

**Open Report on behalf of Heather Sandy, Executive Director - Children's Services**

Report to:	<b>Councillor Mrs P A Bradwell OBE, Executive Councillor: Adult Care, Health and Children's Services</b>
Date:	<b>01 December 2020</b>
Subject:	<b>Proposal on the future of boarding provision at The St Francis Special School, Lincoln (decision to go to Statutory Notice)</b>
Decision Reference:	<b>I021051</b>
Key decision?	<b>No</b>

**Summary:** The proposal under consideration is regarding the decision to go to the next stage of potentially permanently closing the boarding provision at The St Francis Special School, Lincoln with effect from 31 August 2021. With the temporary closure of the boarding facility in March 2020 due to Covid-19 and the previous relatively low numbers of those utilising the facility, Lincolnshire County Council, at the request of the Governing Body, has made the difficult decision to consult on the future of the provision. This does not affect the main St Francis School daytime provision. The residential facility at St Francis currently has capacity for up to 8 pupils.

The number of young people being able to access the facility has reduced due to the increased complex needs of pupils and changes in fire and health and safety regulations. In addition, at the last Ofsted Inspection the facility became more social care focussed and less education based. These factors, along with the facility's temporary closure contributed to the Governing Body's decision to wish to consult on the potential permanent closure.

The closure of the boarding facility would enable the residential accommodation to be included in the Local Authority's (LA) wider considerations regarding the future of care provision for young people. The LA are exploring the possibility of how the residential accommodation could have increased usage to benefit more young people by linking this proposal with the potential to improve short breaks and/or children's homes in the wider Lincoln area.

The LA is co-ordinating the process following statutory guidelines published in The Department for Education (DfE) guide "Making significant changes ('prescribed alterations') to maintained schools" October 2018 in accordance with the terms of the Education and Inspections Act (EIA) 2006 as updated by the Education Act 2011("the Statutory Framework").

On 28 September 2020 a five week period of consultation commenced which

closed on 4 November 2020 and is further referred to in the Consultation section of this report. A summary of written responses received is also attached in Appendix A

This report seeks to advise the Executive Councillor on making the decision regarding proceeding to the next stage of the process with the publication of a Statutory Notice, as required by law, to propose the closure of the boarding provision at The St Francis Special School, Lincoln. If the Executive Councillor gives approval there will follow a further four weeks Representation Period giving another opportunity for people and organisations to express their views and ensure that they are taken into account when the final decision is taken by the Executive Councillor in March 2021. The LA and school will continue to explore alternative uses of the residential buildings in relation to social care during this time.

**Recommendation(s):**

That the Executive Councillor approves the publication of a Statutory Notice in relation to the proposal to the boarding provision at The St Francis Special School, Lincoln with effect from 31 March 2021 which will enable the statutory and legal processes to proceed in accordance with DfE guidelines. This continuation of the statutory process will also enable further consideration of alternative options prior to a final decision being made.

**Alternatives Considered:**

Do not publish the Statutory Notice and continue to operate, fund and staff the boarding provision at The St Francis Special School in its present format. With the aim to re-open the facility at a later date as it was before, once it is deemed safe to do so following the Covid-19 pandemic.

**Reasons for Recommendation:**

- To comply with the wishes of the Governing Body.
- There are currently no pupils boarding due to the pandemic. It is not considered reasonable to keep the boarding provision open and staffed in the long term with no or very few pupils. It is also not considered to be the best use of the accommodation compared to other potential options, which may be more sustainable and could benefit more children requiring specialist social care. It is best practice to ensure spending commitments deliver the optimum outcomes for children and young people of Lincolnshire and deliver value for money.
- It would enable the residential accommodation to be included as part of the LA's wider considerations regarding the future of care provision for children. The LA is exploring the possibility of how the facility could be opened up to a wider area in and around Lincoln, as at present only pupils on roll at St Francis can benefit from the residential provision.

- To enable other options for the use of the facility to continue to be explored prior to a final decision being taken on the future of the residential classification of the school.
- To enable the process to continue to the next stage and allow a further opportunity for people and organisations to express their views about the proposal and ensure that they will be taken into account by the Executive Councillor prior to the final decision being taken. This continuation of the process will allow more time for all potential alternatives to be fully and robustly explored.
- To enable the statutory and legal processes to proceed in accordance with guidelines laid down by the DfE.

## **1. Background**

The St Francis Special School, Lincoln, caters for pupils aged 2 to 19 with a wide range of special educational needs including physical and medical, Autistic Spectrum Disorders and social communication difficulties and severe and profound learning difficulties. As part of the multi-million pound special school capital programme being delivered by the LA, there will be significant adaptations and funding invested into the school over the next few years so that it can cater for all needs. The residential accommodation under consideration here could be considered within scope of the main school project if the final decision is to close and a suitable alternative use couldn't be found.

