

**16 April 2024**

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**Subject: Provision of Education for Learners who Require Alternative Provision**

**Cabinet Member: Cllr Jane Davies - Cabinet Member for Adult Social Care, SEND and Inclusion**

**Key Decision: Key**

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### **Executive Summary**

Wiltshire Council have a need for providing education for learners who require Alternative Provision (AP). We currently have a significant shortage in Ofsted registered provision at a time where we are seeing an increase in demand for places.

Lack of AP sufficiency means that a higher number of pupils are suspended from school when the school might otherwise arrange AP for the learner at an earlier stage and prevent further escalation. This is particularly true for learners with Special Education Needs and Disabilities (SEND) who might otherwise benefit from a provision that is able to address individual need and support and engage with education at an alternative setting.

For some children and young people with SEND this can lead to placements in high-cost independent special schools to meet their needs which otherwise may have been supported through early intervention and alternative provision.

The Asset Gateway and Capital Programme Board approved in October 2023 for the purchase of Calder House, which was to be leased to a commissioned external provider to deliver alternative provision following required site renovations.

This paper is requesting the commissioning of an external provider to deliver alternative provision from 2024 to meet current levels of demand and reduce suspensions and exclusions, reduce expenditure on expensive independent special school placements and support the objectives of safety valve in reducing the current High Needs Budget deficit.

### **Proposals**

Cabinet is asked:

- 1) To authorise the award of a 5 plus 5-year contract to an external education provider, to provide high quality OFSTED registered AP education for up to 50 Wiltshire young people aged 11-16 with or without an EHCP who are unable to attend mainstream or specialist schools for

some or all their education. This will include an annual review of the contract.

- 2) To approve that officers continue to undertake to prepare and complete the tender programme, award, and implement a new contract for the provision of OFSTED registered education by 31 July 2024, with a clear mobilisation period to support opening in Autumn 2024.
- 3) To delegate authority to approve and award a new contract and future extensions and all associated documents to the Corporate Director People, in consultation with the Cabinet Member for Adult Social Care, SEND and Inclusion.

### **Reason for Proposals**

To ensure children and young people who are unable to attend mainstream or specialist schools are provided with full-time equivalent education in an OFSTED registered Alternative Provision, tailored to their individual needs.

To ensure cost effective placements for children and young people within buildings owned by Wiltshire Council by leasing them to a provider at a peppercorn rent through a new contract.

**Lucy Townsend**  
**Corporate Director, People**

# Wiltshire Council

## Cabinet

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### Purpose of Report

1. This report outlines the proposal to commission an external education provider, to provide high quality Ofsted registered AP education for up to 50 Wiltshire young people with or without an EHCP who are unable to attend mainstream or specialist schools for some or all of their education.
2. Cabinet is asked to authorise the method outlined to complete a tender process that delivers sufficiency of places for alternative provision, not currently being met in other Wiltshire provisions.
3. To delegate authority to approve and award a new contract and future extensions and all associated documents to the Corporate Director of People in consultation with the Cabinet Member for Adult Social Care, SEND and Inclusion.

### Relevance to the Council's Business Plan

4. The proposal is relevant to the following priorities and objectives laid down the Council's Business Plan<sup>1</sup>:
5. To support the working themes in the council's business plan 2022 to 2032, commissioning priorities are to:
  - a. **Priority 1** - ensure services are in the right place at the right time
  - b. **Priority 2** - ensure right people receive services in the right place i.e., to provide more High Needs education opportunities closer to home
  - c. **Priority 3** - ensure right service, right price

### Background

6. Wiltshire Council has high number of secondary age young people who need additional social, emotional and/or mental health support to access mainstream provision or to make a successful transition to specialist provision. This has led to increasing demand for short-term and full-time alternative provision packages and increasing rates of suspension of learners with an EHCP.
7. Section 19 of the Education Act 1996 states that 'Each LA shall make arrangements for the provision of suitable education at school or otherwise than at school for those

children of school age who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless such arrangements are made for them’.

