

<b>MAYOR AND CABINET</b>			
<b>Report Title</b>	Decision to alter the SEN provision at Deptford Green School		
<b>Key Decision</b>	Yes	Item No.	
<b>Ward</b>	New Cross		
<b>Contributors</b>	Executive Director for Children and Young People		
<b>Class</b>	Part 1	Date:	18 September 2019

## 1. Summary

- 1.1 This report sets out the results of the statutory consultation on the proposal to alter the SEN provision at Deptford Green School from a Dyslexia unit into a Autism Spectrum Disorder (ASD) unit.
- 1.2 This report then goes on to seek decision from the Mayor and Cabinet (as LA Statutory Decision Maker) to enable this alteration to take place.

## 2. Purpose

- 2.1 The report feeds back on the consultation and seeks a decision from the Mayor and Cabinet regarding the proposed alteration to the SEN provision at Deptford Green School. The proposed alteration will allow the school to cater for up to 20 students within the Resource Base by 2021. With the first revised entry occurring in September 2020.

## 3. Recommendations

- 3.1 The Mayor and Cabinet are recommended:
- 3.2 to note the results of the consultation conducted on the proposal to alter the SEN provision at Deptford Green School.
- 3.3 to agree that the designation of the SEN provision at Deptford Green School is altered from Dyslexia to ASD from Autumn 2019 so as to enable new entrants with a primary diagnosis of ASD from September 2020.

## 4. Policy Context

- 4.1 The proposal to alter the SEN provision at Deptford Green School will contribute to the following key priority outcome of Lewisham's Corporate Strategy 2018-2022:

- **Giving children and young people the best start in life** – every child has access to an outstanding and inspiring education and is given the support they need to keep them safe, well and able to achieve their full potential.

And specifically helps deliver against the commitment to increase the provision for children with special educational needs to meet children's learning needs within the borough.

- 4.2 The Local Authority has a duty to ensure the provision of sufficient places for pupils of statutory school age.

### ***Place Planning Strategy 2017-22***

- 4.5 A recommendation of the 2016 Lewisham Education Commission Report was for the Council to develop a new 5 year Place Planning Strategy that succeeded the Primary Strategy for Change. Officers reviewed what had gone on before and what needs to be achieved in the future, and the draft strategy went through a public consultation process. The strategy was approved by Mayor and Cabinet on 22 March 2017.
- 4.6 Within the strategy the council committed to constantly review its forecasting to ensure that the supply of school places met need as accurately as possible, as both undersupply and oversupply can have knock on effects on school standards and finances.
- 4.7 Within this the strategy also highlights the need to review the provision we have within the borough that caters for children and young people with special educational needs and disabilities (SEND), to ensure that the correct provision is provided in the right place at the right time.

### ***School Organisation Requirements***

- 4.8 Proposals to change the SEN provision at a school must comply with the provisions set out in *The Education and Inspections Act 2006 (EIA 2006)* and *The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013*. These set out the statutory process for making changes to a school, and statutory guidance on making changes to a maintained school indicates 4 stages to making a prescribed alteration to a maintained school. These are:

- 1) Publication of a Statutory Notice
- 2) Representation period (consultation)
- 3) Decision making
- 4) Implementation

- 4.9 In the case of a community school (which Deptford Green is) the Local Authority must propose and conduct the publication and representation periods, with the Mayor and Cabinet (as statutory decision maker) then making the decision.