This report is written in the context of concern over the long term sustainability of the residential facility at St Francis Special School and the possibilities it may present if it were to become something else that could benefit vulnerable young people in an alternative way. The facility has been temporarily closed since March 2020 due to the Covid-19 pandemic, when open it has capacity for up to 8 pupils.

It is not known when it will be safe for the unit to re-open due to the uncertainty surrounding the pandemic. As no timescale can be determined and with staff temporarily deployed into other positions on an informal basis within the school, it is not considered reasonable to keep the boarding provision open and staffed in the long-term with no pupils. It is not the best use of resources and it is not best practice financially.

Originally the residential facility had capacity for approximately 39 boarders. The capacity has gradually reduced over the years due to a number of factors. Needs of pupils at the school increased and became more complex, so the boarding facility couldn't accommodate as many pupils. Changes to fire regulations also affected the capacity, resulting in fewer numbers. At the last Ofsted inspection the emphasis in the boarding facility became more social care focussed, resulting in a drop from 'outstanding' to 'good'. This also contributed towards a decision to make the facility single room occupancy.

Due to the single room occupancy rule some pupils are in rooms that were originally designed to sleep 3 to 4 which are vastly larger than required. In total there are nine multiple occupancy rooms and three single rooms, split equally over three wings. One wing has more recently been used for dining and socialising and not sleeping. With the current maximum capacity of 8 pupils for the whole boarding provision, this means that per person, running costs of the building alone are high and the space is not utilised to its maximum potential. Funding allocated in the 2020/21 is £582,568, which is based on a current maximum capacity is a cost per place of £72,821. This is considered to be a high cost.

When operating, the residential facility is only used part of the year as it is not open at weekends or school holidays. The boarding provision is funded as an education facility and due to funding it is not possible to extend the operating hours. St Francis is the only school in Lincolnshire that operates in this manner. In addition, although federated, Lincoln St Christopher's School is unable to use the facility.

The model of having residential provision as part of a special school is being used far less both locally and nationally. Many special schools now have established links with other provision (rather than part of their own provision). This enables young people to have the potential to access appropriate residential care that they may need (subject to a social care assessment) from a wider range of sources, whilst independent learning is now successfully embedded into the curriculum within the school day to teach young people the skills needed to prepare them for later life and independent living.

St Francis receives commissioned funding for the boarding facility from the High Needs block of the Dedicated Schools Grant. This is outside of the schools main delegated funding for day education provision, which is determined through Lincolnshire's special schools funding formula. The boarding provision is considered to be high cost based on current maximum capacity, and it is important spending commitments are continually considered to deliver value for money on the finite resource available for Lincolnshire. This funding could be used in another way to benefit children's education across the county, and it is also important to recognise the local and national financial challenges of high needs spending.

As a result of Covid-19 the LA explored ways to increase mainstream residential provision for children who are looked after, and St Francis Special School offered their residential buildings to assist the authority in fulfilling its statutory obligations. St Francis was required to relinquish their Ofsted Registration for the boarding facility and this was done in March 2020. The LA then made an urgent application for the facilities to be registered as a temporary home for children aged between six and twelve years. In June 2020 the residential facility, named Wickenby House, was officially registered as a children's home and a certificate was issued to this effect to serve as a temporary children's home during the pandemic. At present there has not been much of a need to place any children at Wickenby House and there are currently no children using the facility.

It is the LA's statutory duty to ensure that there are sufficient school places to accommodate all pupils of all needs of statutory school age across the county of

Lincolnshire. The LA must consider its duty to promote high educational standards, ensure fair access to educational opportunity and assist every child to achieve their potential with the aim of enabling children to take up a school place in the local area. The proposed closure of the residential facility does not affect the number of main St Francis daytime places. Some of the alternatives being explored include different types of residential provision, which St Francis pupils may be able to access (dependent on social care assessments). There may also be the possibility to use the accommodation to increase the capacity or the extend range of provision of St Francis school as part of the SEND strategy. Part of that strategy is also about providing an equitable offer across Lincolnshire which all children can access. The current arrangements at St Francis are not in line with other provision across the county to ensure that all special school provide a similar and equitable offer.

Depending on what the provision becomes in the future, there are a number of possible options relating to the employment of the residential staff. Employees would be given opportunities to look for redeployment opportunities to secure their high quality specialist skills within the authority wherever possible, potentially there could be an opportunity to TUPE staff across into a new setting (only if run by another organisation), temporary secondments, permanent redeployment (there are several opportunities with vacancies in other settings) and as a last resort, redundancy.

