

Open Report on behalf of Heather Sandy, Interim Director - Education

Report to:	Councillor Mrs P A Bradwell OBE, Executive Councillor: Adult Care, Health and Children's Services
Date:	01 November 2019
Subject:	Proposal to expand the capacity at Athena School, Lincoln from 72 to 104 (final decision)
Decision Reference:	I018597
Key decision?	Yes

Summary:

Lincolnshire County Council has a statutory duty to ensure that there are sufficient school places to accommodate all pupils of statutory school age who live in Lincolnshire including provision for children with special educational needs and the Local Authority (LA) believes that this proposal is the best available option to fulfil this duty.

The proposal under consideration is to permanently expand the capacity at Athena School in Lincoln from 72 to 104.

The Local Authority is co-ordinating the process following statutory guidelines published in the Department for Education (DfE) guide "Making 'prescribed alterations' to maintained schools. Statutory guidance for proposers and decision-makers" (October 2018) in accordance with the terms of the Education and Inspections Act 2006, as updated by the Education Act 2011.

On 5 June 2019 a four week period of consultation commenced which closed on 3 July 2019 and is further referred to later in this report in the Consultation section. A summary of written responses received is also attached in Appendix A.

Following the consultation period the decision was taken on 22 July 2019 to publish a Statutory Notice on 8 August 2019. This initiated a four week Representation Period up to 5 September 2019 when further written objections and comments may be submitted. The process is now entering the final stage when the LA, as decision maker, must take the final decision regarding the proposal within 2 months from the end of the Representation Period (by 5 November 2019).

This report seeks to advise the Executive Councillor on making the final decision regarding the proposed expansion of Athena School.

Recommendation(s):

That the Executive Councillor approves the expansion of Athena School from 72 to 104 places with effect from April 2020.

Alternatives Considered:

1. Alternatives Considered:

The Council retains the school as it is at present with no expansion of the capacity at Athena School.

However, the above alternative would have the following disadvantages:

It is likely that there would be insufficient school places for children with special educational needs in the area and the LA may be unable to comply with its statutory duty to ensure sufficient provision in the county in future years.

It would place increasing pressure on Athena School and other schools in Lincolnshire, to provide the standard of special needs education that children are entitled to with limited resources and facilities. If the expansion proposal does not go ahead this would lead to concerns over the consequent impact of overcrowding and the quality of education provided.

It would likely lead, in the future, to children being offered places at schools outside of their local community and having to travel a considerable distance to access a suitable school with the specialist provision they require. This would increase costly out of county placements as well as transport costs and traffic from potential increased car usage, and also cause concerns over the impact of this additional travelling time on the children affected. The Council retains the school as it is at present with no expansion of the capacity at Athena School but looks to increase capacity at other special schools in the surrounding area.

2 Other options around Lincolnshire have been explored and all special schools have been considered for potential expansion. However, none have been found to be as suitable due to reasons such as geographical location in relation to demographic pressures, site limitations, the distance that pupils would have to travel, parental preference, impact on standards, potential planning challenges and leadership and management capacity. This is the most appropriate school in Lincolnshire for expansion to increase special educational needs provision of this type. Other options to add capacity where required across the county will continue to be explored.

Reasons for Recommendation:

To enable the LA to meet its statutory obligation to ensure that there are sufficient school places in Lincolnshire for all children of statutory school age including provision for children with special educational needs.

To ensure that the provision of school places is planned so as to promote high educational standards, enable fair access to educational opportunity for every child and promote the fulfilment of each child's potential. This proposal will both enhance the quality of provision and sustain local provision. It is also an opportunity to extend and enhance further the already excellent provision in place at Athena School to benefit more children, not just the additional pupils but the ones that are already on roll.

The proposal will assist in meeting parental preference. The Government has made it clear that the wishes of parents should be taken into account in planning and managing school estates. DfE guidance states that places should be allocated where parents want them and that successful and popular schools be allowed to grow. Athena School was rated overall by Ofsted as a 'Good' school at its last inspection in December 2018 and is popular with parents.

The LA considers the proposal to be the most appropriate available solution to the expected shortage of special educational needs school places in Lincolnshire. This proposal has the support of the Headteacher and the Governing Body, and also the School Improvement Service being confident that the school has the leadership, management and governance required.

1. Background

An increase in the number of school aged children in recent years has put significant pressure on the mainstream primary sector. There are now increasing pressures on the secondary and special school sectors. In September 2018 Athena was virtually at capacity at the beginning of the school term with 71 children on roll, and over-capacity with 75 on roll during the school year.

