

## Report to the Cabinet

Meeting to be held on Thursday, 14 January 2021

### Report of the Head of Service: Policy, Information and Commissioning (Start Well)

#### Part I

Electoral Division affected:  
Lancaster Rural East;

### Progress on the Implementation of the Procurement Process for Wennington Hall School and Proposal to Consult on the Discontinuance of the Local Authority's Maintenance of the School

(Appendix 'A' refers)

Contact for further information:

Dave Carr, Tel: (01772) 532066, Head of Service: Policy, Information and Commissioning (Start Well)

dave.carr@lancashire.gov.uk

#### Executive Summary

Approval was given to commence a formal procurement process intended to secure the future of Wennington Hall School in January 2020. The implementation of this decision was delayed due to the national pandemic and the invitation to tender published on 26 October 2020. The process for receipt of tenders closed on 4 December 2020.

The statutory process, set out in the School Organisation (Establishment and Discontinuance of Schools) Regulations 2013, must be undertaken before making a decision on the discontinuance of Wennington Hall School. Permission to pursue discontinuance has been given by the Department for Education on the condition that a suitable independent provider is identified.

#### Recommendation

Cabinet is asked to:

- (i) Note the current position and next steps with regard to the implementation of the procurement process.
- (ii) Approve a stage 1 consultation on the proposed discontinuance of the local authority's maintenance of Wennington Hall School and to receive a further report on the outcome in March 2021.

## **Background and Advice**

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 36 young people on roll; most pupils attend on a day basis with seven residential placements. Included in these numbers is one young person in the care of the local authority.

In December 2016, an Ofsted inspection judged the school to require special measures and, as a result, the school was issued with a directive academy order. A further Ofsted inspection took place in July 2019, when the school was judged to be inadequate and in need of significant improvement.

Despite the efforts of the Local Authority and the office of the Regional Schools' Commissioner, it has not been possible to identify a suitable academy sponsor for Wennington Hall School. Therefore, in June 2019, Cabinet considered five possible models to secure the future of Wennington Hall School, and requested a review of three of these: revoking the academy order; developing a joint venture arrangement and transferring the premises to an experienced independent provider.

In September 2019, the Regional Schools Commissioner wrote to the county council to advise that approval had been given to revoke the Academy Order, subject to the county council sourcing an appropriate private provider to take over the running of the educational provision at Wennington Hall School. The revocation of the directive Academy Order is contingent upon the discontinuance of the provision as a maintained school.

During September and October 2019, a market testing exercise took place to assess the interest of providers operating in the market of working with the county council in pursuit of this option. In the context of the decision about the revocation of the Academy Order, and the interest expressed by the independent sector, a report was considered by Cabinet in January 2020, with approval given to commence a formal procurement process.

## **Procurement Process**

On 26 October 2020, the invitation to tender, along with the detailed service specification, was published on the Lancashire County Council etendering portal.

The procurement process has taken the form of a procedure involving negotiations for social and other specific purposes, and intends to meet the objectives of providing:

- a) education for the young people on roll from 1 September 2021, either at Wennington Hall School or other Department for Education registered site(s), where that site will deliver improved education provision and will not entail a greater travel requirement than to the current site;
- b) a lease of the premises to the successful tenderer, with a transfer of ownership of the Wennington Hall School property along with all associated liabilities;

- c) utilisation of the Wennington Hall School site for specialist education provision and/or children's social care provision for a minimum of seven years, from the service commencement date to meet market need.

The anticipated value of the services, as described above, is approximately £700,000 to £1,230,000, for the delivery of services between September 2021 and the end of the academic year in 2024. This range was calculated based on the current costs of similar services per pupil for the same period. Therefore, as the number of pupils reduce over the term of the agreement, the annual value is expected to reduce.

A decision about the awarding of a contract is expected to be made by the end of April 2021, with the mobilisation taking place thereafter. The timescale for award of contract allows for full evaluation of bids received and any negotiation with bidders that may be required. The outcome of the tender process will be reported to Cabinet to note, as part of a further report in relation to the statutory process regarding the discontinuance of schools.

### **Closing a Maintained Special School: Guidance and Process**

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.*
- *It is no longer considered viable.*

As it has not been possible to identify a suitable academy sponsor for Wennington Hall School, the Department for Education on behalf of the Minister for the School System has given permission to pursue discontinuance on the condition that a suitable independent provider is identified. Since 2016, there has also been a significant reduction in number of pupils on roll at the school, such that the school's viability is increasingly threatened.

In January 2020, Cabinet approved a stage 1 consultation be undertaken on the proposed discontinuance of the local authority's maintenance of Wennington Hall School. In April 2020, Cabinet received a report following this consultation and approved the pursuance of a formal consultation period during April and May 2020.

