

Urgent Decision Taken on Behalf of Cabinet

Report to the Leader of the Council and Cabinet Member for Children, Young People and Schools

Report submitted by: Head of Service, Education, Quality and Performance.

Part I

Electoral Division affected:
Lancaster Rural East

Proposal to Discontinue the Local Authority's Maintenance of Wennington Hall School

Contact for further information:

Will Gale, Senior Adviser, School Improvement, Tel 01772 516166

Email will.gale@lancashire.gov.uk

Executive Summary

Between 3 February and 16 March 2020, the county council consulted on a proposal to discontinue the local authority's maintenance of Wennington Hall School, Lancaster. Under the statutory process, the authority is now required to consider the responses to the stage 1 consultation and decide whether to publish a Statutory Notice on the proposal.

The purpose of this report is to provide the information necessary for that decision to be considered.

Reason for Urgency

This decision is urgent and cannot await the next meeting of Cabinet. The reason for this is that all formal meetings of the council, including Cabinet, have been cancelled for the foreseeable future and this decision has been deemed to be business critical by the relevant Executive Director. This decision is therefore being taken on behalf of Cabinet by the Leader of the Council and the Cabinet Member for Children, Young People and Schools in accordance with the provisions of Standing Order C16(1)".

Recommendation

The Leader of the County Council and the Cabinet Member for Children, Young People and Schools are asked to:

- (i) note the consultation arrangements that were undertaken and the responses that were received in response to the authority's proposal.
- (ii) approve that the authority publishes a Statutory Notice of its proposal for the discontinuance of local authority maintenance of Wennington Hall School.
- (iii) confirm approval of the procurement process to identify an independent provider to take over the premises.

This decision should be implemented immediately for the purposes of Standing Order C29 as any delay could adversely affect the execution of the county council's responsibilities. The reason for this is that the decision has been designated as business critical by the relevant Executive Director, and any delay in its implementation would have an adverse affect on the operations of the county council.

Background and Advice

On 16 January 2020, Cabinet approved a stage 1 consultation be undertaken on the proposed discontinuance of the local authority's maintenance of Wennington Hall School, Lancaster due to:

- a) poor educational standards at the school;
- b) failure to secure a sponsor to convert the school to an academy.

Wennington Hall is a local authority maintained residential special school, for children and young people aged 11 to 16 with social emotional and mental health needs. The school has a designated capacity of 80 pupils, including 20 single occupancy residential places for 38 weeks a year. There are currently 55 on roll; most pupils attend on a day basis and a smaller number have residential placements. There are five young people in the care of the local authority.

In December 2016, an Ofsted inspection found the school to require special measures and, as a result, the school was issued with a directive academy order. However, the Regional Schools' Commissioner has not been able to identify a suitable sponsor. A further inspection took place in July 2019, when the school was judged to be inadequate and in need of significant improvement.

The impact of Ofsted judgements has resulted in falling numbers on roll. This has adversely affected the financial viability of the school, because its income is substantially reduced and the deficit accrued is large and increasing.

The Department for Education's statutory guidance, 'Opening and Closing Maintained Schools' includes the following reasons for the discontinuance of a maintained school:

- *It has been judged inadequate by Ofsted and there is no sponsored academy solution.* This applies to Wennington Hall, where over two years of seeking an academy solution have not resulted in a successful outcome. This has been recognised by the Department for Education and the Minister has given permission to pursue discontinuance provided a suitable independent provider is identified.
- *It is no longer considered viable.* The reduction in numbers on roll has reduced the school's income to a level which increasingly threatens its viability.

Closing a Maintained Special School: Guidance and Process

There is a defined statutory process in the School Organisation (Establishment and Discontinuance of Schools) Regulations 2013 which must be followed before making a decision on the discontinuance of a maintained school. This is supplemented by further guidance on the process published by the Department for Education.

