

Open Report on behalf of the Executive Director of Children's Services

Report to:	Children and Young People Scrutiny Committee
Date:	7 September 2012
Subject:	The process for setting up a new school/academy, including the assessment of potential operators, for future new academies/free schools in Lincolnshire

Summary:

On 1 February 2012 the Education Act 2011 (EA2011) introduced changes to the legislation relating to the process for establishing new schools including the Academy/Free School presumption and the process for the selection of potential operators. The Department for Education (DfE) has therefore produced departmental advice (Appendix A) to guide Local Authorities (LA) and other proposers when considering setting up a new school or Academy.

This report invites the Children and Young People Scrutiny Committee (CYPSC) to consider the proposed process to be followed by Lincolnshire County Council (LCC) in the setting up of a new school or Academy including the assessment of potential operators under the new Academy/Free School presumption route.

Actions Required:

To consider the process to be followed by LCC, as proposed in this report, when establishing a new school or Academy and to submit any comments on the proposed process to the Executive Councillor for Children's Services and Lifelong Learning.

1. Background

Impact of recent legislation on the establishment of a new school

LAs are under a statutory duty to ensure that there are sufficient school places in their area, promote high educational standards, ensure fair access to educational opportunity for all and promote the fulfilment of every child's educational potential. They must also ensure that there are sufficient schools in their area, promote diversity and increase parental choice where possible.

Statutory requirements under the Education Act 1996 (EA 1996) and the Education and Inspections Act 2006 (EIA 2006) mean that LAs, in their role as commissioners, must plan for and secure sufficient school places for their area. This obligation will continue following the introduction of the EA 2011. These places may be at existing schools maintained by the LA, Academies or other non-

maintained schools or, where required, provided through a new school. However, EA 2011 incorporates a new section 6A into the EIA 2006 which introduces the Academy/Free School presumption.

The new Academy/Free School presumption requires a LA to seek proposals to establish an Academy/Free School in the first instance where a need for a new school has been identified. LAs can no longer hold a school competition without the Secretary of State's consent nor enter their own community or foundation school proposals into a competition. However, in certain exceptional circumstances it is still possible to publish proposals for a new maintained school outside of a competition. The Secretary of State's consent is no longer required to publish certain proposals ("Special Cases"), including those for the establishment of new voluntary aided (VA) schools, primary schools resulting from infant/junior amalgamations, and new schools resulting from the reorganisation of existing faith provision. Details of the DfE guidance regarding the Academy/Free School Presumption are attached as Appendix A.

The proposed process to be followed in the future by LCC to set up new school provision. (See process map attached as Appendix B)

As stated above, the LA, in its role as commissioner, must plan and secure sufficient school places for all children of statutory school age in Lincolnshire. Where a shortfall is identified the LA has 2 main options. The first stage in the process where a shortfall has been identified must therefore be to explore each of the following 2 options and select the optimum route which will enhance the quality and sustainability of education in the area and enable as many children as possible to achieve their full potential.

(a) Expand an existing school

The LA will, wherever possible and appropriate, initially look to provide additional capacity by expanding an existing school for the following reasons:-

- will benefit from the existing established leadership and management team.
- an existing school will have a proven provider that parents are familiar with.
- expansion can often be more cost effective.
- benefits with increased numbers of peers for children such as wider social interaction.
- benefits with increased numbers of staff such as career progression.

However, the expansion of an existing school may not always be possible due to site size, site constraints or planning restrictions. Organisations such as Sport England can prevent building on a school playing field. Partner organisations such as Highways and Planning can impose restrictions relating to parking, traffic, access, impact on the neighbouring residential area etc. Academies have the power to refuse to expand and the Secretary of State must approve a proposal for the expansion of an existing Academy.

Where the expansion of an existing suitable school is identified as the solution to a shortfall in places there is currently a statutory process that must be followed if the expansion is for more than 30 places and an increase in the physical capacity of the school by more than 25% or 200 pupils (whichever is the lesser). Under this process the LA can publish proposals to expand any category of maintained school and the LA is the decision maker. The overall process, which can take at least six months, includes periods of consultation, publication and representation and must also incorporate a time allowance for LA democratic decision making.

(b) Establish a new school by either of the 2 following options in (bi) or (bii)

(bi) Seek proposals under the Academy/Free School presumption.

Where the expansion of a school is not found to be a suitable solution to meet the shortfall and the LA identifies the need to establish a new school the new Academy/Free School presumption requires a LA to seek proposals to establish an Academy/Free School in the first instance.