8. Wiltshire Council has a statutory duty to provide appropriate specialist provision for children and young people with an EHCP that can meet their needs.
9. Additionally, Wiltshire Council are required to support all learners in accessing provision.
10. Most secondary schools in Wiltshire use AP to meet the needs of some of their pupils and commission AP as part of a continuum of support. There are currently 2 Ofsted registered providers and 77 unregistered providers listed on the Wiltshire Alternative Provision directory. Unregistered provision means there is a lack of full-time provision for children (i.e. not providing all, or substantially all, of the child’s education), where this would be in the young person’s best interests.
11. Schools are recommended to use the Wiltshire Approved Alternative Provision (WAAP) directory of providers, which is kept up to date and to select provision that best matches the needs of the pupil to create a very personalised timetable. WAAP inclusion aligns with quality assurance practice undertaken by officers.
12. Unregistered AP is not subject to national performance and quality inspection frameworks.
13. The Council and schools use of unregistered AP will be under increased scrutiny following changes to the Ofsted Local Area Inspection Framework which supports improved outcomes for children and young people who are directed off site to AP.
14. AP placements not meeting the child’s needs can result in reputational risk to the Council through SEND tribunal, Ofsted inspections, Local Government and Social Care Ombudsman complaints.
15. Most secondary schools receive funding for inclusion through a Service Level Agreement (SLA). This inclusion funding supports provision of personalised learning to excluded pupils and those at risk of exclusion. It supports delivery of duties under Section 19 of the Education Act (1996) and allows schools to utilise inclusion funding for early intervention and to significantly reduce the risk of permanent exclusion.
16. Wiltshire does not have any pupil referral units (PRU) within its school estate. Some Wiltshire secondary schools use devolved funding to make enhanced provision within their school or setting to support pupils on roll to access suitable learning successfully. This does not fall within the definition of AP.
17. In October 2023, the Asset Gateway & Capital Programme Board agreed to let a Wiltshire owned building at a peppercorn rent in order to reduce the ongoing revenue costs of education provision. This would reduce the rental or capital costs of the provider, with the expectation that these cost savings would be passed on to the Council.
18. By offering this property through the successful provider, the Council will be able to guarantee long term sufficiency and stability to more Wiltshire children with social, emotional and/or mental health needs with or without an EHCP.

19. A new registered Alternative provision will ensure young people have access to safe, high-quality education in line with the DfE SEND and AP Improvement Plan's intention for local areas to provide AP with specialist outreach capacity, time-limited placements and transitional placements.

### **Demand**

20. There is considerable demand for offsite placements by schools and the Council for pupils on a short-term basis for the purposes of improving the pupils' behaviour to prevent permanent exclusion and reduce the need for multiple or long-term suspension from school. This demand has increased in recent years.
21. Lack of AP sufficiency means that a higher number of pupils are suspended from school when the school might otherwise arrange AP for the learner at an earlier stage and prevent further escalation.
22. This is particularly true for learners with SEND who might otherwise benefit from a provision this is able to address individual need and support children and young people to engage with education at an alternative setting.
23. We can forecast, based on previous years, where just 1 secondary school had stepped away from the SLA, more than 10 permanent exclusions took place.
24. Numbers of Electively Home Educated (EHE) children are currently at the highest rate recorded in Wiltshire, at over 950 children. Pre-pandemic numbers were below 600. Whilst a number of parents choose not to provide a reason for their EHE decision when asked, there is an increase in the number of parents citing SEMH needs and school refusal. New provision could provide a transitional educational setting to help these children return to mainstream education. This will be true where parents have felt that mainstream education had not met their child's needs and would welcome a pathway back, or where home education is not suitable and transition arrangements are required.
25. Section 19 enquiries to the Council have increased exponentially with 150 cases discussed in the current academic year. These enquiries arise where there is a potential for the Council to make education provision available for pupils under Section 19 of the Education Act (1996) for pupils who are unable to attend school for reasons of exclusion, illness, or for reasons otherwise.
26. There has been an increase in complaints against the Council to the Local Government and Social Care Ombudsman for failing to make such provision available, with two cases this year where the Council has been instructed to make remedies to families. New registered provision would increase capacity of the Council to meet the Section 19 duty.
27. Of the pupils with an EHCP accessing AP while on roll to a mainstream school, 36% have a primary need of SEMH and another 27% with a primary need of autism spectrum disorder. While the Council cannot predict how many pupils will require AP, our high suspension rates and low permanent exclusion rates indicate a substantial level of need for new registered provision.

