



## **Report for: Portfolio Holder Decision**

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**Date of Meeting:**

**Subject:** The Acquisition of a site as a proposed location for a Special Educational Needs school provision

**Key Decision:** Yes

**Responsible Officer:** Dipti Patel – Corporate Director Place

**Portfolio Holder:** Cllr Paul Osborn, Leader of the Council and Portfolio Holder for Strategy

**Exempt:** No but the appendix is exempt by virtue of paragraph 3 of Schedule 12a to the Local Government Act 1972 (as amended) in that it involves the likely disclosure of information relating to the financial or business affairs of any particular person (including the authority holding that information)

**Decision subject to Call-in:** No  
The decision is urgent as it involves a property acquisition which has timescales which are outside of the usual decision-making process with the agreement from the Chair of the Overview and Scrutiny Committee.

**Wards affected:** All

**Enclosures:** Appendix 1 (exempt)

## **Section 1 – Summary and Recommendations**

This report sets out details of a proposed property acquisition within the borough for the delivery of a Special Educational Needs provision.

### **Recommendations:**

The Leader is requested to:

1. Delegate authority to the Corporate Director, Place, following consultation with the Leader to make an appropriate bid for the property on the terms set out in Appendix 1.
2. Delegate authority to the Corporate Director, Place, following consultation with the Leader, to enter into any contracts, approve the final terms of the purchase and take any other necessary steps, including any variation to the Heads of Terms, subject to satisfactory survey reports, valuation, due diligence and financial viability and an appropriate business case.

### **Reason:**

This proposed property acquisition will be a strategic addition to the Council's property portfolio to deliver essential services to the residents of Harrow.

## **Section 2 – Report**

### **Introductory paragraph**

Harrow is experiencing an increase in demand for special school places. In Harrow there is provision for pupils with special educational needs in a range of settings including mainstream schools, additionally resourced mainstream school settings, and special schools. Some pupils also attend schools outside of Harrow. The borough is experiencing a growing and changing population and there is increasing pressure on the current provision for pupils with special educational needs. A shortfall of local provision increases the costs of placements at provision outside the borough.

Harrow has identified a site (as detailed in Appendix 1 which is a confidential appendix) which is being advertised on the open market, and which is suitable, subject to further feasibility studies, title investigation/due diligence and planning consents, to acquire and build Special provision. The purchase will enable the council to realise its vision to create an additional 292+ school places for pupils with special needs.

The details of this property are set out in Appendix 1 due to the commercial confidentiality of the transaction.

## Options considered

1. **Option 1 – Do not purchase.** This option will mean that the Council misses an opportunity to buy a well-located strategic site in the Borough. Moreover, the Council may fail to meet its statutory obligation to provide sufficient school places and may be forced to continue to place children in high cost out of borough special schools. There is an additional risk that the independent sector may not have enough spaces for these children in the more local settings, which would mean increased charges for transport and residential costs, or a failure to place children in the type of setting that they have been assessed to need.
2. **Option 2 - Review existing school sites.** In the context of declining pupil numbers, there can be opportunities to rationalise school sites to manage the number of school places, and create opportunities to repurpose the site, for example, a mainstream school site to be used for a special school. To make changes to schools there is a statutory process to be implemented which is set out in statutory guidance. A key factor in the consideration of changing the use of a school site is the on-going need for school places and amalgamations to ensure the continuing educational provision for children and young people. The current pupil numbers whilst declining in some areas may increase as a result of future housing developments. Therefore, any permanent change to a school site has risks about sufficient future provision.
3. **Option 3 – Purchase the property.** This option gives the Council the opportunity to build provision for at least 292 pupils with special educational needs, subject to planning and funding. More detail is contained in Part II.

The acquisition of the site provides the opportunity to consider options to increase the number of places through the expansion of existing special schools. These include creating satellites, on the new site or a combination of options which could include creating a satellite and relocating and expanding a school on to the site. In developing options to increase capacity and expand the schools, the factors in the 'Making significant changes' guidance will be considered to ensure that there is evidence to demonstrate that the proposals address the factors.

4. **Option 4 – A review of existing council sites** This work has been undertaken, however there are very few school development opportunities in Harrow. There is a shortage of possible sites and where there are larger sites, there are Planning constraints, particularly green belt and Metropolitan Open Land.

## Ward Councillors' comments

Ward Councillors have been informed.

