Executive Scrutiny Committee

A meeting of Executive Scrutiny Committee was held on Tuesday 20th October 2026.

Present: Cllr Sylvia Walmsley (Chair), Cllr Jim Beall, Cllr Marc Besford, Cllr Carol Clark, Cllr Stephen Dodds, Cllr Lynn Hall, Cllr Niall Innes, Cllr Mrs Ann McCoy, Cllr Sufi Mubeen, Cllr Ross Patterson (sub for Cllr Kevin Faulks), Cllr Tony Riordan and Cllr Marilyn Surtees

Officers: Ged Morton, Julie Butcher, Jonathan Nertney, Judy Trainer, Clare Harper, Majella McCarthy and Elisha Dyball

Also in attendance: Cllr Marcus Vickers, Cllr Clare Besford and Cllr Paul Rowling

Apologies: Cllr Kevin Faulks

ESC/35/26 Livestreaming

The Chair announced to those present that the meeting would be live streamed.

ESC/36/26 Evacuation Procedure

The evacuation procedure was noted.

ESC/37/26 Declarations of Interest

There were no declarations of interest recorded.

ESC/38/26 Call in Meeting Procedure

The Committee noted the meeting procedure.

ESC/39/26 Call In - SEND Reform Programme - Education White Paper and Local Area Reform Plan Update

The Head of Democratic Services presented a report setting out the background to the call-in and supporting documents.

The decisions taken at Cabinet on 17 September 2026 in relation to SEND Reform Programme – Education White Paper and Local Area Reform Plan Updated had been subject to a valid call-in. The call in applied to decisions 5 – 13 of the following decisions:

RESOLVED

1) The closure of the national SEND Reform consultation and the submission of the Local Area Reform Plan to the Department for Education, be noted.

2) It be noted that Council and the North East and North Cumbria Integrated Care Board were awaiting the outcome of the assessment process, expected in October 2026.

3) The significant financial implications of approval of the Local Area Reform Plan, including the potential write-off of approximately 90% of the cumulative DSG High Needs deficit, be noted

4) The continued delivery of the SEND Reform Programme and associated transformation activity set out within the Local Area Reform Plan be endorsed.

5) The investment of up to £2m of capital funding, to create a new 50 place SEMH school, be agreed. This was to undertake necessary building work to adapt and expand an older building to create the required places.

6) The investment of £1.4m of capital funding to expand the existing Early Support Nursery to create up to 10 extra spaces, be agreed. This was to undertake necessary building work to adapt the existing provision to create the required places.

7) The investment of £3.75m of capital funding to expand the Ash Trees Academy Special School in building onto the Sandown Road site to create up to 40 additional specialist primary spaces, be agreed. This was to undertake necessary building work to adapt the existing provision to create the required places.

8) Delegated authority be given to the Director of Children's Services, in consultation with the Cabinet Member for Children and Young People, to take all necessary steps to deliver the projects within the approved budgets.

9) Delegated authority to the transfer of budget caused by cost variations within the approved programme be given to the Section 151 Officer and the Director of Children's Services, in consultation with the Cabinet Member for Resources and Transport and the Cabinet Member for Children and Young People.

10) Delegated authority be given to the Director of Children's Services, in consultation with the S151 officer and Cabinet Member for Children and Young People, to allocate the contingency of £860,000 if required within the three schemes, within the approved programme.

11) Delegated authority be given to the Director of Children's Services in consultation with the Director or Corporate Services to award the construction contract to deliver recommendation 1 to a value of £1.7m including variation, annual inflationary uplifts (where allowed in the contract terms and conditions) and extension decision.

12) The Director of Children's Services be appointed as the Council's authorised representative for the purposes of exercising the Council's rights as a Member of Spark of Genius LLP in relation to the SEMH Special School project and associated matters, including attendance at, participation in and voting at Members' meetings of the LLP.

13) Authority be delegated to the relevant Director or Assistant Director to make the specific contract award decision and any subsequent contract variation, annual inflationary uplifts (where allowed in the contract terms and conditions) and extension decision in respect of all contracts required to deliver the SEMH Special School project approved by the report.

Members who had signed the call-in request had been invited to attend the meeting.