## **5. Background & Rationale**

- 5.1 Deptford Green has an established Resource base which is currently commissioned for 14 students with a primary diagnosis of Dyslexia. Students can have a secondary or associated learning need of ASD. The majority of students actually have a dual diagnosis and the resource provision has been meeting these dual needs over the last two years.
- 5.2 As part of Lewisham's wider Special Educational Needs and Disability place planning process officers have been working with the school regarding the proposal to alter the criteria for the resource provision as a result of changing patterns of demand. Following this process the school are fully in support of this proposed change.
- 5.3 The proposed change of the SEN Resource Base provision at Deptford Green from a primary need of Dyslexia to a primary need of Autism Spectrum Disorder (ASD) from October 2019, will ensure clarity for those applying to start their secondary education in September 2020, allowing them to make an informed choice.
- 5.4 Additionally the availability of places will increase over time and the resource base will be able to accommodate 20 students by 2021. All children currently placed in the resource base will remain, unless their needs change and this would be identified through the annual review process in the same way as all children with an EHCP.
- 5.5 This alteration will mean that students will have a primary need of ASD and may have an associated need of dyslexia. The decision for this change has come from analysis of our data and the recognition that there is a significant need in Lewisham for resource places at secondary level for children and young people who have ASD. Many children with dyslexia are supported in their local secondary school and do not require a specific resource base. However children who have dyslexia with a primary need of ASD will still be able to attend the resource base if appropriate to their EHCP provision.
- 5.6 It should be noted that the needs of students with dyslexia can be met through quality first teaching and the implementation of dyslexia friendly classroom teaching practices. In line with the graduated response a student may need to access school based targeted support and intervention to meet any additional literacy and learning needs. This support would be delivered by trained adults within the school. In cases where the school may require additional advice about a student's needs and feel an identification of dyslexia is necessary they can purchase support from the Local Authority Specific Learning Difficulties Team and have the student assessed by a Specialist Dyslexia Teacher who would be able to provide advice about how the student's needs can be met.

- 5.7 The objective of the proposal is to ensure sufficiency of places offering the right level of support to students with a primary need of ASD within the Borough.
- 5.8 This proposal forms part of Lewisham Council's response to the statutory obligation to provide sufficient school places.

### **Implementation of the proposal**

- 5.9 The alteration will allow the school to cater for up to 20 students within the Resource Base by 2021. With the first revised entry occurring in September 2020.

### **Effect on other educational institutions in the area**

- 5.10 It is not anticipated that the proposed alteration will have any impact on other educational institutions within the local area. The proposal has been made to accommodate the increase in students diagnosed with ASD as a primary need and requiring additional support. It will also increase the provision available in the north of the borough.

## **6. Publication and Representation**

- 6.1 The statutory notice and proposal for the alteration of the SEN provision at Deptford Green School were published on 21 June 2019, with the representation period running for 4 weeks until 19 July 2019.
- 6.2 During that period neither the school nor the council received any responses despite the notice being published in the South London Press and the proposal being sent to all staff and parents/carers, as well as being on the Lewisham website.
- 6.3 Officers have completed the statutory process properly and believe that a lack of response suggests that stakeholders do not regard the change to primary need of the resource base, and its proposed implementation, as a negative proposition.
- 6.4 As such, officers recommend that the Mayor agree to the alteration of the SEN provision at Deptford Green School from a primary diagnosis of Dyslexia to a primary diagnosis of Autism Spectrum Disorder (ASD), with an implementation date of October 2019.

## **7. Factors relevant to a making a decision on school organisation proposals**

When making a decision on a school organisation proposal the Decision Maker must consider the following factors:

### **7.1 Consideration of consultation and representation period**

The decision-maker will need to be satisfied that the appropriate consultation and/or representation period has been carried out and that the proposer has had regard to the responses received. If the proposer has failed to meet the statutory requirements, a proposal may be deemed invalid and therefore should be rejected. The decision-maker must consider all the views submitted, including all support for, objections to and comments on the proposal.

*The consultation has been undertaken in accordance with the statutory requirements. Stakeholders have been involved in the development of the proposals. The notices have been published as required (See appendix 2 & 3). Views submitted, including all support for, objections to and comments on the proposals have been reported to the decision maker.*

## **7.2 Education standards and diversity of provision**

Decision-makers should consider the quality and diversity of schools in the relevant area and whether the proposal will meet or affect the needs of parents, raise local standards and narrow attainment gaps.

*This change will allow the local authority to better meet the needs of our children and young people, by ensuring that our specialist provision is suitable for both the current and future cohort. Specifically the proposal will help cater for our growing number of children with ASD as a primary need, by both altering the focus and increasing the number of places. It should also be noted that Deptford Green is the closest Secondary School to Eveyln Ward, which is in the top 5 wards in Lewisham for numbers of children with ASD identified as their primary need within their Education, Health and Care Plans, and as such will help cater for these children that do not meet the threshold for attending a special school.*

## **7.3 Equal opportunity issues**

The decision-maker must comply with the Public Sector Equality Duty (PSED), which requires them to have 'due regard' to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- advance equality of opportunity between people who share a relevant protected characteristic and people who do not share it;
- and
- foster good relations between people who share a relevant protected characteristic and people who do not share it.

