



**Norfolk** County Council

## **New Special Free School, Downham Market, Norfolk**

# **Equality Impact Assessment – Findings and Recommendations**

**September 2023**

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**Equality impact assessments enable decision-makers to consider the impact of proposals on people with protected characteristics.**

**You can update an assessment at any time to inform service planning and commissioning.**

**For help or information please contact [equalities@norfolk.gov.uk](mailto:equalities@norfolk.gov.uk).**

## 1. The proposal

- 1.1 Local Authorities have a statutory duty to ensure the sufficiency of school places in their area. Norfolk County Council does not have enough local specialist provision in mainstream schools and too many children and young people attend a Special School far from home to have their education needs met.
- 1.2 Norfolk County Council is proposing to establish a new special free school for children with Communication and Interaction needs (including ASD) as part of our Local First Inclusion Programme in Downham Market, West Norfolk
- 1.3 This special free school will have 100 places at full capacity across the 5-18 age range, with double capacity in the secondary phase to ensure transition places for existing children as well as extra capacity to admit children year 7 upwards who are not able to access a secondary curriculum nor have their needs met within the environment of a large secondary school. It will also enable the LA to meet its stated ambition of “Local First” by offering a state funded school place for children in the West of Norfolk, reducing both the time and cost associated with transporting children to aligned schools in Fakenham and Norwich.
- 1.4 The school will be the third of its type in Norfolk, joining The Wherry and Duke of Lancaster Schools within a fraternity of 16 state funded special schools. The school will complement the existing provision by meeting the identified short fall of places, which increases pressure for places at existing schools in Fakenham and Norwich. It will also complement a large-scale increase of ASD unit provision across the county and in the local area, which will enable the LA to better plan strategically for local placements rather than being reliant only on when and where places become available - a driving factor for entry into the independent sector, particularly when children are in crisis and placements are needed urgently.
- 1.5 Norfolk’s SEND landscape reflects a tiered approach comprised of:
  - SEND provision available across its 650+ mainstream schools, colleges and early years providers supported by additional support, resource and funding from the LA;
  - Units / Resourced provisions across 32 primary and secondary mainstream schools, across 5 categories of need (ASD, MLD, HI, SLCN, SEMH)
  - 16 state funded special schools – 11 of which support a primary need of learning disability (with a range of co-morbid secondary needs such as PD, ASD, SLCN, SEMH, HI/VI/MSI, PMLD etc); 3 for a primary need of SEMH (with 2 schools being residential); and 2 for a primary need of ASD where pupils have generally average cognitive ability.
  - Two Alternative Provision Academies, (comprising centres dispersed across the county), delivering education to pupils who have been permanently excluded or who without it would not receive suitable, full-time education
- 1.6 In addition to the above, Norfolk has 15 independent schools and 1 independent post 16 specialist provider within its borders and a number in neighbouring local authorities where children are regularly placed; historically/currently these placements have been due to a lack of state-funded special school capacity.
- 1.7 Norfolk’s Local First Inclusion programme, with associated investment from the Department for Education under its Safety Valve agreement, provides a unique opportunity to re-shape Norfolk’s landscape of provision, prioritising a direction of travel which will see;

- Children's needs met locally
- Children's needs met earlier
- Children's needs met more holistically.

- 1.8 Following a comprehensive sufficiency analysis conducted in 2018, Norfolk County Council identified a range of gaps in local specialist provision, as well as additional challenges regarding capacity of mainstream schools to support children local to their homes and communities. In response, we invested £120m into the development of new capital ventures to address its shortfall in both unit and state funded special school provision; accompanying a broader SEND and Alternative Provision Transformation Programme centred upon increasing capacity within the mainstream sector to support more complex children.
- 1.9 The aims of this programme have been to reduce reliance on high cost independent sector provision, within the context of Norfolk as an outlier in respect of % of children with EHCPs placed within independent sector, i.e. the overall % of Norfolk C&YP within special (state-funded + independent) at 47% is comparable to national, however, Norfolk's ratio of independent placements within this overall cohort is substantially higher.
- 1.10 Our over-reliance on high cost/lower quality independent sector provision is overwhelmingly the main reason behind our historic and current High Needs Block cumulative and in year deficit.
- 1.11 Norfolk's Local First Inclusion Programme, sets out the reduction in independent sector provision and the increase in state-funded special school and specialist resource as the key source of savings. Our plan sets out a reduction of independent sector places from just over 900 currently to just over 100 in six years' time.
- 1.12 Our sufficiency analysis was refreshed in 2021 to determine impact of our investment to date; three new special schools and 10 new specialist bases within mainstream schools have opened. This refreshed analysis identified an ongoing reliance on the independent sector and current gaps and needs. This also identified a new gap for provision for children with Communication and Interaction needs, including ASD.
- 1.13 Local data identifies that the numbers of children with EHCPs with a primary need of ASD has increased by 91% between 2018 – 2022. This new school in Norfolk is central to the overall strategic plan by meeting the needs of this cohort earlier, preventing escalation of challenging behaviour resulting in children entering SEMH provisions at a later stage of development.
- 1.14 This free school will be designed and built, in line with Building Bulletin B104, which states that children with SEN require extra space. Building Bulletin's 98, 99 and 103, although aimed at mainstream environments, provide a suitable accommodation checklist to cover the standard educational entitlement.