The Monitoring Officer presented his report which set out the reasons for the validation of the call-in in relation to the following principles of decision-making:

a) Due consultation and the taking of professional advice;
b) Clarity of aims and desired outcomes, insofar as this relates to the erroneous cross-reference within the relevant contractual resolution;
c) Explanation of options and reasons; and
d) Clarity and explanation of information provided.

In addition, the Monitoring Officer advised that he had considered whether he should excuse himself from the validation exercise, given his role in advising Cabinet at the meeting in question. Having consulted with relevant Members, he concluded that it was appropriate to participate in the process as his participation at Cabinet had been relatively limited. The Monitoring Officer wished it to be made clear that this had been considered at the outset of his validation exercise.

The following documents had been included with the agenda for the meeting for consideration by Executive Scrutiny Committee:

- Call in Form
- Cabinet Report
- Decision Record
- Report of Monitoring Officer

On behalf of the Councillors who had submitted the call-in request of the Cabinet decision, Councillor Marcus Vickers set out the rationale for the call in which related to:

- Insufficient evidence and safeguards to support the commitment of over £8 million and the delegation of significant powers to officers
- Errors and inconsistencies in the decision documentation
- Introduction of significant proposals at the meeting that were not fully set out in the published report
- Failure to consider or present alternative options
- Insufficient clarity regarding legal, financial and governance implications, including the Council’s exposure and liabilities
- Lack of assurance on procurement, value for money and contractual arrangements
- Reliance on unconfirmed funding and concerns regarding the contingency
- Inadequate definition and oversight of delegated powers
- Cumulative concerns regarding the transparency, accountability and robustness of the decision-making process

The Cabinet Member for Children and Young People explained why she believed the decision-making principles had been complied with. She stated that Cabinet's primary objective had been to improve outcomes for children and young people with SEND by increasing local specialist provision and reducing reliance on out-of-area placements. It was argued that Cabinet had sufficient evidence to make an informed decision, based on extensive preparatory work including needs assessments, options appraisal, consultation and business case development.

Whilst acknowledging that aspects of the report could have been more detailed, particularly regarding alternative options, it was maintained that these options had been considered and that Cabinet had sufficient information on the need, proposed solutions, risks and financial implications to reach a sound decision.

It was further argued that the issues raised through the call-in related mainly to the presentation of the report rather than the merits of the proposals. She concluded that even if Members believed the report could have been improved, the decision would have been unchanged.

The Deputy Leader and Cabinet Member for Resources and Regeneration addressed the financial and governance aspects of the decision and stated that both officers and Cabinet had been fully aware of the relevant considerations, financial implications and proposed delegations when the decision was made.

It was acknowledged that the report could have been drafted more effectively; however, it was maintained that Cabinet had the necessary information to make an informed decision and that shortcomings in the presentation of the report did not undermine the validity of the decision-making process.

Questions from Committee Members and responses included:

1. Would the inclusion of additional information, particularly on alternative options, have changed Cabinet's decision?

Cabinet Members stated that a number of alternative approaches had been considered during the development of the proposals, including maintaining existing arrangements and options that would not have delivered the scale of SEND provision required. Whilst acknowledging that the report could have set out this assessment more fully, it was maintained that the preferred option was clearly the most effective means of meeting the identified need. As a result, inclusion of additional detail on alternatives would not have altered Cabinet's decision.

2. As Section 151 Officer, was there anything in the process that caused concern?

The Chief Financial Officer advised that an options appraisal had been undertaken as part of the governance process, including consideration of different options and financial models. It was explained that the financial implications of the proposals had been assessed and discussed with Cabinet Members prior to the decision. While financial modelling necessarily involved assumptions, these had been reflected within the business case and options appraisal. There was nothing within the report or decision-making process that would have caused concern to the extent that they would have advised Cabinet that the decision should not proceed.

3. Can the Monitoring Officer clarify his role in advising Cabinet and whether the two additional recommendations introduced at the meeting had been appropriately brought forward and were these recommendations outside the provisions of the Constitution?

The Monitoring Officer explained that, whilst legal advice to Cabinet was often provided by the Head of Legal Services, he remained ultimately responsible for ensuring that appropriate legal advice was available to Cabinet. He advised that the two additional recommendations had been introduced to enable implementation of the substantive decisions already before Cabinet, including arrangements relating to the

Spark of Genius LLP and the procurement of services required to deliver the proposals. The Monitoring Officer considered these additions to be technical and consequential in nature rather than material changes to the proposals. He had advised Cabinet on that basis and confirmed that, had he considered the additional recommendations to be material changes, he would have recommended that Cabinet defer the decision. He further confirmed that he did not consider the inclusion of the additional recommendations to be outside the provisions of the Constitution.