## Risk Management Implications

Risks included on corporate or directorate risk register? **NO**

Separate risk register in place? **NO**

The relevant risks contained in the register are attached/summarised below.  
**Yes**

The following key risks should be taken into account when agreeing the recommendations in this report:

<b>Risk Description</b>	<b>Mitigations</b>	<b>RAG Status</b>
The purchase does not go ahead	This is a universal risk for all acquisitions which remain subject to contract until contracts are exchanged. Advised by the in-house property team, who are well experienced in the purchase of properties, the Council will continue to monitor	<b>RED</b>
The Council is unable to carry out sufficient due diligence and related risk assessments within the timescale	The Council is aware of this risk and is closely monitoring it	<b>RED</b>
The Council is unable to procure sufficient funding to build the provision	The Council will consider the options for the site, working to minimise any revenue impacts through prudent asset management of the site	<b>RED</b>
The Council is unable to obtain planning permission for the site for a new building	The Council will consider the options for the site but must consider the capital financing costs which will fall to the general fund	<b>AMBER</b>
The Council purchases the site but is unable to fund the building of the school	the mitigation could be to sell the site if it cannot be used for a new school building or put to some other use	<b>AMBER</b>

## Legal Implications

Section 14 of the Education Act 1996 places a duty on Local Authorities to ensure that sufficient primary and secondary schools are available for their areas. The form of these schools will be governed by the current presumption in favour of academies and free schools being the new institutions.

Where a local authority identifies the need for a new school, section 6A of EIA 2006 places the local authority under a duty to seek proposals to establish an academy (free school) via the 'free school presumption'. In considering the need for a new school, the local authority should take account of any existing proposals they are aware of that will meet that need.

Pursuant to section 3 of the Local Government Act 1999, there is a general Duty of Best Value to "make arrangements to secure continuous improvement in the way in which an authorities' functions are exercised, having regard to a combination of economy, efficiency and effectiveness.

Section 120 of the Local Government Act 1972 gives a power to local authorities to acquire land by agreement for the purpose of any of their functions under any legislation or for the benefit, improvement or development of their area. Section 120(2) states that land can be acquired notwithstanding that it is not immediately required, providing an enabling power in respect of one of the most difficult aspects of additional school development – securing a well-located suitable site in an appropriate timescale to meet rising demand.

Legal due diligence will be required on the site of the proposed acquisition, to include a review of title and ownership, and searches and enquiries of the vendor, in order to ascertain relevant liabilities and encumbrances connected with the subject property. The results of the legal enquiries, and any associated risks, will be considered prior to any decision to enter into contract.

### **'Making significant changes ('prescribed alterations') to maintained schools' – January 2023 statutory guidance**

#### **School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013'**

The enlargement of the premises of a community school and the increase in pupil numbers at special school by the lesser of 10% or 20 are prescribed alterations under s18 of the Education and Inspections Act 2006 and the 2013 School Organisation (Prescribed Alterations) Regulations. The s19 statutory publication process applies.

The 'Making significant changes' statutory guidance specifies the "... need to ensure that the new provision is genuinely a change to an existing school and not in reality the establishment of a new school".

Factors to consider will include:

- The reasons for the expansion
- What is the rationale for this approach and this particular site?
- Admission and curriculum arrangements

- How will the new site be used (e.g. which age groups/pupils will it serve)
- What will the admission arrangements be?
- Will there be movement of pupils between sites?
- Governance and administration
- How will whole school activities be managed?
- Will staff be employed on contracts to work on both sites? How frequently will they do so?
- What governance, leadership and management arrangements will be put in place to oversee the new site (e.g. will the new site be governed by the same governing body and the same school leadership team)?
- Physical characteristics of the school
- How will facilities across the 2 sites be used (e.g. sharing of the facilities and resources available at the 2 sites, such as playing fields)?
- Is the new site in an area that is easily accessible to the community that the current school serves?"

In the context of proposing that the acquisition of this site will provide the opportunity to create satellite expansion of two existing community special schools, particular consideration will need to be given to ensure that the criteria are met in each case.

To open a new school the relevant guidance is outlined as follows: Consideration would need to be given to the departmental guidance - 'Establishing a new academy: the free school presumption route' of September 2023, where it appears that the provision is actually a new school(s). Presumption free schools are funded and delivered by the local authority and set up as academies. Once opened the free school will be run by the trust and funded by the DfE in the usual way.