*In developing this proposal the Council has had regards to its statutory responsibilities under section 149 of the Equality Act 2010. The proposal does not have any adverse effect on equal opportunity, and in fact helps the council deliver services that meet the needs of those with special educational needs and disabilities.*

## **7.4 Community cohesion**

Schools have a key part to play in providing opportunities for young people from different backgrounds to learn with, from, and about each other; by encouraging through their teaching, an understanding of, and respect for, other cultures, faiths and communities. When considering a proposal, the decision-maker should consider its impact on community cohesion. This will need to be considered on a case-by-case basis, taking account of the community served by the school and the views of different groups within the community.

*The proposal does not have any adverse effect on community cohesion. In fact it should have a positive impact on the local community as there will be an increase in resource base places for pupils with a diagnosis of ASD, specifically in a school that is the closest to an area (Evelyn ward) that has a higher instance of ASD compared to the majority of the borough.*

#### **7.5 Travel and accessibility**

Decision-makers should satisfy themselves that accessibility planning has been properly taken into account and the proposed changes should not adversely impact on disadvantaged groups.

The decision-maker should bear in mind that a proposal should not unreasonably extend journey times or increase transport costs, or result in too many children being prevented from travelling sustainably due to unsuitable walking or cycling routes. A proposal should also be considered on the basis of how it will support and contribute to the LA's duty to promote the use of sustainable travel and transport to school.

*The proposal makes no material change to those that currently utilise the resource base and will enable further students to access specialist provision more locally, and as such does not have any negative impact on travel and accessibility.*

#### **7.6 Funding**

The decision-maker should be satisfied that any necessary funding required to implement the proposal will be available and that all relevant local parties (e.g. trustees of the school, diocese or relevant diocesan board) have given their agreement. A proposal **cannot** be approved conditionally upon funding being made available.

Where proposers are relying on the department as the source of capital funding, there can be no assumption that the approval of a proposal will trigger the release of capital funds from the department, unless the department has previously confirmed in writing that such resources will be available; nor can any allocation 'in principle' be increased. In such circumstances the proposal should be rejected, or consideration deferred until it is clear that the capital necessary to implement the proposal will be provided.

*No new or additional funding is required to implement the proposal*

- 7.7 The Mayor and Cabinet are recommended to agree the proposal that the SEN provision at Deptford Green School should be altered from a primary diagnosis of Dyslexia to a primary diagnosis of Autism Spectrum Disorder (ASD) from October 2019.

## **8. Financial Implications**

### **Capital Financial Implications**

- 8.1 There are no capital financial implications as a result of this report.

### **Revenue Financial Implications**

- 8.2 The current cost of a place at a special unit is £22,150. This is made up of £10,000 place funding and £12,150 top up.
- 8.3 All resource bases attract the same level of funding therefore the change in status should not have an impact.
- 8.4 For 6 additional places the cost will be £132,900. Some cost may be mitigated if it applies to existing pupils.
- 8.5 The SEN Team has advised that there is a demand for these places; The demand may be a combination of
- New pupils
  - Pupils currently with EHCP in mainstream provision
  - Possible but unlikely the movement from out borough placings.
- 8.6 The Dedicated Schools Grant (High Needs Block) is currently under pressure. This increase in cost is likely to place the HNB under further pressure. However the Local Authority has a statutory role to meet the needs of pupils and provision will need to be found. Local provision is preferable to out borough as out borough placements are more expensive and would also potentially incur additional transport costs.

## **9. Legal Implications**

- 9.1 The Human Rights Act 1998 safeguards the rights of children in the borough to educational provision, which the local authority is empowered to provide in accordance with its duties under domestic legislation.
- 9.2 Section 14 of the Education Act 1996 obliges each local authority to ensure that there are sufficient primary and secondary school places available for its area i.e. the London Borough of Lewisham, although there is no requirement that those places should be exclusively in the

area. The Authority is not itself obliged to provide all the schools required, but to secure that they are available.