4. What briefing and engagement had taken place outside the Cabinet meeting, given that alternative options had been considered and Cabinet Members appeared familiar with those options?

The Cabinet Member for Children and Young People advised that the proposals had been developed through a considerable programme of work involving a range of partnership forums, internal meetings and Member briefings. Discussion of the SEND sufficiency challenges and potential solutions had taken place through bodies including the Strategic Education Board, SEND Improvement Board and the Local Area Reform Plan. The Cabinet Member also referred to regular meetings with officers, Corporate Management Team briefings and discussions with Cabinet colleagues. It was explained that these various forums had considered a range of options and contributed to the development of the preferred proposals that were ultimately presented to Cabinet for decision.

5. There was an apparent inconsistency between statements that alternative options had been considered and the decision record, which stated that no alternative options had been considered and rejected. What were the alternative options and why they had not been reflected in the Cabinet report?

Cabinet Members clarified that alternative approaches had been considered during the development of the proposals, including a do-nothing option, expansion of alternative provision placements and expansion of existing educational provision. However, these options were not included within the Cabinet report as they had not been considered viable solutions capable of delivering the scale of intervention required. Whilst it was acknowledged that the report could have provided detail on the options appraisal undertaken, it was maintained that inclusion of those alternatives would not have altered Cabinet's decision. It was emphasised that Cabinet's decision had been informed by discussions and briefings undertaken over a period of time rather than solely by consideration of the report at the Cabinet meeting itself.

The Monitoring Officer advised that there was a valid criticism of the report in that the options appraisal documents had not been identified in background papers. He acknowledged this as a drafting error and confirmed that documents setting out the options considered did exist and had informed the recommendations presented to Cabinet. However, he noted that the question of whether this omission affected the adequacy of the information available to Cabinet was a separate matter for the Committee to determine.

6. Where were the documented appraisals of alternative sites, providers, delivery models, procurement routes and costs as no alternative options had been formally considered by Cabinet at the meeting?

Cabinet Members acknowledged that the options appraisal should have been referenced within the report as a background paper but maintained that this omission

had not materially affected Cabinet's decision, as Members had been briefed on the alternatives and were satisfied that the recommended option was the most appropriate solution.

The Monitoring Officer advised that officers had prepared an options appraisal which considered a range of alternatives and informed the recommendations presented to Cabinet. He reiterated that this document should have been listed as a background paper because it had been relied upon in formulating the recommendations. However, he explained that Cabinet had only been asked to consider a single recommended option rather than choose between a number of alternatives. The decision record therefore correctly stated that no alternative options had been considered and rejected by Cabinet, as those options had been assessed and refined by officers before the matter was presented for decision.

7. Was approval of the Local Area Reform Plan by the Department for Education received after the Cabinet decision and, if so, did this absence affect the decision-making process?

The Cabinet Member for Children and Young People advised that the Local Area Reform Plan had been completed and submitted to the Department for Education prior to the Cabinet meeting, with formal approval being received subsequently. It was explained that the Plan formed part of the wider SEND reform programme and informed much of the Council's ongoing work. Whilst Government approval had not been available at the time of the Cabinet decision, there had been no indication that approval would not be forthcoming, and the subsequent approval did not alter the basis on which Cabinet had reached its decision.

8. Were Cabinet Members satisfied that the full programme was financially and operationally viable without the anticipated High Needs Stability Funding?

The Deputy Leader and Cabinet Member for Resources and Regeneration advised that Cabinet Members relied on professional officer advice when reaching their decision. Members had been advised that the programme was viable and, based on that advice, were able to make an informed judgement. No concerns had been raised by officers regarding the viability of the programme or the funding assumptions, and there had been no indication that approval of the relevant funding arrangements would not be forthcoming.

9. What Council assets and funding were being committed through the proposals and what financial contribution would be made by Spark of Genius?