Under the "Prudential code for Capital Finance in Local Authorities 2021", Local authorities are reminded that the prime policy objective of their treasury management investment activities is the security of funds, and they should avoid exposing public funds to unnecessary or unquantified risk. Authorities should consider a balance between security, liquidity and yield that reflects their own risk appetite but that prioritises security and liquidity over yield. It is therefore important that authorities adopt an appropriate approach to risk management with regard to their investment activities.

Authorities can borrow and invest for the following purposes:

- any function of the authority under any enactment
- for the prudent management of their financial affairs.

The details of these powers vary across the national administrations.

The Prudential Code considers legitimate examples of prudent borrowing to include:

- financing capital expenditure primarily related to the delivery of a local authority's functions  
(subject to the considerations set out in this Code)
- temporary management of cash flow within the context of a balanced budget
- securing affordability by removing exposure to future interest rate rises
- refinancing current borrowing, including adjusting levels of internal borrowing, to manage risk, reduce costs or or reflect changing cash flow circumstances

- other treasury management activity that seeks to prudently manage treasury risks without borrowing primarily to invest for financial return.

Prudential Code determines that certain acts or practices are not prudent activity for a local authority and incur risk to the affordability of local authority investment:

- In order to comply with the Prudential Code, an authority must not borrow to invest primarily for financial return.

In this case any borrowing would be to purchase a site for education provision.

### **Financial Implications**

The total cost of the provision of a new school including any associated cost of land acquisition is set out in Appendix 1. The cost of provision of a new school will be met by £28.5m of grant and the remaining sum would need to be funded from borrowing. The estimated capital financing cost of the borrowing is £1.2m pa.

The provision of new special school provision in Harrow will mean that SEN transport costs can be reduced, which are a cost to the general fund, and there will be a reduced cost of SEN provision in the High Needs block. The estimated cost avoided in transport costs in the general fund would be sufficient to cover the capital financing costs by 2029/30 but there would be a revenue impact to the budget until 2028/29 of around £2m.

### **Equalities implications / Public Sector Equality Duty**

Decision makers should have due regard to the public sector equality duty in making their decisions. The equalities duties are continuing duties they are not duties to secure a particular outcome. The equalities impact will be revisited as the proposals are developed. Consideration of the duties should precede the decision. It is important that Leader has regard to the statutory grounds in the light of all available material such as consultation responses. The statutory grounds of the public sector equality duty are found at section 149 of the Equality Act 2010 and are as follows:

*A public authority must, in the exercise of its functions, have due regard to the need to:*

- (1) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*
- (2) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*
- (3) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.*

*Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard to the need to:*

- (1) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;*

- (2) *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;*
- (3) *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 to the need to:

- (1) *Tackle prejudice, and*
- (2) *Promote understanding.*

*Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.*

*The relevant protected characteristics are:*

- *Age*
- *Disability*
- *Gender reassignment*
- *Pregnancy and maternity*
- *Race*
- *Religion or belief*
- *Sex*
- *Sexual orientation*
- *Marriage and Civil partnership*

The potential for a new SEND provision will provide specialist education for pupils which for many, would be closer to home and their communities which will positively impact students, parents and carers as well as reducing potential travel time.

The creation of additional SEND school provision will deliver this priority:

- 1. A place where those in need are supported**



## **Section 3 - Statutory Officer Clearance**

**Statutory Officer: Sharon Daniels**

Signed by the Chief Financial Officer

**Date: 1/2/24**

**Statutory Officer: Jessica Farmer**

Signed by the Monitoring Officer

**Date: 1/2/24**

**Chief Officer: Dipti Patel**

Signed off by the Corporate Director

**Date: 1/2/24**

**Head of Procurement: Nimesh Mehta**

Signed by the Head of Procurement

**Date: 1/2/24**

**Has the Portfolio Holder(s) been consulted? Yes**

## **Mandatory Checks**

**Ward Councillors notified: YES**

**EqlA carried out:** No, there are considered to be no negative impacts in respect of equality

## **Section 4 - Contact Details and Background Papers**

**Contact:** Sophie Linton MA MRICS, Head of Estates,  
[Sophie.Linton@harrow.gov.uk](mailto:Sophie.Linton@harrow.gov.uk)

**Background Papers:** None

**Call-in waived by the Chair of Overview and Scrutiny Committee:** Yes