A broad timetable, which is subject to change, for the overall process is set out below:

Action	Start
Cabinet approval to consult	16 January 2020
Stage 1 Consultation	3 February – 16 March 2020
Report back on consultation and Cabinet decision whether to publish Statutory Notice CURRENT STAGE	9 April 2020
Stage 2 and 3 Publication of Statutory Notice and representation period	April/May 2020
Stage 4 Decision	June 2020
Stage 5 Implementation	Subject to the identification of provider to take over the premises.

Consultations

The Department for Education's statutory guidance, 'Opening and Closing Maintained Schools' states that proposers, in this case the local authority, must consult organisations, groups and individuals they feel to be appropriate.

In line with the statutory guidance, a consultation document was produced (Appendix A) which was available on Lancashire County Council's website and was widely circulated to interested parties, such as families, staff and governors at the school, Lancaster City Council, county councillors for the districts affected, schools in Lancaster district, special schools throughout Lancashire and other stakeholders.

This report is requesting the publication of a Statutory Notice (Stage 2), which will lead to a further statutory consultation (Stage 3), in order to determine the proposal.

For the consultation, questionnaires were included in the consultation document and made available at the school. Online questionnaires could be accessed at www.lancashire.gov.uk.

Question 1

The first question in the consultation document asked respondents to state whether they agreed or disagreed with the proposal to discontinue the local authority's maintenance of the school. The responses received were as follows:

Number of responses	Strongly agree	Tend to agree	Neither agree nor disagree	Tend to disagree	Strongly disagree
34*	18%	18%	12%	6%	47%

(*34 individual responses to the questionnaire were received. The school's governing body submitted a corporate response)

The most frequently occurring responses amongst those who disagreed was:

- The previously good reputation the school enjoyed and the failure to address issues sufficiently over the last 3 years. In some instances this was coupled with the comment that Wennington Hall still provides an effective provision and that the school is now in a period of improvement;
- The need for the school in an area which would otherwise be unable to meet this type of special educational need;
- The failure of the local authority to provide sufficient support for school improvement, and
- The perceived increased cost of meeting needs through independent provision and independent providers' perceived poor record in meeting this

type of need. (This final point overlaps with many of the comments made in response to the second aspect of the consultation).

These issues were also referred to during the consultation event and the local authority's response is shown below.

There were far fewer comments from those who agreed with the proposal for discontinuance of local authority maintenance. A small number thought an independent provider might do a better job and some referred to the disadvantages of the location of the school.

The most frequent comments in response to the question, 'how would this affect you?' were from parents of current pupils and members of staff, who were particularly concerned with:

- Uncertainty about the future, because information about a private provider and what they are proposing is not yet available;
- The impact on pupils of any type of major change at the school, and
- The terms and conditions of service if staff are no longer employed by the local authority (again, this overlaps with many of comments made in response to the second question, and a wide range of issues related to terms and conditions as well as job security were raised).

Question 2

The second question asked respondents to state whether they agreed or disagreed with the proposal to secure education provision at Wennington Hall within the independent sector. The responses received were as follows:

Number of responses	Strongly agree	Tend to agree	Neither agree nor disagree	Tend to disagree	Strongly disagree
34	27%	18%	9%	6%	41%

The most frequently occurring responses amongst those who disagreed was:

- The lack of support currently provided for the school by the local authority;
- The continuing demand within Lancashire for this type of school, and
- The increased cost of commissioning places from an independent provider and the poor record 'profit making' companies had across the country.

These issues were also referred to during the consultation event and the local authority's response is shown below.

Those who agreed with the proposal made fewer and briefer comments, the most frequent of which was that this was the only option to move the school forward.

Respondents were also asked if they had 'anything else they would like to tell us' and this section included some of the strongest comments. The most frequent criticised the lack of support from the local authority and the 'unfair' scapegoating of staff. The proposal to seek an independent provider was seen as the local authority giving up on the school.

The consultation event

During the consultation period, a consultation event was held at the school between 2pm and 10pm on 27 February 2020 for parents, staff, governors and any other interested parties to ask questions and make comments on the proposal. 34 individuals attended the event. These comprised twenty two members of staff, two union representatives, four parents/grandparents, one governor and five members of the local community.