The Deputy Leader and Cabinet Member for Resources and Regeneration advised that the financial and asset implications of the arrangements had been considered as part of the decision-making process, although the specific figures were not available at the meeting and would be provided afterwards. It was stated that Cabinet had considered the wider financial implications of the proposals and had received no advice indicating any material risks which would affect the decision.

The Chief Finance Officer referred Members to the relevant sections of the report concerning the Council's proposed asset contributions. It was explained that the financial model would follow the existing Spark of Genius joint venture arrangements, whereby the Council would retain ownership of the assets and lease them to the LLP.

10. What procurement procedure would be used for the proposed construction contract and what competition or value for money assessment had already been undertaken?

The Deputy Leader and Cabinet Member for Resources and Regeneration advised that any procurement arising from the proposals would be conducted in accordance with the Council's procurement policies and procedures. It was explained that Cabinet's role was to approve the recommendations and desired outcomes, with the relevant Director then empowered through delegated authority to undertake the procurement process in line with the Council's rules.

11. Could a contract be entered into before the incorrect reference contained within Recommendation 11 had been formally corrected, noting that the recommendation referred to Recommendation 1?

The Deputy Leader and Cabinet Member for Resources and Regeneration acknowledged that Recommendation 11 contained an incorrect cross-reference but maintained that Cabinet clearly understood the purpose of the recommendation.

The Monitoring Officer accepted that any error within the recommendations was undesirable. However, having considered the report as a whole, he advised that the intention and purpose of the recommendation remained sufficiently clear, particularly in relation to the procurement arrangements it was intended to authorise. He confirmed that officers considered the resolution capable of being implemented without referral back to Cabinet and did not regard the incorrect reference as being sufficiently material to invalidate the decision or prevent action being taken under the delegated authority granted.

With regard to the corresponding error in the Cabinet decision record, the Monitoring Officer advised that the published decision record could not be amended retrospectively. However, the intention and effect of the resolution were sufficiently clear to enable it to be implemented. The Monitoring Officer further noted that the Executive Scrutiny Committee had identified the typographical error during its consideration of the matter, and that the minutes of that meeting would provide a clear record of the discussion and clarification provided.

12. What precise financial and contractual limits apply to decisions taken by Directors or Assistant Directors under the Cabinet delegations?

The Deputy Leader and Cabinet Member for Resources and Regeneration advised that delegated powers operated within the Council's established scheme of delegation and decision-making framework. It was explained that, when agreeing delegations, Cabinet considered both the intended outcomes and whether the proposed delegation was within the thresholds set by the Council. If something was outside of those thresholds it would need to go back to Cabinet.

13. How were the additional recommendations introduced at the Cabinet meeting and did Cabinet Members understood their implications before the decision was taken?

The Deputy Leader and Cabinet Member for Resources and Regeneration advised that the additional recommendations had been shared with him prior to the meeting and circulated to all Cabinet Members at the meeting itself.

The Monitoring Officer added that whilst the recommendations had been introduced late in the process, he considered them to be technical and consequential in nature rather than material changes requiring deferral of the decision.

14. A Member noted that when authority was delegated to officers, reports often included an explicit requirement for officers to consult the relevant Cabinet Member and queried why this was not the case on this occasion.

The Monitoring Officer advised that, whilst it was common practice to include a specific requirement to consult the relevant Cabinet Member within delegated authority recommendations, there was no legal requirement to do so. He explained that the Council's Constitution and Scheme of Delegation already required officers to consult appropriately with Members when exercising delegated powers and he would expect consultation with the relevant Cabinet Member to take place before any significant delegated decisions were made.

15. What was the actual contingency figure and why was more than a quarter of the £8 million programme being held as contingency?

Officers advised that the contingency allowance reflected the current stage of development of the schemes and the level of certainty available in the cost estimates. It was explained that any drawdown of contingency funding would be subject to the Council's financial procedure rules, documented justification and capital programme governance processes. Members expressed concern that the contingency provision appeared high for a project at that stage of development.

16. How much had already been spent or committed on design work and other preparatory activity, and were the costs included within the estimates?

The Chief Financial Officer undertook to provide details following the meeting. It was explained that the Council maintained funding to support initial design and development work for capital schemes prior to formal approval by Cabinet.

AGREED that the decision was taken in accordance with the decision-making principles as set out in the Council’s Constitution and no further action be taken.

Chair: .....