## **2. Legal context**

- 2.1 Public authorities are required by the Equality Act 2010 to give due regard to equality when exercising public functions<sup>1</sup>. This is called the 'Public Sector Equality Duty'.

- 2.2 The purpose of an equality impact assessment is to consider the potential impact of a proposed change or issue on people with protected characteristics. If the assessment identifies any detrimental impact, this enables mitigating actions to be developed.
- 2.3 It is not always possible to adopt the course of action that will best promote the interests of people with protected characteristics. However, equality assessments enable informed decisions to be made that take every opportunity to minimise disadvantage.

### 3. Information about the people affected by the proposal

- 3.1 This proposal will primarily impact on children and young people with Communication and Interaction needs, including ASD in Norfolk.
- 3.2 This includes residents, service users and/or staff with a range of protected characteristics, in relation to disability, sex, gender reassignment, marital or civil partner status, pregnancy and maternity, race, religion/belief, age and sexual orientation.
- 3.3 The table below sets out the forecast total school age pupils in Norfolk from the 2022 SCAP submission. Norfolk's overall school age population is expected to increase marginally by 0.24% between 2021 – 2028. However when those totals are broken down by age range, the picture becomes more nuanced with a reduction of children in the lower age ranges, an evening in the mid age ranges and a larger % increase in the upper age ranges (which will transpose into post 16).

| Year  | Sum of Y R | Sum of Y 1 | Sum of Y 2 | Sum of Y 3 | Sum of Y 4 | Sum of Y 5 | Sum of Y 6 | Sum of Y 7 | Sum of Y 8 | Sum of Y 9 | Sum of Y 10 | Sum of Y 11 | Totals |
|-------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|-------------|-------------|--------|
| 21/22 | 8761       | 9010       | 9050       | 9043       | 9309       | 9484       | 9373       | 9060       | 8869       | 9135       | 8651        | 8235        | 107980 |
| 22/23 | 8486       | 8755       | 9046       | 9224       | 9000       | 9324       | 9486       | 9498       | 8997       | 8875       | 9090        | 8624        | 108405 |
| 23/24 | 8103       | 8557       | 8856       | 9192       | 9312       | 9134       | 9458       | 9651       | 9546       | 9070       | 8948        | 9163        | 108990 |
| 24/25 | 7867       | 8219       | 8670       | 9048       | 9320       | 9434       | 9394       | 9614       | 9751       | 9644       | 9169        | 9047        | 109177 |
| 25/26 | 7819       | 7994       | 8362       | 8871       | 9195       | 9465       | 9579       | 9409       | 9702       | 9836       | 9722        | 9258        | 109212 |
| 26/27 | 8150       | 7918       | 8080       | 8494       | 8977       | 9294       | 9567       | 9594       | 9478       | 9761       | 9913        | 9799        | 109025 |
| 27/28 | 8227       | 8226       | 7994       | 8216       | 8577       | 9053       | 9378       | 9608       | 9656       | 9525       | 9821        | 9966        | 108247 |

- 3.4 In 2021, NCC commissioned Mastodon C to undertake a series of forecast analyses of its EHCP population. The data provided by NCC was validated by Mastodon C and used to project the EHCP population over the next 10 years including by setting, year group and primary need category. The modelling was based on three years of data using DfE SEN2 returns (January 2019 – January 2022). Using these historic pathways, the model runs 1000 simulations for each possible child with an EHCP over the projected future timespan. This gives a probability range of 90% projected outcomes, an interquartile range of 50% of the projected outcomes and a median figure. The underlying population used is the ONS general population projects updated in 2018. Based on the 3-year historical patterns, the headlines from this data analysis showed that:
- Norfolk's EHCP population would be projected to grow to 11,432 by 2027 and 13,033 by 2032. Population grows through the entire period of the projection but slowing from 11.9% year on year in 2022 to 1.8% by 2032;
  - Numbers of children with a primary need of ASD and SEMH would increase significantly until 2032, followed by SLCN and MLD;