## **Main Considerations for the Council**

28. Most Wiltshire secondary schools receive funding for inclusion through a Service Level Agreement (SLA). The proposed provision supports schools in using this funding to be able to meet the needs of learners who require additional off-site support. This proposal also reduces the risk of exclusion from secondary schools.
29. There is a current lack of sufficiency of alternative provision in Wiltshire. Currently 2 Ofsted registered providers and 77 Wiltshire Approved Alternative Provision providers are not Ofsted registered.
30. Schools may commission providers not listed on the Council AP directory. In such cases schools are wholly responsible for the quality assurance of the provision.
31. The Council's use of provision that is not Ofsted registered will be subject to additional scrutiny highlighted through the Ofsted Local Area Inspection Framework which supports improved outcomes for children and young people who are directed off site to Alternative Provision.
32. The low number of Ofsted registered providers represents a risk in Wiltshire and there is a priority to increase this number. The risks are:
  - Lack of full-time provision for children in settings that are not DfE registered (i.e. not providing all, or substantially all, of the child's education in any one setting), where full-time in one setting would be in the child's best interests
  - Lack of flexibility in timetabling of sessions for pupils in settings that are not DfE registered, i.e. no more than 5 half days a week in any one setting
  - The Council commissioning AP that doesn't meet the child's needs due to lack of availability of Ofsted registered provision, resulting in reputational risk through SEND tribunal, Ofsted inspection and Local Government and Social Care Ombudsman decisions
  - The Council is not able to secure funding stability for alternative provision
  - Lack of equivalence in inspection frameworks for providers that are not Ofsted registered can bring a risk to commissioners seeking assurance
  - Head teachers are under additional safeguarding scrutiny during school inspections by Ofsted when pupils are attending provision that is not Ofsted registered. Consequently, this may increase the likelihood of permanent exclusion decisions. This would not be the case if there was increased sufficiency in Ofsted registered provision.
33. Most secondary schools in Wiltshire also use AP to meet the needs of some of their pupils and commission AP as part of a continuum of support. Schools are recommended to use the Wiltshire Approved Alternative Provision directory of providers, which is kept up to date and to select provision that best matches the needs of the pupil to create a personalised timetable.
34. There has been an increase in complaints against the Council to the Local Government and Social Care Ombudsman citing a lack of provision in place for young people who need AP. This carries a reputational risk to the Council.

35. In the forum for monitoring the secondary Service Level Agreement, primary behaviour and SENCo network meetings and the In-Year Fair Access Panels, school leaders are expressing a need for increased AP sufficiency across the three tiers set out in the Wiltshire SEND and AP Strategy where sufficiency and quality priorities are clearly set out.
36. To ensure that the contract will meet the needs of children and young people, significant engagement and consultation has taken place across the Council, other local authorities, providers, and head teachers. This has focussed on the opportunities to provide DfE registered alternative provision to prevent permanent exclusion and reduce the risk of multiple suspensions from school and ensure that the Council will be able to deliver a suitable, safe, and good value provision through the contract.

### **Funding and Cost Benefits**

37. It is intended that through the tender process we will be able to appoint an education provider who is able to support Wiltshire Council in delivering high quality provision at a cost that supports with the aims and objective of the High Needs Block sustainability programme.
38. The contract management process will ensure value for money through a rigorous tendering process, and robust contract management.
39. We expect to see a decrease in the daily cost of AP – full time equivalent cost of current AP is £62,892 reducing to a block tendered price of £30,000 x 50 places – due to the provider not having the risk of securing a mortgage, locating a deposit and risk of increasing mortgage payments. This will facilitate a speedier timeframe for us to respond in a timely manner to create capacity for September 2024. When tendering, social value will be explored as part of the new Procurement Bill.
40. With the location of the site, access to the school will support the reduction of costs for SEN Transport, which is a further contributory factor to the current High Needs Block deficit.

### **Highlights of the contract**

41. The contract will allow for the provision 50 places for Wiltshire children aged 11-16 with or without an EHCP who are unable to attend mainstream or specialist schools for some or all of their education. These places will be mobilised and made available over an agreed period, based on demand. This capacity will be provided through the property leased to the provider.
42. The places will be directly commissioned by schools, alongside places commissioned by Wiltshire Council.
43. Evidence informs us that the needs of children change over time and will vary across our children SEND population. Therefore, the Provider is expected to be agile enough to be able to meet any demand as the needs of children change.
44. It is expected that the tendered price for the contract will be below the current rate available. The Council will reserve the right to review any prices submitted and will only award if there is a reduction in the average cost of places.