- 9.3 In exercising its responsibilities under section 14 of the Education Act 1996 a local authority must do so with a view to securing diversity in the provision of schools and increasing opportunities for parental choice.
- 9.4 The Education and Inspections Act 2006 places requirements on local authorities to make their significant strategic decisions concerning the number and variety of school places in their localities against two overriding criteria:
- to secure schools likely to maximise student potential and achievement;
  - to secure diversity and choice in the range of school places on offer.
- Section 19 of the Education and Inspections Act 2006 provides that where a local authority or the governing body of a maintained school proposes to make a prescribed alteration to a maintained school and it is permitted to make that alteration, it must publish proposals.
- 9.5 The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 provide that changes to the SEN provision within a maintained school are prescribed alterations which means that statutory proposals have to be published, and there must be a period of four weeks for representations before a decision is made. Proposals to alter the SEN provision will be determined by the local authority as decision maker.
- 9.6 The relevant Guidance advises that the Mayor as decision maker will need to be satisfied that the appropriate consultation and/or statutory representation process has been carried out and that the proposer has had regard to the responses received. The Mayor must consider all the views submitted, including all support for, objections to and comments on the proposals.
- 9.7 Any decision to alter the SEN provision at Deptford Green School should be taken in the light of the representations received to the statutory consultation and the DfE Guidance for Decision-Makers attached at Appendix 4.
- 9.8 Decisions must be made within a period of two months of the end of the representation period or be referred to the Schools Adjudicator.

### **Equalities Legislation**

- 9.8 The Equality Act 2010 (the Act) introduced a public sector equality duty (the equality duty or the duty). It covers the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

- 9.9 In summary, the Council must, in the exercise of its functions, have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
  - advance equality of opportunity between people who share a protected characteristic and those who do not.
  - foster good relations between people who share a protected characteristic and those who do not.

9.10 It is not an absolute requirement to eliminate unlawful discrimination, harassment, victimisation or other prohibited conduct, or to promote equality of opportunity or foster good relations between persons who share a protected characteristic and those who do not. It is a duty to have due regard to the need to achieve the goals listed at 9.9 above.

9.11 The weight to be attached to the duty will be dependent on the nature of the decision and the circumstances in which it is made. This is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. The Mayor must understand the impact or likely impact of the decision on those with protected characteristics who are potentially affected by the decision. The extent of the duty will necessarily vary from case to case and due regard is such regard as is appropriate in all the circumstances.

9.12 The Equality and Human Rights Commission has issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled "Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice". The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at:

[www.equalityhumanrights.com/en/advice-and-guidance/equality-actcodes-practice](http://www.equalityhumanrights.com/en/advice-and-guidance/equality-actcodes-practice)

[www.equalityhumanrights.com/en/advice-and-guidance/equality-acttechnical-guidance](http://www.equalityhumanrights.com/en/advice-and-guidance/equality-acttechnical-guidance)

9.13 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

The essential guide to the public sector equality duty  
Meeting the equality duty in policy and decision-making  
Engagement and the equality duty: A guide for public authorities  
Objectives and the equality duty. A guide for public authorities

## Equality Information and the Equality Duty: A Guide for Public Authorities

- 9.14 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at:

[www.equalityhumanrights.com/en/advice-and-guidance/public-sectorequality-duty-guidance#h1](http://www.equalityhumanrights.com/en/advice-and-guidance/public-sectorequality-duty-guidance#h1)

### **10. Crime and Disorder Implications**

- 10.1 There are no crime and disorder implications.

### **11. Equalities Implications**

- 11.1 This report supports the delivery of the Council's Equalities programme by ensuring that all children whose parents/carers require a place in a Lewisham school will be able to access one.
- 11.2 The Council's Comprehensive Equality Scheme for 2016-20 provides an overarching framework and focus for the Council's work on equalities and helps ensure compliance with the Equality Act 2010.
- 11.3 Specifically this report seeks to alter the SEN provision within a school to ensure that it best delivers for the current cohort of young people within the borough, and therefore ensures that we are taking due regard for their needs.

### **12. Environmental Implications**

- 12.1 Every effort will be made to enhance rather than detract from school environments in the solutions to providing amalgamations of schools.

### **13. Background documents**

**Appendix 1** – Alteration of SEN Provision at Deptford Green School - Anonymised Representation responses.

**Appendix 2** – Copy of Proposal to alter the SEN provision at Deptford Green School

**Appendix 3** – Copy of Statutory Notice to alter the SEN provision at Deptford Green School

**Appendix 4** – Statutory Guidance for Decision Makers

If there are any queries on this report, please contact Matt Henaughan, SGM  
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