the development of Free Schools, this report therefore seeks the approval of Committee to review the current Policy to recognise the opportunities in relation to the funding and building of new schools where they are needed.

16. The DfE and Education Funding Agency (EFA) has expressed an early interest in a small number of the 22 proposed primary schools required to serve proposed housing developments in the County and which offer a speedy contribution to meeting the target of 500 new free schools by 2020. In order to quickly respond to the rapidly changing school organisation landscape and to ensure that a wide range of stakeholders including successful Multi Academy Trusts (MATs) are presented with the data which indicates where new schools may be required as a result of house building, or indeed, Basic Need, this report seeks the approval of Committee to organise public events or other forms of communication such as newsletters and web-based notices, to provide interested sponsors and stakeholders with a better understanding of where new schools may be required. This would allow potential new school sponsors to apply to open a free school through the ‘direct route’, but in areas where a need for a new school has been identified. The County Council would continue to work in partnership with MATs, the EFA, the DfE and the Regional Schools Commissioner to ensure new schools are delivered for the benefit of Nottinghamshire residents.

17. Members should be aware that the final selection of the sponsor of a new school through the 'direct route' will be the decision of the Secretary of State, who will delegate this responsibility to the Regional Schools Commissioner. Nottinghamshire County Council would then be expected to advertise the establishment of any new school as widely and transparently as possible.

### **Other Options Considered**

18. Due to the rapidly changing government approach to school governance, funding and provision and financing of new school places and schools, the County's current strategy to establishing new schools as approved in July 2014 could be retained as the Committee's preferred position to the funding for new schools. However, this route offers a high degree of financial liability with the Council. In addition, if Committee decides to reaffirm the current strategy, it is likely that Nottinghamshire County Council would lose the opportunity to access the national funding that has been identified to create 500 new schools across the country by 2020.

### **Reason/s for Recommendation/s**

19. The new opportunities identified by the government's support for the 'direct route' of funding the building of new schools provides the County Council with an opportunity to limit its financial risk in relation to the building of new schools in areas where they will be required as a result of new housing developments and/or Basic Need.

### **Statutory and Policy Implications**

20. This report has been compiled after consideration of implications in respect of crime and disorder, finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty, safeguarding of children and adults at risk, service users, sustainability and the environment and ways of working and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

### **RECOMMENDATION/S**

- 1) To approve the involvement of the DfE in the establishment and building of new schools in Nottinghamshire, where circumstances enable the financial risks to be reduced/removed for the County Council and where school places could be provided at a much earlier date than allowed by housing developer education contributions and associated trigger payments.
- 2) To recommend a review of the Schools Policy and the Place Planning and Schools Capital Strategy (2014) to reflect changes to national policy and funding including the Free School programme and to identify the 'direct route' as the Committee's preferred route to fund new schools wherever possible.
- 3) To approve that the strategic public place planning information that the County holds with regard to where new schools may be required as a result of house building and basic need, if relevant, should be shared through a public event, or other effective means of public notice open to all national and local sponsors of new schools (Free Schools).

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### **Constitutional Comments (LM 24/08/16)**

21. The recommendations in the report fall within the Terms of Reference of the Children and Young People's Committee but if there is a change to the Place Planning and Schools Capital Strategy or the Nottinghamshire Schools Policy further reports will need to be presented to the Policy Committee for approval of these.

### **Financial Comments (TMR 23/08/16)**

22. The financial implications are set out in the body of the report.

### **Background Papers and Published Documents**

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

Schools Capital Programme progress report – report to Children and Young People's Committee on 14 July 2014

<http://ws43-0029.nottsgov.uk/dmsadmin/Meetings/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/3337/Committee/482/Default.aspx>

Policy Statement for Schools – report to Policy Committee on 13 November 2013.

### **Electoral Division(s) and Member(s) Affected**

All.

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