45. The education provider will meet the running costs of the building, with maintenance costs based on fair wear and tear.
46. There will be quarterly contract monitoring meetings with the provider, which can be increased or decreased as necessary. The contract is expected to develop a close partnership between the Council and the successful provider, and there may also be some additional benefits to the children and the Council as a result of this closer working.
47. There will be an annual contract review with providers, to agree whether a variation needs to be put in place to respond to changing demand, or the changing needs of children. This will be throughout the lifetime of the contract to provide greater flexibility.
48. As there will be an annual review to ensure that current needs are being met, the contract term is intended to be 5 plus 5 years. This will be more attractive to the provider, and promote more competition and investment, and will help to form the foundation for a long-term positive relationship, which will benefit children and young people, and better value for money for the Council.
49. The successful provider will be expected to maintain Ofsted ratings of Good or Outstanding throughout the lifetime of the contract. If this standard was not met, there would be the ability to move children if appropriate to alternative provision, and there will be clauses within the contract to ensure that the Council was not financially disadvantaged through this process.
50. The Provider will make positive links with local health teams and ensure that the appropriate interventions are delivered to children and young people, as necessary.
51. The contract is asking Providers to deliver social value to the children, families, and communities across Wiltshire through this contract. This will form part of the evaluation process through the tender application and will also be monitored throughout the lifetime of the contract to ensure the Provider is able to put something back into the community.
52. To make best use of the building, there will additionally be an expectation from the provider to facilitate the use out of school hours for education and community use.

### **Options Considered**

53. To reduce the demands on the High Needs Block, the following options for Alternative Provision have been reviewed by a SEND & Inclusion Task Group:
54. Do nothing: This option was discounted as the current level of need is recognised as significant and ongoing, and Wiltshire are reliant on non DfE registered provision with associated entitlement challenges.
55. Work with existing mainstream schools/MATs to provide Specialist SEMH Resource Bases in the Centre/West of the County: There are currently limited buildings with potentially appropriate spaces in the right geographical locations. Specialist teams to deliver/support learners would need to be established.



56. Work with independent special school providers: There are no current Day Special SEMH schools within Wiltshire, ISS options for this age-range are all out of county and require children to travel considerable distances to/from daily. However, there are ISS providers showing interest in sourcing premises and establishing provision within Wiltshire.
57. Development of a bespoke offer, commissioned to support secondary aged children from external education providers with the knowledge and experience to deliver high quality provision.
58. Based on the options available the decision was approved by Strategic SEND to develop a bespoke offer at a Council owned premises for an external provider to deliver OFSTED registered education.

### **Market Engagement and Consultation**

59. There has been significant market engagement with providers of specialist education, and their views and ideas have been considered as part of the contract and incorporated where it is appropriate to do so. There has also been considerable interest and support for the project, and the approach from the provider market.
60. Market Engagement has been undertaken with parents and carers of children and young people in Alternative Provision to understand the current strengths and challenges of the service available to ensure that the specification meets the needs of our families.
61. Engagement with headteachers has been held through site visits to Calder House.
62. Potential providers have had the opportunity to visit the proposed site at Calder House to understand the space available and ensure that it will be able to meet the needs of all learners.
63. We will continue with further market engagement events as we move towards tender go-live date.
64. An indicative timeline has been developed which is outlined below:

7 May 2024	Tender Goes Live
14 June 2024	Tender Closes
17 – 28 June 2024	Evaluation and Moderation
2 July 2024	Announcement
3 to 14 July 2024	Standstill
15 July 2024	Commencement of Mobilisation Period

### **Safeguarding Implications**

65. Contracts give clear direction on how and when to raise a safeguarding alert to avoid any confusion about who will do this and/or assumptions that someone else will raise

the alert.

66. Contracts also ensure that any issues relating to child protection are identified and appropriate referral made to Multi Agency Safeguarding Hub (MASH).

### **Public Health Implications**

67. The Alternative Provision Contract will benefit the overall health and wellbeing outcomes of children and young people in Wiltshire in terms of service continuity and reducing the risk that their health and care outcomes could be compromised if the service was not in place.

### **Procurement Implications**

68. A compliant procurement process will be followed in line with Public Contract Regulations 2015.

69. The procurement process will be designed and run, in conjunction with the Commercial and Procurement team.

70. Consideration to social value implications will be informed through our socially responsible procurement policy and will be taken into consideration when developing the specification for the service. Providers are expected to deliver high levels of social value through this contract.

### **Equalities Impact of the Proposal**

71. The equalities impact of the proposed decision is low against all criteria on the Equalities Risk Criteria Table and, therefore, a full Equalities Impact Assessment is not required.