The proposal being consulted on is to permanently expand the capacity of the school by incorporating the former St Christopher's Annex on the adjacent site with some remodelling and refurbishment of the existing buildings. Appendix E shows some indicative plans of how the former St Christopher's Annex buildings might be integrated and adapted to form an extension of Athena. No detailed designs have been agreed at this early stage of developing any plans until a final decision is made. If expansion plans proceed then this will enable the school to offer up to 32 additional places above their current capacity of 72, to a new capacity of 104. There are 75 pupils attending Athena at present. Additional teaching and resource space is required for the children already on roll as well as to enable the school to increase the capacity.

Following statutory consultation, if the proposal is approved, it is proposed that building work would begin later in 2019. No detailed design for the remodelling of the existing buildings has yet taken place, but such works will be designed for internal remodelling only so that there is no requirement for planning permission in relation to changes to the accommodation. The external perimeter fencing may require planning permission if there is a need to increase the height, but timescales will allow for this. The project is planned to be completed for April 2020 so that the new capacity can be implemented. The project would be managed to cause minimal disruption to the school during term time making the best use of school holidays where possible. Any potential building project would look to be isolated from the existing provision to ensure minimal disruption to the children and the running of the school. The new facilities will present excellent opportunities to improvements to the school overall that would benefit the children already on roll at the school as well as provide additional accommodation for increasing pupil numbers. It will also reduce the potential need for temporary classrooms on site in the future and provide flexibility in the way the accommodation is used to offer more options in the way the curriculum is delivered.

Having additional teaching spaces, associated resources and more children on roll will also have financial benefits for the school. This may potentially provide the opportunity to enhance teaching provision and career opportunities for staff which in turn will benefit the learning experience of the children. This proposal also offers the opportunity to support the school in maintaining the already high standards and provide a platform for further improvements.

The Lincolnshire Special Educational Needs and Disabilities (SEND) project is a strategy supported through significant investment where the LA aim to enhance the good and outstanding specialist education provision currently provided. The objectives of the project is to ensure a sufficient supply of specialist school places to meet the needs of pupils within their local community, thus reducing travel time; develop a flexible education with greater collaboration between mainstream and special schools; provide opportunities for pupils with SEND to transition to mainstream school; clarify and enhance existing health offer to special schools; and provide opportunities for mainstream and special school staff to enhance their knowledge of SEND. The proposed expansion of Athena, a social, emotional and mental health (SEMH) school, is a separate project to the SEND strategy; however the overall vision of SEMH provision is currently being developed and will be aligned with the main strategy once approved. The proposal for the proposed expansion of Athena School has been considered with a future SEMH strategy in mind to ensure that it fits with whatever options are considered to address growing pressure on SEMH places. Consideration will also be given to how the LA and SEMH providers will work with mainstream schools to ensure that children are supported in the most appropriate settings with places available.

The requirements for decision making relating to school organisation in LA Maintained schools are set out in the guide "Making 'prescribed alterations' to maintained schools. Statutory guidance for proposers and decision-makers" (October 2018) published by the DfE.

The DfE does not prescribe the exact process which a decision maker should follow but the decision maker must have regard to this guidance. The decision maker should consider the views of those affected by the proposal and should not simply take account of the numbers of people expressing a view but give greatest weight to those stakeholders most likely to be affected and especially the parents of children at the school concerned.

Factors to be considered by Decision Makers

The Consultation and Representation Period

The Executive Councillor must be satisfied that the appropriate consultation and representation periods have been carried out and that all of the responses received have been given due consideration.

Although there is no longer a prescribed consultation period prior to the publication of the Statutory Notice and Complete Proposal the DfE's guidance states "*a strong expectation on schools and LAs to consult interested parties in developing their proposal prior to publication*". The LA conducted a four week period of pre-consultation to fulfil this expectation and also to operate a fair and open process and ensure all views were considered. A Statutory Notice (Appendix C) and Complete Proposal (Appendix D), initiating a four week Representation Period, were published in accordance with current statutory requirements.

Responses submitted during both the Consultation and Representation Period have been made available to the Executive Councillor for consideration when taking the final decision and further details of these responses are provided in section 6 of this report (**Consultation**).

Education standards and diversity of provision

The Executive Councillor should consider the quality and diversity of schools in the area and be satisfied that the proposal will meet the aspirations of parents, contribute to raising local standards of provision and lead to a closing of attainment gaps. The Government's aim is to create a more diverse school system offering excellence and choice so that every child receives an excellent education whatever their background and wherever they live.