Subsequently, Cabinet, having carefully considered the views of all respondents, as an essential part of the consultation process, withdrew the proposal in recognition of the timing of identifying a provider and the potential impact of the global pandemic on the operating market. The statutory process, set out in the School Organisation (Establishment and Discontinuance of Schools) Regulations 2013, must now be repeated before making a decision on the discontinuance of Wennington Hall School.

The applicable statutory guidance recommends a minimum consultation period of 6 weeks. Following this, there would be a requirement to publish the proposal, allowing

a four week representation period to allow for objections and comments. The local authority would then be required to make a determination within two months and publish its decision no later than one week thereafter, following which a four week period is allowed for appeals by the dioceses.

There are five statutory stages for this proposal as set out below:

<b>Stage1</b>	<b>Stage 2</b>	<b>Stage 3</b>	<b>Stage 4</b>	<b>Stage 5</b>
<b>Consultation</b>	<b>Publication</b>	<b>Representation</b>	<b>Decision</b>	<b>Implementation</b>
No longer than 12 months and a minimum of 6 weeks during school term time is recommended.	<p>Publication of statutory notice in appropriate local newspaper, on school premises and at all entrances of the school, within 12 months of the consultation.</p> <p>An accompanying proposal is also required.</p>	Must be a minimum of 4 weeks, from the date the statutory proposal is published.	<p>Local authority as the decision-maker must determine proposals within 2 months.</p> <p>If longer, must be referred to the schools' adjudicator within a week of the end of the 2 month period.</p> <p>Appeal may also be made to the adjudicator within the 4 weeks following publication of the Local authority's decision by Diocesan Board of Education for any diocese in the Church of England in the local authority</p>	No prescribed timescale, but proposers must be expected to show good reason if the timescale is longer than 3 years.

			area and/or the bishop of any Roman Catholic Church in the local authority's area.	
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Taking into account the above, an outline timetable for the process to be applied in respect of a proposal to cease to maintain Wennington Hall School is set out below:

Action	Start
Cabinet approval to consult	January 2021
Stage 1 Consultation	January - February 2021
Report back on consultation and Cabinet decision whether to publish Statutory Notice	March 2021
Stage 2 and 3 Publication of Statutory Notice and representation period	April - May 2021
Stage 4 Decision	May - June 2021
Stage 5 Implementation	Subject to the awarding of a contract to a suitable provider

### Required Consultation

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 will be produced and published on Lancashire County Council's website. This will also be circulated to interested parties, including families, staff and governors at the school, Lancaster City Council, county councillors for the districts affected, schools in the Lancaster district, special schools throughout Lancashire and other stakeholders.

### 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 procurement process or local authority's commissioning arrangements. The procurement of a provider gives an opportunity to improve the availability of high quality school places in Lancashire and the potential to avoid disruption to the long

term education of children and young people currently educated at the Wennington School site.

## **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. Information about staff employed at the school was provided as part of the procurement process.

## **Financial**

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 currently forecast to rise by circa £1million per year if no further action is taken.

When a local authority discontinues its maintenance of a school, a deficit balance reverts to the authority and will need to be funded from the authority's budget, therefore this is a financial risk to the county council.

## **Procurement Process**

The county council has, as set out above, implemented a tender process to engage suitably experienced providers in the field of special educational needs, which meet specified eligibility criteria as set out in the Invitation to Tender documentation.

Further procurement implications are set out at Appendix 'A' and are deemed to be Part II for the reason set out below:

This section of the report contains information relating to the financial or business affairs of any particular person (including the authority holding that information).

## **Property**

The Wennington Hall School property has been valued by the Local Authority at £2,750,000. Tenderers were required to submit their own valuation of the property as part of the tender process.

The potential for a substantial capital receipt for the school premises as set out in the tender documents published as part of the procurement process will require approval from the Department for Education to the disposal under S77 School Standard and Framework Act 1998. The approval of the Secretary of State is also 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.

A consultation process as set out in the Department for Education guidance needs to be undertaken and consent from the Secretary of State sought for the disposal of the playing fields at Wennington Hall School, alongside any required consent for the disposal of the land other than that falling within the statutory definition of 'playing fields'.

Consultation needs to be for a minimum of six weeks, with four weeks during term time.

### **Equality and Cohesion**

This proposal will impact on the protected characteristics groups of age (young people) and disability for pupils at the school and on employees, so a full Equality Impact Assessment will be provided to assist at the determination stage of the proposal.

### **List of Background Papers**

Paper	Date	Contact/Tel
None		

Reason for inclusion in Part II, if appropriate

Appendix 'A' is not for publication - Exempt information as defined in Paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972. The report contains information relating to the financial or business affairs of any particular person (including the authority holding that information). It is considered that in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.