- Norfolk's population of EHCP children in post 16 FE settings would increase dramatically to approximately 4,300 by 2032;
- Numbers in mainstream schools would increase to around 2600 in 2026 before levelling out and slightly reducing to 2032;
- Numbers in state funded special would increase markedly between 2020-2024 before levelling out at the 2500 range;
- Numbers in independent settings would grow to just under 1000 in 2027 before levelling out.

3.5 A substantial analysis of demand for special school provision based on requests for such arising from parental preference or where mainstream schools were recommending they were not able to meet children's needs within Annual Reviews, was undertaken looking at the academic years 2018-19 to 2021-22. This revealed that:

- Requests for special school places had risen by 33% over the period (780 in 2018/19 to 1038 in 2021/22)
- For the children referred in a given academic year, the LA was only able to secure placements in on average 70% of the cohort referred.
- This resulted in an exponentially increasing waiting list of children needing a special school place that the LA was unable to provide.
- To analyse the impact of this further, NCC undertook a sufficiency refresh of its EHCP "waiting list" population in 2021 following that undertaken in 2018. The 2021 analysis was able to compare demand into the special school system from the 2018 analysis across three designations of special school – learning disability/complex needs schools; SEMH schools and ASD.

3.6 The key headlines from this analysis are as follows:

- Requests for special school places had risen by 33% over the period.
- For the children referred in a given academic year, the LA was only able to secure placements in on average 70% of the cohort referred.
- This resulted in an increasing number of children needs a special school place that the LA was unable to provide.
- Children attending existing schools – The Wherry and Duke of Lancaster were travelling from hugely dispersed areas across Norfolk;
- 10% of the waiting list cohort were currently within Alternative Provision having been excluded from their school.
- Most children on the waiting list were in mainstream primary schools (70%).
- The analysis also identified a large cohort of children with a primary need of ASD were receiving their education in high cost independent sector placements, as reflected in the Norfolk SV DSG Management plan. The independent sector had grown, with 2 new schools being created in that period in response to growth in the market. Costs in the ASD sector was rising at significantly over-inflationary rates year on year.
- There remained insufficient secondary mainstream ASD unit places against the numbers in the primary phase and this cohort were found being referred for special school provision in Year 6.

## 4. Potential impact

4.1 Based on the evidence available, this proposal is likely to have a positive impact on children and young people living in Norfolk with ASD. The additional new SEND Free School will contribute to Norfolk succeeding in achieving its aim and success criteria as set out in the Local First Inclusion Programme and SEND Sufficiency Strategy.

#### 4.2 Impact of education in specialist provision

There are several benefits to children and young people being educated in local state-funded specialist provision. This includes:

- More children and young people can be educated closer to home/family and remain in their local community
- Reduced need to travel long distances/out of county to achieve an appropriate education
- Greater access to local specialist provision improving Norfolk's Local Offer to children, young people and their families relating to special educational needs
- The Local Authority will meet statutory duties under Section 14 of the Education Act to provide sufficient school places for all of its statutory school age learners
- Local provision will facilitate multi-agency planning and working as a 'team around the child' with the child and family.
- Reduced need for independent sector, including those at such significant distance requiring them to board, further dislocating them from their communities.

4.3 Relevant legislation protects the right of children with special educational needs to be educated in mainstream schools. The new special free schools will not compromise this inalienable right of children and families. The schools will be principally for pupils whose parents have expressed a request for their child to attend the school via relevant acts of legislation which inform the school place planning for pupils with EHC plans. In some cases, the school will be made available to pupils whose parents may seek for their child to attend a different special school where the cost of such is prohibitive when compared to the cost of education within the new school. The rights of parents will be protected in such cases by their ability to appeal to the Special Educational Needs and Disability Tribunal.

#### 4.4 Impact on other schools

LA mainstream school; There will be a beneficial impact for local maintained schools, as the new special school will cater for this profile of special education need, nearby. Any reduction in pupils on roll at maintained schools is a low risk, given the number of mainstream schools in the area.