The LA believes that this proposal provides the best option to maintain and improve standards of attainment with an enhanced quality of education for current and future children in the area whilst maintaining diversity.

Demand

The LA believes that this proposal is the best available option to address the projected need for SEND places for young people with SEMH (Social Emotional and Mental Health) needs. It will enable children to attend a suitable school with the specialist provision that they need, whilst reducing the need to place children in schools a considerable distance away from where they live. The LA believes that the proposal is an opportunity to extend and enhance further the already excellent

provision in place at Athena School to benefit and support more children in our local communities with SEMH needs and provide them with the opportunity to reach their full potential. This proposal will enable the school to offer up to 32 additional places above their current capacity of 72, to a new capacity of 104.

Equal Opportunity

The LA must have 'due regard' to the need to eliminate discrimination, advance equality of opportunity and foster good relations and should consider whether there are any sex, race or disability discrimination issues that arise out of the proposed expansion. There should be a commitment to provide access to a range of opportunities which reflect the ethnic and cultural mix of the area while ensuring that such opportunities are open to all.

The LA will continue to be committed to provide access to a range of opportunities which reflect the ethnic and cultural mix of the area while ensuring that such opportunities are open to all.

Community cohesion

The impact on the community must be considered and schools have a key part to play in providing opportunities for young people from different backgrounds to learn from and respect each other and gain an understanding of other cultures, faiths and communities. The decision-maker must take account of the community served by the school and the views of different sections of the community.

Travel and accessibility

The Executive Councillor should be satisfied that accessibility planning has been properly taken into account and that proposed changes do not adversely impact on disadvantaged groups. Proposals should not unreasonably extend journey times or increase transport costs or result in too many children being prevented from travelling sustainably due to unsuitable walking or cycling routes. The proposal should be considered on the basis of how it will support and contribute to the Council's duty to promote the use of sustainable travel and transport to school.

This proposal will address the projected need for this type of SEND provision and enable children to attend a suitable school with the specialist support they require whilst reducing the need to place children in schools a considerable distance away from where they live, in some cases out of county.

Capital

The Executive Councillor should be satisfied that any land, premises or capital required to implement the proposals will be available and that all relevant parties have given their agreement. A proposal cannot be approved conditionally upon funding being made available. The proposal being consulted on is to permanently expand the capacity of the school by incorporating the former St Christopher's Annex on the adjacent site with some remodelling and refurbishment of the existing buildings.

Should a decision be made at the end of this process to proceed, the build costs would be met from Children's Services Capital Programme through Basic Need and Council Funding. The schools place revenue funding will be made through the Local Authority's special schools funding formula within the High Needs block of the Dedicated Schools Grant.

School premises and playing fields

All schools are required to provide suitable outdoor space to both enable physical education for pupils in accordance with the curriculum and also for pupils to play outside safely. DfE guidelines suggest areas for pitches and games courts but these are non-statutory.

This proposal will create more space for the pupils at Athena School.

Special Educational Needs and Disabilities (SEND) Provision and SEND Improvement Test

The expansion of the school will have a positive impact on SEND provision. The additional teaching and resource space created will benefit the children already on roll as well as to enable the school to increase the capacity. The increased capacity will enable staff to pupil ratios to be maintained without the need to increase the number of pupils in a class, as there will be more classrooms and more staff.

2. Legal Issues:

Equality Act 2010

Under section 149 of the Equality Act 2010, the Council must, in the exercise of its functions, have due regard to the need to:

- * Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act
- * Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- * Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation

Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:

- * Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic
- * Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it

- * Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low

The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities

Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding

Compliance with the duties in section 149 may involve treating some persons more favourably than others

The duty cannot be delegated and must be discharged by the decision-maker. To discharge the statutory duty the decision-maker must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is identified consideration must be given to measures to avoid that impact as part of the decision making process.

An Equality Impact Assessment has been carried out and is available on request. No negative impacts were identified.

Joint Strategic Needs Analysis (JSNA) and the Joint Health and Wellbeing Strategy (JHWS)

The Council must have regard to the Joint Strategic Needs Assessment (JSNA) and the Joint Health & Wellbeing Strategy (JHWS) in coming to a decision.

The provision of additional places at the school arising out of the expansion would support both the JSNA strategy and the Lincolnshire Health & Wellbeing Strategy as follows:-

- Ensuring young children do not have to travel long distances to get to school to avoid negative impact on their health and safety and general wellbeing.
- Ensuring that young children do not have extended school days caused by travel to schools other than their local school which might lead to over tiredness. Fatigue and lack of concentration might otherwise lead to accidents, impaired learning ability and children not reaching their full potential.
- Enabling children to attend a school in their local community and socialise with their friends will contribute to their enjoyment of their time in education with the consequent benefits to the learning process.
- Enabling children to attend a school in their local community will increase the number of children able to walk, cycle or scoot to school which will be beneficial to their health and physical wellbeing.