Local Authority staff in attendance were as follows: School Improvement Senior Adviser, Human Resources Manager (Schools), Principal Accountant Schools' Finance, and Inclusion Team Manager. The school's Headteacher was also in attendance.

At the event, attendees were asked whether they would be in support of discontinuance of the local authority's maintenance of the school, or if they wished to raise issues about the potential impact of discontinuance. All of those attending wished to raise issues about the impact and only one expressed support for discontinuance.

The main points they raised about discontinuance of the local authority's maintenance of the school were as follows:

1. Does 'discontinuance' really mean 'closure'?

Many individuals were puzzled by the meaning of 'discontinuance' and some were aware of the Department for Education's guidance which refers to closure alongside discontinuance. Questions such as 'is this really closure, but without using the word?' and 'what will be the impact of discontinuance?' were raised.

The local authority's response to this concern is as follows:

The local authority is obliged to complete the statutory process for discontinuance to enable negotiations to take place with independent providers. A decision can be taken to discontinue maintenance by the local authority without implementing that decision until the procurement process to identify an independent provider has taken place. Concerns are understandable because of the close association between discontinuance and closure, but there is no intention to implement the decision with immediate effect, and, in this context, there is a distinct and deliberate difference between the meaning of 'discontinuance of maintenance' and 'closure'.

2. The reference in local media reports about discontinuance being implemented in August 2020

In the week before the consultation event, the local paper provided accurate extracts from the consultation booklet, but also referred inaccurately to the decision being implemented in August 2020. Attendees were concerned this would mean rapid closure with the consequent impact on pupils and staff.

The local authority response to this concern is as follows:

August 2020 was originally proposed as the target date for achieving a decision to discontinue the maintenance of the school, but, as stated previously, there is no intention to implement the decision on that date. It is recognised that establishing a procurement process to identify an independent provider to take over the premises will take time and implementation will be delayed until that process is completed.

3. The declining numbers on roll owing to lack of admissions

Concern was expressed about the declining numbers on roll at the school, which many individuals felt threatened the viability of Wennington Hall. Particular concern was expressed about the lack of admissions in Year 7 and to the residential provision.

The local authority response to this concern is as follows:

The local authority has been cautious about new admissions to Wennington Hall, because of the policy to place pupils at good or better providers (as graded by Ofsted), wherever possible. Since 2016, the school has been in an Ofsted category of concern and, although improvements have been made, these have not been sufficient to remove the school from an Ofsted category. A private provider will have greater flexibility, which may enable them to raise standards more rapidly and it is likely that the raising of standards would result in a greater willingness to place pupils at the school.

4. The loss of a valuable resource for Lancashire, which had provided outstanding education in the past

Several individuals referred to Wennington Hall's long history of successfully meeting vulnerable pupils' needs. They also felt that much of this good work was continuing and would be further strengthened if the school received the right level of support. Some attendees were concerned that discontinuance would result in the loss of a valuable Lancashire resource, which would prove more costly to the local authority in the long run if in the hands of a private provider.

The local authority response to this concern is as follows:

The local authority accepts that the school had a very successful record before 2016, but, since then, Ofsted have repeatedly reported on low standards at the school, which have not been successfully addressed. The local authority accepts that it has not been successful in securing improvement and is compelled to seek an alternative solution. The school continues to be subject to a Department for Education academy

order, but in a three year period no suitable academy sponsor was identified. The Department insists the school must cease to be maintained as a local authority school and the academy order will only be revoked once the authority ceases its maintenance of the school.

Should the school cease to be maintained, the local authority is committed to negotiating good value and high quality provision with a private provider.

5. The potential threat to jobs should Wennington Hall cease to be a maintained school

Attendees raised a number of issues related to job security, pay and conditions.

The Local Authority response to this concern is as follows:

Human Resources expertise is being made available to staff to support them and attendees at the event had access to a local authority HR manager to discuss their concerns. Specific clarification was provided about Transfer of Undertakings (Protection of Employment) regulations, which should apply if staff transfer to a private employer. It is not possible for the local authority to answer all queries with certainty and these can only be answered if and when negotiations with a private provider are concluded.