Independent schools; There could be a negative impact for independent providers who currently have pupils on roll, which may transfer to the new school. The negative impact for independent schools will be to their pupil numbers and financial state.

However the overall impact for Norfolk's children with SEND will be beneficial, as any savings from school transport budget and dedicated schools grant High Needs Block, can be reinvested back into SEND services.

4.5 Norfolk County Council confirms that this new school will not have a negative impact on public or service users and that no particular groups of people will be adversely affected by the new schools.

4.6 However Norfolk County Council is aware that there may be a negative impact for independent providers.

4.7 Please find below detailed analysis of the impact on people with protected characteristics and identifies action to mitigate, were possible.

| Protected characteristic                 | Impact; positive, detrimental, disproportionate or negative   | What mitigation can be in place?   |
|--|---|--|
| Age                                      | <p>This proposal will provide additional SEND places for the relevant aged children required and create more local provision. Children and young people between the ages of 5 and 18 will be able to access places at the new schools, which will cater for boys and girls. Norfolk County Council wants to ensure that as many pupils as possible benefit from the proposed new schools whilst ensuring that others aren't adversely affected.</p> <p>There is no negative age-related impact.</p>   | <p>Admissions will be managed in line with the <a href="#">Special Educational Needs and Disability Code of Practice, January 2015</a></p>   |
| Disability                               | <p>This proposal provides children aged 5 – 18 with communication and Interaction needs, including ASD, with be able to access local provision suitable for their needs, subject to assessment.</p> <p>The school will be designed to current DfE Building Bulletin 103 requirement for schools and will be a modern design, offering high quality facilities.</p> <p>The school will be fully inclusive and meet the needs of children with Special Education Needs and/or Disability (SEND).</p> <p>This proposal will have a positive impact on children and young people with SEND.</p> | <p>Once an academy sponsor has been confirmed, we will work with the Trust staff to ensure that any issues identified for pupils, staff or visitors can be addressed.</p>  |
| People with a long-term health condition | <p>It is not anticipated that the proposal will affect people disproportionately because of long term health conditions.</p>  | <p>No mitigation is currently required but the position will continue to be monitored and if any issues in respect of this protected characteristic are identified then the Action Plan will be amended accordingly.</p> |
| Gender reassignment                      | <p>It is not currently anticipated that the proposal will affect people disproportionately, because of issues around gender reassignment.</p>   | <p>No mitigation is currently required but the position will continue to be monitored and if any issues in respect of this protected characteristic are identified then the Action Plan will be amended accordingly.</p> |
| Marriage/civil partnerships              | <p>It is not currently anticipated that the proposal will affect people disproportionately, because of issues around marriage and civil partnership.</p>  | <p>No mitigation is currently required but the position will continue to be monitored and if any issues in respect of this protected characteristic are identified then the Action Plan will be amended accordingly.</p> |
| Pregnancy and Maternity                  | <p>It is not currently anticipated that the proposal will affect people</p>   | <p>No mitigation is currently required but the position will continue to be monitored and if any issues in respect</p>   |

|                       |   |   |
|-----------------------|---|---|
|                       | disproportionally, because of issues around pregnancy and maternity   | of this protected characteristic are identified then the Action Plan will be amended accordingly.   |
| Race                  | The school will be required to accept all children regardless of race or ethnicity and therefore will have a positive impact on this characteristic.  | No mitigation is currently required but the position will continue to be monitored and if any issues in respect of this protected characteristic are identified then the Action Plan will be amended accordingly. |
| Religious/<br>belief  | The school is not being proposed as a religious school and therefore has a positive impact on this characteristic, as it will cater for children of all religions and be inclusive of all faiths. | No mitigation is currently required but the position will continue to be monitored and if any issues in respect of this protect characteristic are identified then the Action Plan will be amended accordingly.   |
| Sex                   | The proposal will have a positive impact on this characteristic, as the school will be for both male and female pupils.   | No mitigation is currently required but the position will continue to be monitored and if any issues in respect of this protected characteristic are identified then the Action Plan will be amended accordingly. |
| Sexual<br>orientation | It is not currently anticipated that the proposal will affect people disproportionately, because of issues around sexual orientation.   | No mitigation is currently required but the position will continue to be monitored and if any issues in respect of this protected characteristic are identified then the Action Plan will be amended accordingly. |

## 5. Conclusion

- 5.1 There is no legal impediment to going ahead with the proposal. It would be implemented in full accordance with due process, national guidance and policy. Similar proposals have been implemented elsewhere in the UK.
- 5.2 It is possible to conclude that the proposal may have a positive impact on some people with protected characteristics, for the reasons set out in this assessment. It may also have some detrimental impacts, also set out in the assessment.
- 5.3 Decision-makers are therefore advised to take these impacts into account when deciding whether or not the proposal should go ahead, in addition to the mitigating actions recommended below.
- 5.4 Some of the actions will address the potential detrimental impacts identified in this assessment, but it is not possible to address all the potential impacts. Ultimately, the task for decision-makers is to balance these impacts alongside the need to manage reduced resources and continue to target support at those who need it most.