Crime and Disorder

Under section 17 of the Crime and Disorder Act 1998, the Council must exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment), the misuse of drugs, alcohol and other substances in its area and re-offending in its area.

Not Applicable.

3. Conclusion

The final decision is required from the Executive Councillor to determine whether to approve the proposal to expand the capacity at Athena School as detailed in this report. The factors to consider in making this decision are within this report and all valid written responses received during consultation and the Representation Period (see section 6 Consultation) must be considered.

The LA believes this proposal to be in the best interests of local children and local parents as well as educational provision in the area and it supports the Council's aim of ensuring that as many children as possible can reach their full potential. It also enables the LA to fulfil its statutory duty of ensuring that there are sufficient places to accommodate all pupils of statutory school age in Lincolnshire.

It is recommended that the proposal is implemented to ensure the best educational opportunities for the children of Lincoln and the wider area. The advantages of implementing this proposal are detailed earlier in this report in the "Reasons for Recommendations" section.

4. Legal Comments:

The Council is the decision-maker for school alteration proposals of this type under the School Organisation (Prescribed alterations to maintained schools) Statutory guidance for proposers and decision-makers (October 2018). The decision-maker may reject the proposal, approve the proposal without modification or approve the proposal with such modifications as the Council considers desirable but only after consultation on those modifications with the governing body.

The Council as decision-maker may make the approval of the proposal conditional but only on specified matters contained in the Regulations.

The proposal is consistent with the Policy Framework and within the remit of the Executive Councillor.

5. Resource Comments:

The recommendation of the report to approve the expansion of Athena School from 72 places to 104 places with effect from April 2020 will ensure that the Local Authority meets its statutory obligation of sufficient school places for children with special educational needs. It is seen as the best available option to address the projected need for SEMH special needs secondary aged places through a remodelling and refurbishment of an existing building adjacent to the main school building of SEMH provision. The option will offer value for money from a capital and revenue perspective in providing suitable provision in Lincolnshire and reduce the requirement to place out of county in high cost placements.

The build costs would be met from Children's Services Capital Programme through Basic Need and earmarked Council Funding. The schools place revenue funding will be made through the Local Authority's special schools funding formula within the High Needs block of the Dedicated Schools Grant. The cost per place for SEMH provision at the Athena school is more cost effective than a placement in an external provider.

6. Consultation

In order for the school to expand the Local Authority must follow the necessary statutory processes in accordance with the Education and Inspections Act 2006, the Education Act 2011 and the guidance "Making 'prescribed alterations' to maintained schools. Statutory guidance for proposers and decision-makers" (October 2018) issued by the DfE.

Under these guidelines the LA must ensure that sufficient time and information are provided for people to understand, form a view on the proposal and make a response. Under the DfE guidelines which came into effect in October 2018 there is no longer a prescribed consultation period for significant changes to schools (including physical expansions). However there is a "*strong expectation on schools and LAs to consult interested parties in developing their proposal prior to publication*". To comply with this the Local Authority has conducted a four week period of pre-consultation. Any documentation issued must set out the problem that is being addressed and invite comment on one or more solutions. The Local Authority must explain the decision making process and take all reasonable steps to draw the proposal to the attention of all those who might be interested and take into account their views.

The Education and Inspections Act 2006 specifically includes as interested parties the registered parents of registered pupils at the school and also the appropriate District and Parish Councils for the area. The guidance issued by the DfE in October does not prescribe a definitive list of consultees. The list of interested parties was therefore compiled comprising as wide a range of consultees as practicable to ensure that all interested parties were included and incorporated parents of current Athena pupils and those of primary aged pupils attending

Fortuna School, the District Council, as well as individual County, District and Parish Councillors as appropriate.

A letter incorporating relevant information and reasons for the proposal was sent out to a wide range of interested parties on 5 June 2019 to commence a four week period of consultation. There was the opportunity to provide a response to the consultation online, by letter, email or by returning a response form by 3 July 2019. A copy of the letter commencing consultation was published on the County Council website at www.lincolnshire.gov.uk/schoolorganisation.

All written responses received during consultation have been made available to the Executive Councillor for consideration and further details are confirmed in this report in Appendix A. To briefly summarise, however, there were 4 valid responses in total with 0 against the proposal, 4 for the proposal and 0 neither for nor against. All comments made will be taken into consideration by the Executive Councillor in the decision making process.