The authority should be clear from our school place planning about the type (e.g. mainstream, special educational needs, alternative provision), age range, gender and capacity of the Academy/Free School required. The LA must advise the DfE of the proposal together with confirmation of the site details and that all the capital funding needed to establish the school will be provided by the LA.

Having identified an appropriate site and secured the funding through the capital programme, the next step is to find a suitable operator as under recent legislation the LA is no longer allowed to operate a new Academy/Free School.

Under DfE guidance it is for the LA to decide how to manage and co-ordinate the process for seeking proposals for an operator. This process is summarised in Appendix B.

(bii) Publication of proposals under certain exceptional circumstances.

There are two sections of legislation which must be considered here ie Sections 10 and 11 of EIA 2006.

Under section 10 where an Academy/Free School approach is not considered to be appropriate, and the proposal does not fall under section 11, it is still possible to apply to the Secretary of State for consent to publish proposals for a new foundation or Voluntary Controlled (VC) school. If consent is received then a statutory process must be followed. This overall process can take at least six months and includes periods of consultation, publication and representation and must also incorporate a time allowance for LA democratic decision making. However, the LA would have to justify the need for the submission of such a proposal and explain why an Academy/Free School proposal is not appropriate.

Under Section 11 it is possible in special cases for the LA to publish proposals for a maintained school without the permission of the Secretary of State where the following circumstances apply:-

- Proposal for a new community or foundation primary school if this is replacing a maintained infant and a maintained junior school.
- Proposal for a new school resulting from the reorganisation of existing faith schools in the area.
- Proposal for a new VA school.

Of the above 3 proposals the first 2 are only available where the specific circumstances apply.

The third proposal for a new VA school is one that the LA could consider and can be commenced at any point in the process once the need has been identified for a new school. However, such a proposal is only possible under exceptional circumstances and the need for a VA school would have to be justified. The LA should not be considering a proposal for a new VA school, because of the Academy/Free School presumption, unless the proposer or LCC have specifically identified the need for a VA school. The final decision maker would need to be able to justify its decision if it were to be challenged e.g. why a VA school would be more suitable than any other type of school.

In addition to being against the Academy/Free School presumption the following points may be reasons against a VA school

- this option would restrict the number of potential applicants and will therefore restrict parental choice and diversity. This would be particularly pertinent where the proposer of a new VA school is already operating a school in the area for example if a Diocesan Board of Education submitted a proposal for a new VA school in a community where there was already a specific church school.
- The LA must also be confident that any potential provider will have a proven record in their capacity to support and enhance school improvement.
- Proceeding with a submission for a new VA school also has the disadvantage of not being as open, fair and transparent a process as that of the selection of an operator when several proposals are submitted under the Academy/Free School presumption and as a process may be more open to challenge.

The LA would have to bear all of the above in mind together with the consideration of relevant factors (such as the suitability of a potential sponsor and the ability of the sponsor to meet the funding and site requirements under this type of proposal) on a case by case basis when determining whether a proposal for a new VA school is an appropriate option.

Should a proposal for a new VA school be submitted there is a statutory process which must be followed. This process is similar to that followed when expanding an existing school. The overall process can take at least six months and includes periods of consultation, publication and representation and must also incorporate a time allowance for LA democratic decision making.

One of the main categories of proposers of VA schools is a faith/church school provider. However, such a provider would not be restricted to proposing a VA school but would also have the option of submitting a proposal under the Academy/Free School presumption. Within their submission the proposer would have the opportunity as part of their bid to justify the need and level of demand for a faith/church school.

2. Conclusion

Following discussion of this report, the Committee is requested to consider and make comments/recommendations on the proposed process to be followed by LCC in the future when setting up a new school or Academy including the assessment of potential operators under the new Academy/Free School presumption route.

3. Consultation

Prior to the publication of the appropriate guidance advice was sought from the DfE on a number of occasions. Discussions also took place with officers from other LAs. In addition, there has been consultation with the Children’s Services Directorate Management Team, officers from LCC Property and Technology Management, the LCC Children’s Commissioning team and Procurement Lincolnshire together with input from the CYPSC following the meeting on 20 July 2012 when the proposals for new primary Academies in Lincoln and Skegness were considered.

a) Policy Proofing Actions Required

not applicable

4. Appendices

These are listed below and attached at the back of the report	
Appendix A	DfE advice "Establishing a New School"
Appendix B	Process map to establish a new school
Appendix C	Sponsor Proposal Form including new school requirements and scoring criteria

5. Background Papers

No background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report.

This report was written by Paul Holmes, who can be contacted on 01522 553366 or paul.holmes@lincolnshire.gov.uk.