## **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 Impact Equality Assessment (Appendix B to this report) has been carried out. The following positive impacts were identified:

By reviewing the future of the boarding provision at the school it will enable the residential accommodation to be included as part of the LA's wider considerations regarding the future of care provision for young people. As part of the consultation the LA will explore the possibility of how that part of the school buildings could have increased usage to benefit more young people through a wider residential offer for short breaks or other care, along with other possible opportunities it may present. An option to explore further is the opportunity to link this proposal with the potential to improve both short breaks and children's homes in the wider Lincoln area to help support some of our most vulnerable young people within their local communities.

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 & Well Being Strategy (JHWS) in coming to a decision.

Not applicable.

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.

The proposal will have no impact on Crime and Disorder.

### **3. Conclusion**

This report is written specifically regarding the publication of a Statutory Notice on the proposal to end the boarding provision at The St Francis Special School, Lincoln and is not to determine the final decision on the closure of the boarding provision. If the recommendation in this report is approved it will enable the process to move to the next stage. This will allow further time for all options for the future of the residential buildings to be fully explored and therefore enable a fully researched and informed final decision to be taken which will be in the best interests of children and parents.

Therefore, a decision is required at this stage from the Executive Councillor as to whether to proceed to the publication of a Statutory Notice. The reasons on which this decision is based are detailed earlier in this report in the "Reasons for Recommendations" section. The factors to consider in making this decision are within this report and all valid written responses received during consultation (see section 6) must be considered (summarised in Appendix A).

### **4. Legal Comments:**

The Council has the power to propose the closure set out in the Report subject to following the statutorily prescribed process including all consultation requirements. This Report seeks approval to proceed to publication of a statutory notice proposing closure and to proceed into statutory consultation. In arriving at the recommendation a non-statutory consultation process has been undertaken which has taken into account statutory guidance. The Executive Councillor must take into consideration all matters which are required by the Statutory Framework in particular those considerations specific to rural schools and the consultation responses must be conscientiously taken into account in reaching a decision. It would be lawful for the Executive Councillor to make a decision in accordance with the recommendation.

Equality and diversity issues are required to be taken into account prior to a final decision being taken and will be addressed in any final decision report if the Executive Councillor approves a statutory consultation as recommended in this Report. The Joint Strategic Needs Assessment, Joint Health and Wellbeing Strategy and Child Poverty Strategy will need to be taken into account at that stage as well.

### **5. Resource Comments:**

There are no immediate financial implications arising from the recommendation in this report to publish a statutory notice. Financial implications will arise if the final decision is to permanently close the boarding provision at The St Francis Special School, Lincoln with effect from 31 August 2021. These financial implications would be dependent on the facilities future use. A final decision will

not financially impact the running of the main school site education delivery at The St Francis Special School, Lincoln.

The boarding provision is funded as a commissioned activity through the High Needs block of the Dedicated Schools Grant. It is seen as best practice to ensure spending commitments continue to deliver the optimum outcomes for children and young people of Lincolnshire and deliver value for money. This is even more important in the context of local and national funding challenges of high needs spending. The Dedicated Schools Grant is a ring-fenced grant and has to be spent into accordance with the Schools & Early Years Finance Regulations in supporting the children of Lincolnshire. The Local Authorities role is to govern the use and effective deployment and prioritisation of resource, and decisions are made in consultation with schools and other stakeholder groups.

## 6. Consultation

In order for the boarding provision to close the LA must follow the necessary statutory legal processes as required by the Secretary of State in accordance with the Education and Inspections Act 2006, the Education Act 2011 and the guidance "Making significant changes ('prescribed alterations') to maintained schools" October 2018 issued by the DfE.

Under these guidelines the LA should consult appropriate parties before publishing any proposals and moving onto the Representation period (a second formal consultation period of 4 weeks). It is for the proposer to determine the nature and length of the initial consultation, although it is best practice for consultations to be carried out in term time to allow the maximum number of people to respond. When planning the consultation timeline it was taken into account that half-term would fall within the initial consultation period, this lead to the LA opting for a five week consultation.

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 statutory "pre-publication" consultation period for significant changes to schools. 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 five 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.

Proposers should have regard to the Cabinet Office guidance on consultation principles when deciding how to carry out the consultation period. Under these guidelines the LA must ensure that sufficient time and information are provided for people to understand and form a view on the proposal and make a response.



Any consultations should be clear and concise and have a purpose. Consultations should be targeted to specific groups and enough information should be given to ensure that those consulted understand the issues and can give an informed response.