An information event was also held at the school to discuss the proposed expansion. Notes taken from the meetings are shown in Appendix B.

Following the completion of the consultation period all feedback was considered with a full report (which is referred to in the Background Papers section below and will also be re-considered along with this report) by the Executive Councillor and a decision was taken on 22 July 2019 to proceed to Statutory Notice. A statutory 4 week Representation Period was entered into on 8 August 2019 commencing with the publication of the Statutory Notice (Appendix C) in the local press, on the Lincolnshire County Council's website and at the school gates. Ideally the representation period would have taken place entirely in term time, but due to the timescales for requiring a decision to enable work to take place to provide the capacity required to support the local community by April 2020, it was necessary to publish the Statutory Notice on 8 August 2019. It was not possible to extend the representation period into term time as it must lawfully be no more or less than 4 weeks. However, a thorough consultation did take place in term time prior to the Statutory Notice being published and the proposal did not change from what had originally been consulted on. The Complete Proposal, available in paper and electronic format (Appendix D) to which the Statutory Notice refers, was sent to interested parties as detailed in the statutory guidance and was also published on the website at www.lincolnshire.gov.uk/schoolorganisation. The Representation Period provided a further opportunity for people and organisations to express their views and ensure that they are taken into account when the final decision is taken. Three responses were received during the Representation Period, two which supported the proposal and one which was neither for nor against.

Under current legislation the Local Authority is the decision maker for the proposal and is co-ordinating the statutory process before making a final decision in November 2019. The LA, as decision maker, must be able to show that all relevant issues raised are taken into consideration in the decision making process. Points raised can be considered unpersuasive but must not be ignored altogether.

The last stage of the statutory process would be the implementation of the proposal with the permanent change in capacity from 72 to 104 with effect from April 2020.

a) Has Local Member Been Consulted?

Yes.

b) Has Executive Councillor Been Consulted?

Yes.

c) Scrutiny Comments

The Children and Young People Scrutiny Committee considered this report on 18 October and has recorded its strong support for the recommendations on the basis they represent a value for money solution to the demand for additional SEMH places at key stages three and four in the Lincoln area.

The Committee notes that it is unlikely that a planning application will be required for the building works, with the exception of the planned installation of a three metre high fence to safeguard the pupils at the school, which is a particular requirement given that the site is adjacent to the A15 (South Park Avenue, Lincoln). The Committee accepted the rationale for the height of the fencing and agreed to highlight to the Executive Councillor the need for sensitivity over its installation.

The Committee also received clarification on several points, which included:

- Phasing of Building Works – Some internal works were likely to be undertaken during 2019, but most for the building works would be undertaken in early 2020.
- Transition Planning – Most, but not all, pupils at the Fortuna School transfer to the Athena School; this is dependent on their needs. Transition planning for all pupils begins in year 5.
- Admission of Additional Pupils – The additional pupils would be admitted to the Athena School over a period of time, probably two terms.

As stated above, the Committee strongly supported the planned expansion of Athena School and sought further information on several specific details, such as the capital funding required; and on how much would be saved by placing pupils locally, as opposed to independent or out-of-county placements. It was agreed that a briefing paper would be prepared for consideration at a later date.

d) Have Risks and Impact Analysis been carried out?

Yes

e) Risks and Impact Analysis

An Equality Impact Assessment has been completed and in summary the analysis indicates that there will several positive impacts and no negative impacts arising out of the Executive Councillor's decision.

7. Appendices

These are listed below and attached at the back of the report	
Appendix A	Summary of written consultation responses
Appendix B	Notes from information event at the school
Appendix C	Statutory Notice
Appendix D	Complete Proposal
Appendix E	Draft indicative site plans

8. Background Papers

Document title	Where the document can be viewed
Report on the proposal to expand the capacity at Athena School from 72 to 104 (decision to go to Statutory Notice)	Lincolnshire County Council Committee Records Reference I018149
The DfE guide "Making 'prescribed alterations' to maintained schools. Statutory guidance for proposers and decision-makers" (October 2018)	Available on request from the School Organisation Planning Team, Children's Services.
Equality Impact Analysis	Available on request from the School Organisation Planning Team, Children's Services.
Individual consultation responses	Individual responses available to be viewed by the decision maker. Content of responses anonymised and summarised to this report in Appendix A.

This report was written by Matthew Clayton, who can be contacted on 01522 555353 or matthew.clayton@lincolnshire.gov.uk.