### **Environmental and Climate Change Considerations**

72. It is anticipated that the energy consumption and associated emissions will not alter from their current levels as a result of this proposal.

### **Workforce Implications**

73. These proposals relate to a service that will be delivered through external suppliers, so, there is no direct impact on Council employed staff.

### **Risks that may arise if the proposed decision and related work is not taken**

74. Lack of full-time provision for children in settings that are not DfE registered (i.e. no more than 5 half days a week in any one setting), where full-time in one setting would be in the child's best interests.

75. Lack of flexibility in timetabling of sessions for pupils in settings that are not DfE registered, i.e. no more than 5 half days a week in any one setting.

76. The Council commissioning AP that doesn't meet the child's needs due to lack of availability of Ofsted registered provision, resulting in reputational risk through SEND

tribunal, Ofsted inspection and Local Government and Social Care Ombudsman decisions.

77. The Council is not able to secure funding stability for alternative provision.
78. Lack of equivalence in inspection frameworks for providers that are not Ofsted registered brings a risk to commissioners seeking assurance.
79. Head teachers are under additional safeguarding scrutiny during school inspections by Ofsted when pupils are attending provision that is not Ofsted registered. Consequently, this may increase the likelihood of permanent exclusion decisions. This would not be the case if there was increased sufficiency in Ofsted registered provision.
80. There is also a risk that the average weekly, and overall cost of independent specialist education provision will rise more significantly, as placements will be sourced through more expensive framework contracts, or on a spot purchase basis.

### **Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks**

81. There is a risk that a suitable provider is not identified through the tender process to operate the contract, in which case the Council will review the contract proposals, arrange further market engagement, and offer a new contract to the market in a timely way.
82. Another risk is related to the speed of mobilisation of the education spaces, which will be managed through engagement with the commissioning team and the provider. The benefit of supplying property to the successful provider means that they will be able to mobilise much faster as they will not need to purchase property initially.
83. If the number of children who require a place reduces the Council will be left with void placements. The annual contract review will ensure that the number of commissioned places remain appropriate to the demand, and regular contract management and communication with the provider and with operational teams will reduce this risk.

### **Financial Implications**

84. Costs for independent special school places account for 23% of High Needs education costs, but for only 6% of children. Reducing our reliance on this type of provision will reduce costs.
85. As part of the contract, there will be a price review mechanism which will be reviewed to ensure continued best value throughout the lifetime of the contract.
86. In conjunction with the ability to request a fee increase, there is also the expectation that providers will be delivering social value in the community to benefit the children and families of Wiltshire. The amount of social value delivered each year will also form part of the decision-making process when considering any request for a fee increase, as this an expectation on the Provider, and does have a financial impact.
87. The cost of one permanently excluded child is around £370,000 in potential additional education, health, and criminal justice costs across a lifetime.

## **Legal Implications**

88. Legal Services has been instructed to advise on this matter and will prepare the new contract. Legal advice will continue to be sought until the conclusion of the project.
89. The proposals will be implemented using a Council template contract which has been tailored to protect the interests of the Council and will remain commercial.
90. The procurement will be undertaken in accordance with Constitutional and Legal requirements under the Public Contracts Regulations 2015.

## **Overview and Scrutiny Engagement**

91. A briefing has been held with the Chair and Vice-Chair of the Children's Select Committee to discuss this paper and proposals.

## **Conclusions**

92. The Council needs to meet the growing demand for SEMH provision and specialist support for secondary aged learners, support the reduction in expenditure on high-cost Independent Special School placements and ensure that children and young people receive high quality education in county.
93. This report recommends Cabinet agree the following proposals:
- i. To award a 5 plus 5 year contract to an external education provider, to provide high quality OFSTED registered AP education for up to 50 Wiltshire young people aged 11-16 with or without an EHCP who are unable to attend mainstream or specialist schools for some or all of their education. This will include an annual review of the contract.
  - ii. That officers continue to undertake to prepare and complete the tender programme, award, and implement a new contract for the provision of OFSTED registered education by 31 July 2024, with a clear mobilisation period to support opening in Autumn 2024.
  - iii. To delegate authority to approve and award a new contract and future extensions and all associated documents to the Corporate Director, People, in consultation with the Cabinet Member for Adult Social Care, SEND & Inclusion.

## **Kathryn Davis - Director, Education & Skills**

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## **Appendices**

None

## **Background Papers**

None