The guidance "Making significant changes ('prescribed alterations') to maintained schools" October 2018 issued by the DfE also lists who should be consulted. The list of interested parties was therefore compiled according to these principles comprising of a wide a range of consultees and incorporated the Chief Executive of the District Council as well as individual County, District and Parish Councillors as appropriate.

Guidance requires that the proposer consults with pupils and parents of registered pupils at the school, a letter was sent to every parent and views were collected from a number of pupils.

On 28 September 2020 a letter incorporating relevant information and reasons for the proposal was sent out to interested parties to commence a five week period of consultation (Appendix C). Responses to the consultation could be submitted online by completing a short survey, by letter or email. The deadline for responses was 4 November 2020. A copy of the letter commencing consultation was published on the County Council at [www.lincolnshire.gov.uk/school-pupil-support/school-organisation-planning](http://www.lincolnshire.gov.uk/school-pupil-support/school-organisation-planning)

It was not felt appropriate to hold a public meeting due to the Covid-19 pandemic, so a virtual information event was scheduled to take place online and offered to all interested parties. Information about this event was published on the LA's website and included in the letter. However, no one pre-registered for the event, so it did not go ahead and parents of pupils were encouraged to either discuss the proposal with the school or to approach the School Organisation Team via email, phone or through writing a letter, in addition to the online survey.

All written responses received during consultation have been provided to the Executive Councillor for consideration and further details are confirmed in this report in Appendix A. There were also a number of questions submitted about the proposal which the LA responded to, these questions and answers form part of Appendix A.

To summarise; there were 46 valid responses in total.

There were 22 responses received from pupils at St Francis. Overall the pupils were very sad about the proposal to potentially close the facility. The pupils stated that they like staying in the residential unit, it makes them happy and they enjoy seeing the staff and their friends. The pupils also value residential as it gives them independence which helps prepare them for when they move out of home.

Three responses were not against the proposal and supported the notion of exploring and developing provision available to pupils with additional needs and the opportunities it may bring.

The remaining 21 responses were concerned about the proposed closure as it is seen by those respondents as a vital service for the St Francis pupils and their families. It was highlighted in the majority of these responses that the residential boarding gives the pupils an opportunity for independence, which prepares them for adulthood. Residential is also considered to be one of the pupil's only opportunities to socialise with their peers outside of the classroom and offers a more conventional childhood for a few nights.

It was also highlighted the residential staff are well liked and provide excellent care. Parents also like how their children are familiar with the residential staff, as they also know them through the main day provision.

The Anglican Diocese had no objections to explore the long term future of the boarding provision for St Francis Special School.

These responses should be considered alongside the advantages that the proposal is considered to offer and the potential opportunities that may arise.

The letter giving details of the consultation process incorporated the following details of the anticipated timeline:

<b>STAGE 1</b>	<b>STAGE 2*</b>	<b>STAGE 3*</b>	<b>STAGE 4*</b>	<b>STAGE 5*</b>
Consultation	Publication of Statutory Notice	Representation Period 4 Weeks	Final LA Decision	Implementation
30/09/2020 – 04/11/2020	17/12/2020	17/12 – 21/01/2021	March 2021	September 2021

The LA is the decision maker for the proposal and is co-ordinating the statutory process before making the final decision. 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.

**a) Has Local Member Been Consulted?**

Yes, the local member has been made aware of the proposal to close the boarding provision at The St Francis Special School, Lincoln.

**b) Has Executive Councillor Been Consulted?**

Yes, the Executive Councillor has been involved in the discussions regarding the proposal to close the boarding provision at The St Francis Special School, Lincoln.

**c) Scrutiny Comments**

The decision of whether to proceed to the publication of a Statutory Notice has not been discussed by a scrutiny committee.

#### **d) Have Risks and Impact Analysis been carried out?**

Yes.

#### **e) Risks and Impact Analysis**

An Impact Assessment has been completed and in summary the analysis indicates that there will be no significant impact, positive or negative, arising out of the Executive Councillor's decision. This report deals only with the question of whether to publish a Statutory Notice and no decision is being made at this time with regard to the proposed expansion at the school. The publication of the Statutory Notice enables the statutory process to continue and gives 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 by the Executive Councillor.

### **7. Appendices**

These are listed below and attached at the back of the report.
Appendix A - Summary of written responses from interested parties during consultation
Appendix B – Equality Impact Analysis
Appendix C – Letter to commence consultation

### **8. Background Papers**

Document title	Where the document can be viewed
"Making significant changes ('prescribed alterations') to maintained schools" (October 2018)	Available on request from the School Organisation Planning Team, Children's Services.
Equality Impact Analysis	Appendix B to this report.
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](mailto:matthew.clayton@lincolnshire.gov.uk) .