## 6. Recommended actions

|    | Action   | Lead           | Date    |
|----|--|----------------|---------|
| 1. | Review the EqIA as the new school develops       | Caroline Money | ongoing |
| 2. | Ensure admissions is managed in line with policy | Kim Breen      | ongoing |
| 3. | Work with the appointed sponsor to ensure        | Capital        | ongoing |

## 7. Evidence used to inform this assessment

- Norfolk County Council's [Equality, Diversity and Inclusion Policy](#)
- Norfolk County Council's [Equality, Diversity and Inclusion Objectives](#)
- Demographic factors set out in [Norfolk's Story 2019](#)
- Norfolk County Council [Area Reports](#) on Norfolk's JSNA relating to protected characteristics:
- Business intelligence and management data, as quoted in this report
- Equality Act 2010 and Public Sector Equality Duty codes of practice

## 8. Further information

For further information about this equality impact assessment please contact Caroline Money, School Organisation Manager.



If you need this document in large print, audio, Braille, alternative format or in a different language please contact Caroline Money by emailing [schoolreview@norfolk.gov.uk](mailto:schoolreview@norfolk.gov.uk).

# Annex 1 – table of protected characteristics

The following table sets out details of each protected characteristic.

Remember that people with multiple characteristics may face the most barriers:

| Characteristic                                  | Who this covers  |
|---|--|
| <b>Age</b>                                      | Adults and children etc, or specific/different age groups  |
| <b>Disability</b>                               | <p>All disabled people including but not limited to:</p> <ul style="list-style-type: none"> <li>• People with mobility issues (e.g. wheelchair or cane users; people of short stature; people who do not have mobility in a limb etc)</li> <li>• Blind and partially sighted people</li> <li>• People who are D/deaf or hearing impaired</li> <li>• People with learning disabilities</li> <li>• People who have mental health issues</li> <li>• People who identify as neurodiverse (this refers to neurological differences including, for example, dyspraxia, dyslexia, Attention Deficit Hyperactivity Disorder, the autistic spectrum and others).</li> </ul> |
| <b>People with a long-term health condition</b> | People with long-term health conditions which meet the criteria of a disability.   |
| <b>Gender reassignment</b>                      | <p>People who identify as transgender (defined as someone who is proposing to undergo, is undergoing or has undergone a process or part of a process to reassign their sex. It is not necessary for the person to be under medical supervision or undergoing surgery).</p> <p>You may also want to consider the needs of people who identify as non-binary (a spectrum of gender identities that are not exclusively masculine or feminine).</p>   |
| <b>Marriage/civil partnerships</b>              | People who are married or in a civil partnership. They may be of the opposite or same sex.   |
| <b>Pregnancy &amp; Maternity</b>                |  |
| <b>Race</b>                                     | <p>Race can mean colour, nationality (including citizenship), or ethnic or national origins, which may not be the same as current nationality.</p> <p>A racial group can be made up of two or more distinct racial groups, for example black Britons, British Asians, British Sikhs, British Jews, Romany Gypsies and Irish Travellers.</p>  |
| <b>Religion/belief</b>                          | Belief means any religious or philosophical belief or no belief. To be protected, a belief must satisfy various criteria, including that it is a weighty and substantial aspect of human life and behaviour. Denominations or sects within a religion can be considered a protected religion or religious belief.  |

| <b>Characteristic</b>     | <b>Who this covers</b>   |
|---------------------------|--|
| <b>Sex</b>                | This covers men and women. You may also want to consider the needs of people who identify as intersex (people who have variations in sex characteristics). |
| <b>Sexual orientation</b> | People who identify as straight/heterosexual/lesbian, gay or bisexual.   |

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<sup>1</sup> The Act states that public bodies must pay 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 people who share a relevant protected characteristic<sup>1</sup> and people who do not share it;
- Foster good relations between people who share a relevant protected characteristic and people who do not share it.

The full Act is available [here](#).