Please note: A formal consultation was not conducted with Wennington Hall pupils, but their general views were gathered by the school and are included in the comments in this summary.

Implications:

This item has the following implications, as indicated:

Risk management

The authority has a statutory duty to secure high quality school places for its residents. School places will be secured for all current pupils affected by the proposed discontinuance, and potential future placements implemented through the local authority's commissioning arrangements.

Human Resources

There are implications for staff employed at the school who may be subject to the Transfer of Undertakings (Protection of Employment) Regulations 2006, depending on the nature of any successor service. Any incoming provider would wish to ensure its position is protected under any arrangement entered into with the county council.

Finance

Wennington Hall School went into special measures, and subsequently a deficit when the county council intervened in relation to safeguarding issues at the school in 2017. The school has a cumulative deficit of over £1million, as a result of maintaining higher staffing levels, to ensure pupils are adequately safeguarded and additional

transport costs due to fewer residential placements. This deficit is expected to rise substantially by March 2021 if no further action is taken.

When a local authority discontinues its maintenance of a school, any balance remaining including a deficit reverts to the authority.

Procurement Process

The county council intends to conduct negotiations with providers suitably experienced in the field of special educational needs, who meet specified eligibility criteria and who may be in a position to deliver education to pupils currently on roll at Wennington Hall.

The county council intends to explore a range of options presented by the provider market, including provision of education at other premises available to the provider.

Property Transfer or Sale

There is the potential for a substantial capital receipt for the school premises. However, a capital receipt will only be realised if approval from the Department of Education is given to the disposal under S77 School Standard and Framework Act 1998. In addition, the approval of the Secretary of State would be required under Schedule 1 to the Academies Act 2010.

The county council must also give consideration to Section 123 of the Local Government Act 1972. This provides that a council cannot dispose of its land for a consideration less than the best that can be reasonably obtained in the market, except with the express consent of the Secretary of State or via the 2003 General Disposal Consent order, permitting councils to dispose of land at an undervalue without Secretary of State consent, provided that:

- (a) the authority considers the disposal will help it to secure the promotion or improvement of the economic, social or environmental well-being of its area; and
- (b) the undervalue of the disposal does not exceed £2,000,000.

Equality and Cohesion

A full Equality Impact Analysis will be completed and reported at the determination stage of the proposal.

List of Background Papers

None

Reason for inclusion in Part II, if appropriate

N/A

Urgent Decision Taken on behalf of Cabinet: Declarations

Leader of the Council

The Proposed Discontinuance of the Local Authority's Maintenance of Wennington Hall School

Original recommendation, as set out in the report, approved without amendment. Yes/No *

Original recommendation amended and decision as follows: Yes/No *

I have a pecuniary/non-pecuniary interest in this matter. Yes/No *

If an interest is declared please give details below:

.....
Leader of the County Council

insert date

Chief Officer

I certify that this is an appropriate and accurate record within the terms of Standing Order C30(2) and (3) of the decision taken by the Cabinet Member.

.....
insert title of authorising officer

insert date

*Delete as appropriate

This decision is to be taken by more than one Cabinet Member and all relevant Cabinet Members must be in agreement with the decision

Urgent Decision Taken on behalf of Cabinet: Declarations

Cabinet Member for Children, Young People and Schools

The Proposed Discontinuance of the Local Authority's Maintenance of Wennington Hall School

Original recommendation, as set out in the report, approved without amendment. Yes/No *

Original recommendation amended and decision as follows: Yes/No *

I have a pecuniary/non-pecuniary interest in this matter. Yes/No *

If an interest is declared please give details below:

.....
Cabinet Member for Children, Young People and Schools

insert date

Chief Officer

I certify that this is an appropriate and accurate record within the terms of Standing Order C30(2) and (3) of the decision taken by the Cabinet Member.

.....
insert title of authorising officer

insert date

**Delete as appropriate*

This decision is to be taken by more than one Cabinet Member and all relevant Cabinet Members must be in agreement with the decision